

# Glossary

**Administrator/Administratrix** – A person given authority by the Court to look after an estate:

- when there is no will,
- when the will does not name an executor, or
- when the executor is unwilling to act.

A female administrator is called an administratrix. The administrator stands in the place of the deceased and is responsible for all of the tasks related to looking after the estate, including, finding, securing and selling assets, paying debts, filing taxes, distributing assets to beneficiaries, and accounting to the court and beneficiaries. (This is not a complete list of an administrator's duties).

**Affidavit** – A written statement of the facts, sworn or affirmed to be true before a Notary Public, Commissioner for Oaths, or a lawyer.

**Beneficiary** – A person who receives a gift from an estate.

**Bequest** – A gift of personal property under a will (for example, a gift of a necklace).

**Bond** – 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. A bond protects the beneficiaries and creditors of the estate in case the administrator does not look after the estate properly.

**Caveat** – A form filed with the court (Form 75A – Caveat). The form is filled in and filed by a person with a relationship to the deceased who has a reason to oppose the granting of probate or administration to someone else for a reason. The caveat asks the court to not do anything further on the estate without notice to the person who filed it. The caveator then has 30 days to apply for probate, or the caveat will be cancelled.

**Codicil** – An amendment or addition to a person's will, made by the testator. A codicil must be signed and witnessed with the same formalities as a will.

**Commissioner for Oaths** – A person appointed by the Province of Manitoba who can take oaths, affidavits, affirmations, or statutory declarations in the province for use in Manitoba.

**Common-Law Partners** – For the purposes of intestate succession (where there is no will) and dependant’s relief, (where a dependant applies to court for support from the estate) common law partners are:

- persons who register a common-law relationship with the Department of Vital Statistics, or
- persons who are not married but who have lived together in a conjugal relationship for at least three years, or
- persons who are not married, but who have lived together in a conjugal relationship for at least one year and they are together the parents of a child.

For the purposes of property division, common law partners are persons who register with the Department of Vital Statistics, or persons who are not married but have lived together in a conjugal relationship for at least three years.

**Devise** – To give real property by a will.

**Estate** – All of the assets of a person who died, including real and personal property and rights of action.

**Executor/Executrix** – a person appointed in a will to control and protect the estate assets, pay debts and distribute the property as directed by the will. A female executor is called an executrix.

**Gift** – A provision in the will that gives a beneficiary something. Devise and bequest are other terms used in wills to mean a gift.

**Holograph will or codicil** – A will or codicil written entirely in the testator’s own handwriting and signed at the end by him or her. A holograph will does not need a witnesses.

**Intestate** – Dying without a will.

**Issue** – descendants of a person, including not only children, but grandchildren and great-grandchildren.

**Joint Tenants** – A form of ownership of property. When one of the joint tenants dies, the property becomes the property of the surviving joint tenant(s). This may or may not be the case with joint bank accounts.

**Master** – A judicial officer of the Court of Queen’s Bench who can make certain orders under *The Court of Queen's Bench Act*.

**Ministerial Order** – A document issued by the Ministry of Indian and Northern Affairs naming the executor(s) of the estate of a First Nation member under the provisions of the *Indian Act*.

**Notary Public** – A public officer authorized to certify and seal documents, take affidavits and administer oaths for documents used in the Province of Manitoba and outside Manitoba.

**Personal representative** – An executor or administrator of an estate, or administrator with the will annexed.

**Personal property** – All property, except land and buildings, also known as personalty or moveable property. For example, jewelry and bank accounts are personal property.

**Per capita** – An equal share of the estate or asset is given to each person who is of equal relationship to the deceased.

**Per Stirpes** – The beneficiary or beneficiaries take the share to which their deceased parents would have been entitled.

**Probate** – The official confirmation by the court that a will is valid and that the executor has the legal authority to look after the estate.

**Probate Court** – In Manitoba, the Probate Division of the Manitoba Court of Queen's Bench handles all matters involving the administration of estates. The Probate Court handles requests for grants of probate of a will and letters of administration of an estate without a will.

**Real Property** – Property that includes land and buildings, also known as realty, or immovable property.

**Renunciation** – When someone with the right to act as administrator or executor of an estate gives up that right through a written, signed and witnessed document submitted to the court.

**Residue** – The remainder of an estate that is left once all debts are paid and specific gifts are made.

**Requisition** – A form that requests the court to take certain actions.

**Right of action** – The right to bring an action before a court or otherwise enforce a legal right.

**Specific gift** – In a will, a gift of specific property.

**Surety** – A person or insurance company responsible for paying the amount of the bond if the administrator does not look after the estate properly.

**Testamentary capacity** – Has been interpreted as the ability of a person making a will to appreciate and understand:

(a) the nature and effect of the act of making a will,

(b) the extent of the property he or she is disposing of, and

(c) the moral claims on his or her estate to which he or she ought to give effect.

The testator must also be capable of appreciating these factors in relation to each other and capable of forming an orderly desire to dispose of his or her property.

**Testator** – A person making a will (testatrix if female).

**Trust** – An interest in property that is being held by one person for the benefit of another person or persons.

**Trustee** – A person who holds legal title to property for the benefit of another. The term trustee may refer to the executor or administrator of an estate.

**Will** – Includes all papers and documents of which probate may be granted. A will must be in writing, must be made by a person 18 or older, and be witnessed by two people who are not beneficiaries, or spouses, or common law partners of beneficiaries. (Except for holograph wills, and wills written under certain exceptional circumstances like wills of minors).