

# **Detailed Step-by-Step Instructions on How to Apply for Administration with Will Annexed in Manitoba**

An administrator with will annexed is appointed in the following situation:

- When a person dies and leaves a will, but there is no executor to administer the estate, either because one wasn't named, or because the named executor has died, is not able to act, or will not act. In this case, the administrator is appointed according to *The Intestate Succession Act*. The estate is distributed according to the terms of the will.

**STEP 1 Decide who will be appointed administrator.** *The Intestate Succession Act* sets out priorities about who has the right to be named administrator. The first right goes to a spouse or common-law partner, then to an adult child, then to parents and then brothers and sisters and then to grandparents and nieces and nephews. According to *The Court of King's Bench Surrogate Practice Act*, the administrator must be a resident of Manitoba.

**STEP 2 Decide whether you should see a lawyer about the estate.** Review the terms of the will and its form, and assess whether there are any potential problems or issues that would make it necessary or desirable to consult a lawyer. (See [\*\*Probate Guide -Read this First – When this guide should not be used\*\*](#))

**STEP 3 Get the Administration forms and fill them out.** You will need copies of the forms you must file with the court.

Pre-printed forms are available at the Court office, but there is a fee.

You can get the forms online at the Province of Manitoba website.

You can fill in the forms on computer and print them out, or print the forms and fill them out in handwriting. If you are filling them out by hand, print neatly in pen.

Cross out any information that does not apply.

Use only one side of the paper.

Use figures for dates, numbers and sums.

The forms come together in a package. You will need the [Request for Administration with Will Annexed Set](#).

## **Request for Administration with Will Annexed Set**

Includes:

- [\*\*74B\*\*](#) Inventory and Valuation of the Property of the Deceased
- [\*\*74C\*\*](#) Request for Administration with Will Annexed
- [\*\*74G\*\*](#) Administration with Will Annexed (2 copies)
- [\*\*74M\*\*](#) Nomination of Administrator
- [\*\*74N\*\*](#) Renunciation of Letters of Administration with Will Annexed
- [\*\*74V\*\*](#) Bond for Administrators with Will Annexed
- [\*\*74W\*\*](#) Affidavit of Execution of Bond
- [\*\*74X\*\*](#) Affidavit of Execution of Renunciation
- [\*\*74Y\*\*](#) Affidavit of Justification by Sureties for Administration

**STEP 4** **Find out what assets exist and form part of the estate.** Review the will and personal papers of the deceased, including any instructions and list of assets they may have left to the executor, and the contents of their safety deposit box, and bank statements. Find out what assets exist but are not specifically named in the will by discussing this with the deceased's spouse, accountant, employer and financial institutions.

Note that the Court cannot grant Administration with Will Annexed until 7 days after the death of the deceased.

**STEP 5** **Fill out the Forms to File at Court**

Review the Administration with Will Annexed precedents that are included in this section for help in filling out the forms.

Forms needed are: 74B, 74C, 74G, 74M, 74N, 74V, 74W, 74X, 74Y

### **74B Inventory and Valuation of the Property of the Deceased**

Do not include jointly held real or personal property. Only property that is in the deceased's name alone should be included, unless there is a joint bank account that the deceased intended to be included in the estate.

If you find out after you apply for probate that other assets exist that you did not list, you can file an amended valuation within 30 days of the discovery, and pay the additional fees required at that time.

Any "right of action" that the estate has should be valued at \$1.00 and then amended later if necessary. If you include a right of action, you must also provide the court with a letter stating that you will provide an amended inventory once the value is determined and that you will pay the additional probate charge at that time.

The value of property for probate or administration purposes is the fair market value of the property minus any incumbrances (for example mortgages). Show only the net value.

Do not include life insurance or RRSPs payable to named beneficiaries – only include these if they are payable to the estate.

Note: Be aware that any interested person or the court can inquire further into the assets of the deceased, and the administrator may have to provide the additional information. The rules that govern this are KBR 74.06.1 (1) - 74.06.2(3).

#### **74C Request for Administration with Will Annexed**

This form is mostly self-explanatory. Section 7 should be filled out according to the degrees of kinship listed in *The Intestate Succession Act*.

#### **74M Nomination of Administrator**

Rule 74.04 (2) says all persons habitually resident in Manitoba with an equal or superior right to administration shall either nominate the person making the request by using Form 74M or renounce by using Form 74P.

#### **74N Renunciation of Administration with Will Annexed**

Must be filled out by anyone in Manitoba with an equal or greater right to act as administrator, who is renouncing their right to act.

#### **74G Administration with Will Annexed (2 copies)**

This is a very straightforward document. Fill in the details about the deceased, date of death and occupation and your name (and the other administrator's name(s), if applicable). Leave the Judge's name and the date blank. You will need two copies to file in court.

#### **74V Bond for Administrators (or with Will Annexed)**

A bond is an agreement made by the administrator and sureties with the Probate Court Judge promising that all of the administrator's duties will be performed, and if they are not, the sureties will pay money to the court. The bond amount is twice the value of the estate.

A bond is filed with the Court in Form 74V.

An Affidavit of Execution of Bond is filed with the Court in form 74W and must be sealed. (The Notary or Commissioner for Oaths will attach a seal).

The bond is meant to guarantee the proper administration of the estate and protect the beneficiaries and creditors. The Court can dispense with the requirement for a bond when the beneficiaries are all adults and they consent. When the value of the estate is less than \$50,000 a surety is not needed. Only one surety is needed if the estate is worth more than \$50,000, but less than \$100,000.

The administrator can buy a bond from an insurance company or a surety company and in that case, a personal surety is not needed.

**74W Affidavit of Execution of Bond**

**74X Affidavit of Execution of Renunciation**

**74Y Affidavit of Justification by Sureties for Administration**

A surety guarantees the bond required by the court for security on administration of an estate. Two sureties are required to guarantee the bond if the estate is worth \$100,000 or more. Each must swear to owning assets worth the amount of the bond. Each must live in Manitoba. Only one surety is needed if the estate is worth more than \$50,000, but less than \$100,000.

A surety uses Form 74Y to state the value of their assets and guarantee that they will pay the amount of the bond if the administration of the estate is not carried out according to the terms of the bond.

The Administrator can also buy a bond from an insurance company or surety company. In that case, the amount of the bond only has to be for the amount of the value of the estate.

You will also need to file the following:

**The executed (signed) original will with affidavit of execution**

If the affidavit of execution was not signed at the same time as the will, an affidavit will have to be prepared and signed now by one of the witnesses to the will. A witness to a will cannot swear the Affidavit of Execution of a will.

If neither witness can be found, an affidavit should be prepared that lists the efforts made by the executor to find the witnesses and obtain proof that the signature on the will is that of the testator.

The Commissioner or Notary must mark the will as an exhibit to the administrator's **Affidavit in Support of Request for Administration with Will Annexed** and to the **Request for Administration with Will Annexed**. The administrator must sign the will to identify it. The wording is "This is the last Will and Testament of (testator's name)" "(administrator's name), Administrator (for identification purposes)".

**Two photocopies of the executed original will** (not including the affidavit of execution).

**Proof of Death** - this will usually be either the Funeral Director's Death Certificate or a Death Certificate from Vital Statistics.

#### **74E Affidavit of Condition**

You will need this form if there are any marks on the will that were aimed at modifying the contents – extra words written in, things crossed out, alterations, etc. and not initialed by the testator and the two witnesses.

These changes would not be included in the probate, unless an affidavit in Form 74E is prepared and signed by the administrator that states they existed in the will prior to its execution, or by republication of the will or execution of a codicil. **See a lawyer, or get some legal advice at this point.**

Also, if suspicious circumstances exist and it looks like someone has tried to obliterate something in the will, probate will not be granted until all such matters have been explained to the satisfaction of a judge. **In this situation, see a lawyer or get some legal advice.**

#### **In Case of a Holograph Will or Codicil**

A holograph will or codicil is a will or codicil written totally in the testator's own handwriting and signed at the end by the testator. A holograph will does not need a witness.

In order to probate a holograph will or codicil, an [Affidavit in Form 4D](#) (also available online or at the court office) must be prepared and sworn by a person who is familiar with the testator's handwriting and signature. In the affidavit this person says the writing and signature is the testator's, and that at the time of the writing of the will or codicil, the testator was over 18, and that they appeared to be of sound mind, memory and understanding.

### **STEP 6**

#### **Go to the Court of King's Bench and file the forms.**

You do not need to make an appointment. Just go to the Court of King's Bench Office nearest where you live with the documents and filing fee.

Estate matters at The Court of King's Bench in Winnipeg at 408 York are dealt with in Room 100C. (This is just a section of the long counter where all incoming matters are handled. As you enter the court, turn right and look for the sign that says Wills and Estates).

You will take a number for service and then a clerk will take your forms and fees and they will be reviewed and dealt with by Court staff and a Master or a Judge.

If your documents are not in the proper form they may be rejected. In that case you will have to pay a \$10.00 Rejection Fee.

### **STEP 7**

#### **Receipt of Grant of Administration with Will Annexed**

Once you receive the Grant of Administration you will have the authority to deal with the estate assets held by various institutions. Some institutions may require a notarial copy, and also may require a death certificate.