

About this Guide

This guide has been written to help people in Manitoba who are planning to administer an estate or act as an executor for an uncomplicated estate with a value of less than \$100,000. This guide is for people who want to go to Probate Court and apply for a grant of probate or administration by themselves.

Even small estates may be complicated and issues can come up that are beyond the scope of this guide. It is always recommended that even when handling an estate on your own, you should get legal advice.

This guide is primarily to help executors and administrators with the forms needed to apply for probate or administration.

This guide contains some short explanations of some laws that affect applying for estate administration in Manitoba. It gives step-by-step instructions on applying for probate or administration, whether there is a will or not, and whether there is a named executor or not.

This is not a step-by-step guide for dealing with an estate.

This guide does not list all of the duties of an executor or administrator. It does not explain how estate assets are to be collected, transferred, otherwise dealt with or distributed. This guide does not deal with the payment of debts or the filing of tax returns. This guide does not cover passing of accounts in detail.

Before you Begin

Is it necessary to probate the will?

If all of the assets of the deceased are held jointly, it may not be necessary to probate the will. When there is a right of survivorship, as is common with jointly-held property, it automatically passes to the surviving owner. Contact the financial institutions where assets of the deceased are held to find out what the institution needs from you or the Court in order to release the funds or other assets. If all of the assets are jointly held, it is not necessary for the will to be probated. If the estate assets are worth \$10,000 or less, you can apply for an Administration Order (“Administration Order under Section 47 of *The Court of Queen's Bench Surrogate Practice Act*”)

There may be uncertainty when there are joint bank accounts. Whether a joint bank account should form part of the estate or simply pass to the survivor on the account is a question of law to be decided according to each fact situation and the intention of the deceased.

When This Guide Should Not Be Used

Do not use this guide if:

- The will has been lost.
- There are multiple wills and it is not known which was the last will.
- The proposed executors or co-executors are non-residents of Manitoba. (See a lawyer who can explain tax consequences of estates and trusts in other jurisdictions.)
- Another party opposes the grant of probate (he or she files a caveat opposing the grant of probate or administration).
- You are aware that there may be potential *Dependent's Relief Act* claim(s), *Family Property Act* claim(s) or a *Homesteads Act* claim.
- There is confusion or disagreement about family relationships such as paternity or common-law partner status that makes it difficult to decide who is a potential beneficiary or executor.
- There are unclear terms in the will.
- There are disputes among (actual or potential) beneficiaries or executors.
- There are questions about the capacity of the testator at the time of the writing of the will, or suspicion that the testator was affected by undue influence by a beneficiary.
- There are suspicious circumstances relating to the will or the testator's death.
- It is a bankrupt or insolvent estate (where debts are more than assets).
- The deceased held a joint bank account with a beneficiary and it is uncertain whether it was intended to be included in the estate or pass to the survivor on the account.
- There may be circumstances that come up during a probate or administration application that complicate matters. For example, if a caveat is filed by a party who opposes your request for probate, you should see a lawyer.

Hiring a Lawyer

A personal representative can hire a lawyer to help with his or her duties. The fees of that lawyer are paid out of the estate and the amount is governed by the *Queen's Bench Rules*, particularly Rule 74.14.

There are many advantages to hiring a lawyer when you are applying for probate or administration of an estate.

- A lawyer will make sure that you are aware of all of the laws that could apply to you and the estate that you are administering. A lawyer can explain what your responsibilities as an executor are, how long the estate administration might take, and can answer any questions you have.
- A lawyer will prepare your request for probate or administration forms, and will file the documents at court, and guide you through the legal process.
- A lawyer will be able to identify when certain laws will affect your estate – such as whether anyone may have a claim against the estate under *The Dependent's Relief Act* or *The Family Property Act*.
- Laws relating to estate administration are complex and sometimes cannot be easily understood or interpreted by non-lawyers. This is partly because legislation and court decisions change the meaning of provisions in wills automatically (by operation of law), so that what is written in the will is not how the probate court master or judge will read it. For example, if a man writes a will and names his wife as an executor, but then they get divorced, the law treats the situation as though the wife had died before the husband, so she cannot act as the executor.

Every person has the right to represent himself or herself before any court and is not obligated to hire a lawyer. **However, the consequences of not hiring a lawyer for probate court could potentially be serious. The courts do not make special allowances for people who are not represented by lawyers (unrepresented parties). If you make mistakes or wrong decisions during the process, it may not be possible to correct them later.**

Provincial Estate Laws

Estates are mainly governed by provincial laws. The Court in which estates are probated, supervised and otherwise dealt with is The Manitoba Court of Queen's Bench Probate Division. **Each province in Canada has different laws governing estate administration and the procedures related to it. Therefore, you should not rely on advice or information from other provinces or advice from people**

who want to share the experiences they had in another province or country. It is important to follow the procedures set out in the laws of Manitoba. Manitoba laws can be found online at www.gov.mb.ca/laws.

Laws Relevant to Estate Administration

This is not a complete list, but some laws that govern estate administration in Manitoba are:

The Wills Act

Executors should read this entire act.

The Homesteads Act

Allows spouses and common-law partners the right to live in the family home even after the death of the other spouse. Limits the rights of any other parties to deal with the homestead as an asset.

The Court of Queen's Bench Rules (Regulation 553/88) are regulations of *The Court of Queen's Bench Act* (C.C.S.M. c. C280). They are referred to as the *Queen's Bench Rules*. These regulations set out the rules of court, including how forms and evidence must be presented in court. Executors and administrators should read Rule 74.

The Court of Queen's Bench Surrogate Practice Act

Executors and administrators should read this act, which deals in detail with probate and administration application requirements. (Noted in this guide as SPA.)

The Law Fees and Probate Charge Act

Sets out probate or administration fees on estates by a percentage calculation.

The Family Property Act

Allows spouses and common-law partners to make application for an accounting and equalization of estate assets of the deceased spouse or common-law partner, within six months from the grant of probate of the will or of letters of administration.

The Common-Law Partners' Property and Related Amendments Act

Passed in 2004, gives common-law partners the same rights as married spouses under *The Family Property Act* and *The Intestate Succession Act*.

The Dependants Relief Act

Allows a dependant who is in financial need to apply to the court for an order that reasonable provision be made out of the estate of the deceased for the maintenance and support of the dependant. Dependant includes a spouse, child or common-law partner or other. The dependant can apply whether or not the deceased left a will, and notwithstanding any other provisions in the will or *The Intestate Succession Act*.

The Intestate Succession Act

If a person dies without a valid will, his or her estate is distributed according to this act, which sets out the priority of beneficiaries according to degrees of kinship.

There are many other Manitoba statutes that affect estate administration and some federal ones as well, such as the *Income Tax Act*. We will look at some relevant sections of other laws in the rest of the guide. As well, rules of common law (court judgments) are part of the law, and how cases have been decided before and how sections of legislation have been interpreted affects estate administration as well.