

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 executors have died, are not able to act, or will not act. In this case, the administrator is named according to *The Intestate Succession Act* and 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 as to 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 nieces and nephews. According to *The Court of Queen's Bench Surrogate Practice Act* s. 7(1) the administrator must be a resident of Manitoba.

STEP 2 **Get the Administration forms and fill them out.** You will need copies of the forms you must file with the court. The forms are specified by *Queen's Bench Rule 74*. You do not need to use a computer in order to get your forms or fill them out. You may print neatly in pen on the pre-printed forms and cross out information that is not applicable (see the precedents at the back of this guide). Text in court documents can be printed, typewritten, or handwritten legibly. Only one side of the paper is to be used, and dates, numbers and sums are to be expressed in figures.

If you have access to a computer and Internet access, 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. http://web2.gov.mb.ca/laws/rules/forms_e.php

Administration of Will Annexed Set

- 6A Covering Page Request
- 74B Inventory and Valuation of the Property of the Deceased
- 74D Request for Administration with Will Annexed
- 74E Affidavit in Support of Request for Administration with Will Annexed
- 74K Administration with Will Annexed

74N Nomination of Administrator

STEP 3 Find out what assets exist and form part of the estate. Review the will and if available, any instructions and list of assets he or she may have left, perhaps to an original executor. Review the personal papers of the deceased and the contents of his or her safety deposit box. Review bank statements. Investigate what assets exist but may not specifically be named in the will by discussing this with the deceased's spouse, accountant, employer and financial institutions.

Note that the court cannot grant letters of administration with the will annexed until seven days after the death of the testator (unless a judge otherwise directs) (QBR 74.02 (18)).

Only property that is in the deceased's name alone should be included. Do not include jointly held real or personal property.

If you find out after you apply for administration 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. (s. 24(2) SPA).

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 administration charge at that time.

The value of property for administration purposes is the fair market value of the property less any incumbrances (*Queens Bench Rule* s.74.07(1)) so show only the net value.

Do not include life insurance or life insured 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 QBR 74.06.1 (1) - 74.06.2(3)

STEP 4 Fill out the Forms to File at Court

Review the Administration precedents in the back of this guide for assistance in filling out the forms, page 71

Forms needed are: 6A, 74B, 74D, 74E, 74K, 74N, 74O, 74R, 74S, 74T, 74T.1, 74U

6A Covering Page Request

74B Inventory and Valuation of the Property of the Deceased

74D Request for Administration with Will Annexed

74E Affidavit in Support of Request for Administration

This has to be sworn or affirmed in front of a Notary or Commissioner for Oaths.

74N Nomination of Administrator

Rule 74.04 (2) says all persons habitually resident in Manitoba with an equal or superior right to the administration shall either nominate the person making the request in Form 74N or renounce in Forms 74O (Administration with the Will Annexed)

74O Renunciation of Probate or of Administration with the Will Annexed

74R Administration (2 copies)

Leave the date and judge's name blank

74S Bond for Administrators (Or with Will Annexed or Foreign Executors)

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 74S. An Affidavit of Execution of Bond is filed with the Court in form 74T and must be sealed. 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, or when the value of the estate is less than \$50,000.

A bond can also be purchased by the administrator from an insurance or surety company, so that a personal surety is not necessary.

74T Affidavit of Execution of Bond

74T.1 Affidavit of Execution of Renunciation

74U 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. Each must swear to owning assets worth the amount of the bond. Each must live in Manitoba.

A surety uses Form 74U to state the value of his or her assets and guarantee that he or she will pay the amount of the bond if the administration of the estate is not carried out according to the terms of the bond. An insurance or surety company can also sell a bond to the administrator and act as a surety. In this 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. If neither witness can be located, 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. A witness to a will cannot swear the Affidavit of Execution of a will.

The Commissioner or Notary must mark the will as an exhibit to the **Request for Administration with Will Annexed** and to the **Affidavit in Support of 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).

STEP 7 Go to the Court of Queen's Bench and file the forms. You do not need to make an appointment. Just go to the Court of Queen's Bench Office nearest where you live with the documents and filing fee. Estate matters at The Court of Queen'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.

In addition to these forms, if applicable, you must also bring:

74G Affidavit of Plight and Finding

This is required if there are any marks in the will which were aimed at modifying the contents – extra words written in, things crossed out, alterations, etc. and not initialed by the testator. These changes would not be included in the probate, unless an affidavit in Form 74G 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 as if someone has tried to obliterate something in the will, administration will not be granted until all such matters have been explained to the satisfaction of a judge.

For this situation, see a lawyer or obtain legal advice.

In Case of a Holograph Will or Codicil

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

In order to probate a holograph will or codicil, an affidavit in **Form 4D** (also available online or at Statutory Publications) must be prepared and sworn by a person who is familiar with the testator's handwriting and signature and who 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 of the age of majority and that he or she appeared to be of sound mind, memory and understanding at that time. (SPA 22(5) deals with holograph wills.)

Administration Charge

Many banks will advance the administration charge from the deceased's account. Calculate the amount owing as follows:

Where the value of the property in the estate is more than \$10,000:
\$70 plus \$7 for every additional \$1,000 of value or fraction thereof.

For example, an estate worth \$100,000 would have to pay \$700 for the administration charge.

You can pay by cash, cheque or money order, made payable to the Minister of Finance.

If your documents are not in the proper form they may be rejected. In that case you will have to pay a \$5.00 Rejection Fee.

STEP 8**Receipt of Grant of Letters of Administration with Will Annexed**

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