

## For Executors - Detailed Step-by-Step Instructions on How to Apply for Probate in Manitoba

- STEP 1 Find the Will.** Find the deceased's signed original will (not a photocopy). It is likely either among the deceased's personal papers or with the deceased's lawyer or trust company. Sometimes people give their executor a copy of their will and a letter or memo with additional information about their wishes.
- STEP 2 Find the Affidavit of Execution.** Check whether there is a [Form 74D Affidavit of Execution of Will or Codicil](#) with the will. (If this was not signed at the time the will was executed, you will have to contact one of the witnesses who witnessed the will and have the Form 74D affidavit sworn by them before applying for probate.)
- STEP 3 Consider who should serve as the executor(s).** There may be more than one person named as executor in the will. Now is the time for executors to consider renunciation. Executors should consider whether they are willing and able to act as executors. Joint executors should consider whether it would be preferable that one person only act as a single executor, because of the possible inconvenience of acting as joint executors (particularly where one executor lives outside of Manitoba). Executors must be unanimous in their decisions unless specified otherwise in the will. If one of the co-executors lives outside Canada they may have to post a bond and should consult a lawyer for advice about possible tax implications relating to the residence of trusts.
- STEP 4 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 5 Get the Probate 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 Probate Set](#)

### **Grant of Probate set**

Includes:

[74A](#) Request for Probate

[74B](#) Inventory and Valuation of the Property of the Deceased

[74D](#) Affidavit of Execution of Will or Codicil (this should be with the will)

[74F](#) Grant of Probate (you will need 2 copies)

[74N](#) Renunciation

[74X](#) Affidavit of Execution of Renunciation

You will only need Forms 74N and 74X if an executor is not able or willing to act and is renouncing.

- STEP 6 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 the deceased may have left to you as executor, the contents of the 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.
- STEP 7 Consider survivorship provisions.** The court cannot grant probate until seven days after the death of the testator (unless a judge otherwise directs). A will may also contain a clause that extends the amount of time that the executor must outlive the testator before applying to probate the will.
- STEP 8 Begin preparing Form 74B Inventory and Valuation of the Property of the Deceased.** Assess the value and nature of the assets and determine whether the will must be probated. 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 the estate assets are worth \$10,000 or less, you can apply for an "[Order under Section 47 of The Court of King's Bench Surrogate Practice Act](#)"

## **STEP 9 Prepare the forms that you need to file at court**

### **Forms to Prepare and File at Court**

Review the Probate precedents that apply to this section for help in filling out the forms.

#### **74A Request for Probate**

This is a simple form that:

- asks the court to grant probate,
- identifies the deceased,
- asks for the deceased's marital and common law information,
- says when the will was signed, and
- asks for information about the executor or executors, including place of residence and occupation.

All executors' information must be included and all executors must sign the form.

Make sure that the full legal names of the testator and executors are used. If anything, other than the full legal name, was used in the will for either the testator or executors, add a line that explains this. For example, if the testator's legal name was James Potts, but in the will he was called Jimmy Potts, write: "James Potts (shown in the will as Jimmy Potts), late of the City of Winnipeg..."

#### **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.

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.

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 executor may have to provide the additional information. The rules that govern this are KBR 74.06.1 (1) - 74.06.2(3).

**74F [Probate](#) (2 copies)**

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

In addition to these forms, you must also bring:

**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 **Request for Probate**. The executor must sign the will to identify it. The wording is "This is the last Will and Testament of (testator's name)" "(executor's name), Executor (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.

If any executor is renouncing their appointment, you must also fill out:

**[Form 74N Renunciation](#)**

**[Form 74X Affidavit of Execution of Renunciation](#)**

When an executor decides not to act as an executor, that executor must prepare and sign the Form 74N Renunciation Form in the presence of a witness.

That witness must sign a Form 74X Affidavit of Execution of Renunciation, which must be sworn before a Commissioner for Oaths or a Notary Public.

## **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 executor 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 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 10 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 11 Receipt of Grant of Probate**

Once you receive the Grant of Probate 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.