

2014 Bill 4

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Second Session, 28th Legislature, 63 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 4**

## **ESTATE ADMINISTRATION ACT**

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MS KUBINEC

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## **BILL 4**

2014

### **ESTATE ADMINISTRATION ACT**

*(Assented to , 2014)*

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

**Interpretation and Application**

**Definitions**

**1** In this Act,

- (a) “attorney” means an attorney empowered to act under an enduring power of attorney as defined in the *Powers of Attorney Act*;
- (b) “beneficiary” means a person who receives or is entitled to receive a beneficial disposition of property under a will or under an intestacy;
- (c) “claimant” means a person with a claim against an estate, but does not include a person whose sole claim arises because that person is
- (i) a beneficiary,
  - (ii) seeking a division of matrimonial property,
  - (iii) seeking maintenance and support under the *Wills and Succession Act*, or
  - (iv) seeking temporary possession of the family home under the *Wills and Succession Act*;
- (d) “Court” means the Court of Queen’s Bench;

- (e) “descendant” means any lineal descendant of a person through all generations;
- (f) “grant” means the Court’s grant of the authority to administer an estate as provided for in Part 3 and includes
  - (i) a grant of probate,
  - (ii) a grant of administration, or
  - (iii) a resealed or ancillary grant of probate or administration;
- (g) “personal representative” means an executor or an administrator or judicial trustee of the estate of a deceased person and includes a personal representative named in the will whether or not a grant is issued;
- (h) “property” means
  - (i) real and personal property, as well as rights or interests in them,
  - (ii) anything regarded in law or equity as property or as an interest in property,
  - (iii) any right or interest that can be transferred for value from one person to another,
  - (iv) any right, including a contingent or future right, to be paid money or receive any other kind of property, and
  - (v) any cause of action, to the extent that it relates to property or could result in a judgment requiring a person to pay money;
- (i) “Public Trustee” means the Public Trustee appointed under the *Public Trustee Act*;
- (j) “represented adult” means
  - (i) a represented adult as defined in the *Adult Guardianship and Trusteeship Act*, or
  - (ii) an incapacitated person as defined in the *Public Trustee Act*;

- (k) “resealing” means the sealing of a foreign grant with the seal of the Court as provided for in section 18;
- (l) “Rules” means the *Surrogate Rules* (AR 130/95), or any successor to those rules, and the *Alberta Rules of Court* (AR 390/68 and AR 124/2010), or any successor to those rules;
- (m) “will” includes
  - (i) a codicil,
  - (ii) a writing that
    - (A) alters or revokes another will,
    - (B) appoints a personal representative, or
    - (C) on the death of the testator, confers or exercises a power of appointment,
  - and
  - (iii) any other writing that is a testamentary disposition.

### **Jurisdiction**

**2(1)** Subject to section 51, this Act applies to the estate of a deceased person if

- (a) on the date of death the deceased person was a resident of Alberta,
- (b) on the date of death the deceased person owned property in Alberta, or
- (c) the Court, on application, is satisfied that a grant is necessary.

**(2)** If an application is pending and

- (a) it is proved that the deceased person on the date of death was not a resident of Alberta and did not own property in Alberta, or
- (b) where subsection (1)(c) was relied on, the Court is satisfied on all the evidence that a grant is not necessary,



the Court may stay the proceedings and make any order as to the costs of the proceedings that the Court considers appropriate.

#### **Applications to the Court**

**3(1)** In this section, “judge” and “master in chambers” have the same meanings as in the *Court of Queen’s Bench Act*.

**(2)** An application to the Court under this Act must be heard by a judge and not by a master in chambers.

**(3)** Section 11 of the *Alberta Evidence Act* applies in respect of evidence offered or taken in an application to the Court under this Act.

#### **Rules**

**4** The Rules apply to any application or matter that arises in the administration of an estate under this Act.

## **Part 1 The Role of a Personal Representative**

#### **General duties of a personal representative**

**5(1)** A personal representative must

- (a) perform the role of personal representative
  - (i) honestly and in good faith,
  - (ii) in accordance with the testator’s intentions and with the will, if a valid will exists, and
  - (iii) with the care, diligence and skill that a person of ordinary prudence would exercise in comparable circumstances where a fiduciary relationship exists,
- and
- (b) distribute the estate as soon as practicable.

**(2)** A personal representative is a trustee within the meaning of the *Trustee Act*.

(3) Subject to the will, if any, and this Act or any other enactment, if because of a personal representative's profession, occupation or business, the personal representative possesses or ought to possess a particular degree of skill that is relevant to the performance of the role of personal representative and that is greater than that which a person of ordinary prudence would be expected to exercise in dealing with the property of another person, the personal representative must, when acting or retained in his or her professional capacity, exercise that greater degree of skill.

#### **Disposition of human remains**

6 The *Funeral Services Act* and the *Cemeteries Act* and the regulations under those Acts apply to the determination of who has the authority to control and give instructions for the disposition of human remains and the making of funeral arrangements.

#### **Core tasks**

7(1) The core tasks of a personal representative when administering an estate are

- (a) to identify the estate assets and liabilities,
- (b) to administer and manage the estate,
- (c) to satisfy the debts and obligations of the estate, and
- (d) to distribute and account for the administration of the estate.

(2) The core tasks referred to in subsection (1) may include, but are not limited to, the activities set out in the Schedule.

#### **Failure to provide notice or the non-performance of duty or core task**

8 If, on application, the Court is satisfied that a personal representative has refused or failed to provide the notice required under Part 2 or to perform a duty or core task for which the personal representative is responsible, the Court may

- (a) order the personal representative to provide the notice or to perform the duty or core task;
- (b) impose conditions on the personal representative;

- (c) remove the personal representative;
- (d) revoke a grant;
- (e) make any other order that the Court considers appropriate.

## **Part 2 Notice**

### **Notice required by the Rules or the Court**

**9** The notice required under this Part is in addition to any notice required by the Rules or by the Court.

### **Personal representative's notice when acting without a grant**

**10(1)** A personal representative named in a will who acts in the administration of the estate without applying for a grant must serve, in accordance with the Rules,

- (a) on the beneficiaries of the deceased person, the personal representative's notice to beneficiaries described in subsection (2),
- (b) on any family members of the deceased person, an attorney, a trustee, the Public Trustee or a guardian, on whom a notice would be required to be served under section 11(1) on application for a grant, a personal representative's notice to family members,
- (c) on a spouse of the deceased person on whom a notice would be required to be served under section 11(2) on application for a grant, a personal representative's notice to a spouse, and
- (d) on the Public Trustee and on the other persons referred to in section 12, as applicable, a personal representative's notice, as required by the Rules.

**(2)** The personal representative's notice to beneficiaries must

- (a) identify the deceased person,
- (b) provide the name and contact information of the personal representative,

- (c) describe the gift left to the beneficiary in the will or refer to the applicable provisions of the *Wills and Succession Act* or the *Intestate Succession Act*,
- (d) state that all gifts are subject to the prior payment of the deceased person's debts and other claims against the estate, and
- (e) include any other information or documents required by the Rules.

**Notice to family members on application for a grant**

**11(1)** Unless otherwise ordered by the Court, an applicant for a grant must serve a copy of the application and a notice pertaining to the rights of family members under Part 5 of the *Wills and Succession Act* on the following as applicable:

- (a) the spouse of the deceased person, if the spouse is not the sole beneficiary under the will of the deceased person or under Part 3 of the *Wills and Succession Act*;
- (b) the adult interdependent partner of the deceased person, if the adult interdependent partner is not the sole beneficiary under the will of the deceased person or under Part 3 of the *Wills and Succession Act*;
- (c) each child of the deceased person who, on the date of the deceased person's death, was an adult who was unable by reason of a physical disability to earn a livelihood;
- (d) a child of the deceased person who
  - (i) was, on the date of the deceased person's death, at least 18 but less than 22 years of age, and
  - (ii) was unable to withdraw from his or her parents' charge because he or she was a full-time student as determined in accordance with the *Family Law Act*;
- (e) the attorney of an adult
  - (i) who is a child of the deceased person,
  - (ii) who was an adult on the date of the deceased person's death, and

- (iii) who is unable to earn a livelihood by reason of mental disability;
- (f) the trustee of a represented adult
  - (i) who is a child of the deceased person,
  - (ii) who was an adult on the date of the deceased person's death, and
  - (iii) who is unable to earn a livelihood by reason of mental disability;
- (g) the Public Trustee, if the deceased person is survived by
  - (i) a child who was a minor on the date of the deceased person's death, or
  - (ii) a grandchild or great-grandchild who was a minor on the date of the deceased person's death and in respect of whom the deceased person stood in the place of a parent on the date of the deceased person's death;
- (h) the guardian of a child, grandchild or great-grandchild referred to in clause (g).

**(2)** Subject to subsection (3), an applicant for a grant must serve a copy of the application and a notice pertaining to the rights of a spouse under the *Matrimonial Property Act* on any spouse, as defined in that Act, of the deceased person, if the spouse is not the sole beneficiary under the will of the deceased person or under Part 3 of the *Wills and Succession Act*.

**(3)** The Court may by order dispense with the notice requirement under subsection (2) if the Court is satisfied that the spouse does not have a right to make a claim under the *Matrimonial Property Act* against the estate of the deceased person.

**(4)** If the deceased person is survived by a child who was an adult on the date of the deceased person's death who is unable to earn a livelihood by reason of mental disability, who has no attorney and for whom a trustee has not been appointed, the Court may, having regard to the value of the estate, the circumstances of the child and the likelihood of success of an application made on the child's behalf under Part 5, Division 2 of the *Wills and Succession Act*,

- (a) direct that a grant be issued subject to any conditions the Court considers appropriate, or
- (b) direct
  - (i) that a grant not be issued in respect of the deceased person's estate until a trustee has been appointed for the child, and
  - (ii) that the applicant or some other person must apply to have a trustee appointed for the child under the *Adult Guardianship and Trusteeship Act*.

**(5)** A grant must not be issued unless the Court is satisfied that the requirements of this section have been complied with, except that the Court may dispense with the requirement to serve a copy of the application or a notice on any person if it is shown to the Court's satisfaction that the person could not be found after reasonable inquiry.

**Notice to Public Trustee and others on application for a grant**

**12(1)** Unless otherwise ordered by the Court, an applicant for a grant must serve a copy of the application and a notice in accordance with the Rules on the following, as applicable:

- (a) an attorney acting for a person who is interested in the estate;
- (b) the trustee of a represented adult who is interested in the estate;
- (c) the Public Trustee, if any of the following are interested in the estate to which the application pertains:
  - (i) a minor;
  - (ii) a person who was a minor on the date of the deceased person's death;
  - (iii) a missing person as defined in the *Public Trustee Act*;
- (d) the guardian of a minor referred to in clause (c)(i).

**(2)** Except as otherwise ordered by the Court, an application must not proceed until the attorney or trustee, as the case may be, is

represented on the application or has expressed the intention of not being represented.

**(3)** An application must not proceed until the Public Trustee is represented on the application or has expressed the intention of not being represented.

### **Part 3 Applications for Grants**

#### **Division 1 Applications for Grants**

##### **Priority among applicants for a grant**

**13(1)** On application for a grant, unless the Court orders otherwise, the priority to be given to an applicant for a grant is,

- (a) if a will exists, as follows, in descending order of priority:
  - (i) to a personal representative named in the will, unless that person is incapable of acting or unwilling to act;
  - (ii) to a personal representative appointed by the person expressly authorized in the will to appoint a personal representative;
  - (iii) to a residuary beneficiary named in the will;
  - (iv) to a life tenant of the residue in the will;
  - (v) to a beneficiary under an intestacy if the residue is not completely disposed of in the will;
  - (vi) to a beneficiary receiving a specific gift in the will;
  - (vii) to a contingent beneficiary of the residue in the will;
  - (viii) to a contingent beneficiary of a specific gift in the will;
  - (ix) to the Crown in right of Alberta;
- (b) if no will exists, as follows, in descending order of priority:

- (i) to the surviving spouse or surviving adult interdependent partner;
- (ii) to a child of the deceased person;
- (iii) to a grandchild of the deceased person;
- (iv) to a descendant of the deceased person other than a child or grandchild;
- (v) to a parent of the deceased person;
- (vi) to a brother or sister of the deceased person;
- (vii) to a child of the deceased person's brother or sister if the child is a beneficiary under the intestacy;
- (viii) to the next of kin of the deceased person determined in accordance with sections 67 and 68 of the *Wills and Succession Act* who are beneficiaries under the intestacy and who are not otherwise referred to in this clause;
- (ix) to a person who has an interest in the estate because of a relationship with the deceased person;
- (x) to a claimant;
- (xi) to the Crown in right of Alberta.

**(2)** Between applicants of equal priority under subsection (1), preference must be given, unless the Court, on application, rules otherwise,

- (a) to a resident of Alberta, or
- (b) in the case of an application for a grant referred to in subsection (1)(b)(i), to the surviving spouse or surviving adult interdependent partner of the deceased person who lived with the deceased person immediately or most recently before the deceased person's death.

**(3)** If there are 2 or more persons of equal priority by reason of degree of kinship under subsection (1), the Court may grant the authority to administer the estate to one or more of those persons as the Court considers appropriate.



**(4)** If

- (a) the deceased person died intestate,
- (b) the deceased person died leaving a will affecting property but without having appointed a personal representative, or
- (c) the personal representative named in the will is incapable of acting or unwilling to act,

the persons entitled to administer the estate under subsection (1), (2) or (3) may nominate a person to administer the estate, or any part of it, and the right of the persons nominating passes to their nominee.

**(5)** If the sole executor named in a will is a minor,

- (a) the Court must, subject to section 14 of the *Public Trustee Act*, grant the authority to administer the estate to another person as the Court considers appropriate, and
- (b) on becoming an adult, the executor named in the will may be granted the authority to administer the remainder of the estate.

**General and limited grants**

**14(1)** The Court may, on application, make a grant of any kind permitted by the Rules, including the following:

- (a) a general grant;
- (b) a limited grant, in accordance with this Division and the Rules,
  - (i) for all or a specific part of the personal property of the deceased person,
  - (ii) for all or a specific part of the real property of the deceased person,
  - (iii) for a limited time, or
  - (iv) for a limited purpose or matter.

**(2)** The Court may make a grant referred to in subsection (1) subject to any conditions the Court considers appropriate.

(3) If the Court makes a limited grant, the limitation and any conditions must be set out in the grant.

**Special circumstances**

**15(1)** If because of special circumstances the Court considers it to be necessary that

- (a) the property of a deceased person be administered immediately or on an interim basis, or
- (b) a person other than the personal representative determined in accordance with section 13 be appointed to administer the property of a deceased person,

the Court may, on application and on the notice that it directs, issue a grant to the Public Trustee or some other person as the Court considers appropriate.

(2) The Court may impose any conditions the Court considers appropriate on a grant referred to in subsection (1).

**Interim administration by Public Trustee**

**16** When a person dies, with or without a will, and the deceased person's personal representative has not taken possession of the deceased person's property, section 12 of the *Public Trustee Act* applies.

**Grant when litigation pending**

**17** Before or after the commencement of an action involving the validity of the will of a deceased person, an application for a grant or an application to revoke a grant, the Court may appoint a personal representative, and the personal representative so appointed

- (a) has all the powers of a personal representative, other than the authority to distribute the property, and
- (b) is subject to the direction of the Court.

## **Division 2 Foreign and Ancillary Grants**

### **Resealing of foreign grants**

**18(1)** In this section,

- (a) “foreign grant” means a grant of probate or administration or other document having the same general effect that a grant has in Alberta, that has been granted by a court in
  - (i) a province or territory of Canada other than Alberta,
  - (ii) the United Kingdom or any British possession, colony or dependency, or
  - (iii) a member nation of the British Commonwealth;
- (b) “probate” includes letters of verification issued in the Province of Quebec.

**(2)** The Court may, on application, direct that a foreign grant be resealed, and on being resealed the foreign grant

- (a) has the same effect in Alberta as a grant issued by the Court,
- (b) is, with respect to property in Alberta, subject to any order to which any grant issued by the Court is subject, and
- (c) is, with respect to property in Alberta, subject to appeal in the same manner as any grant issued by the Court.

**(3)** For the purposes of this section and the Rules,

- (a) a copy or exemplification of a foreign grant sealed with the seal of the court that granted it, or a copy of a foreign grant certified by or under the direction of the court that granted it, is as effective as the original;
- (b) a foreign grant is proof, without more, of the death of the deceased person whose estate is dealt with in the grant and
  - (i) that the signing formalities of the foreign jurisdiction were observed and the will is the last will of the deceased person, or

(ii) that the deceased person left no will.

**(4)** A foreign grant must not be resealed under this section until

- (a) a certificate has been issued by the registrar, clerk or other officer of the court that issued the foreign grant that security in a sum sufficient to cover the property of the deceased person in Alberta has been given to that court or is not required by that court, and
- (b) security in a sum sufficient to cover the property of the deceased person in Alberta has been given to the Court as in the case of an application for an original grant or is not required by the Court.

**Application for ancillary grant**

**19(1)** An applicant may apply for an ancillary grant if

- (a) part of the deceased person's property is in Alberta but the deceased person was not resident in Alberta on the date of death, and
- (b) the deceased person was resident in a jurisdiction that is not referred to in section 18(1).

**(2)** An application for an ancillary grant must set out only the property and debts of the deceased person in Alberta.

**(3)** In an application under this section, a foreign grant is proof, without more, of the death of the deceased person whose estate is dealt with in the grant and

- (a) that the signing formalities of the foreign jurisdiction were observed and the will is the last will of the deceased person, or
- (b) that the deceased person left no will.

**(4)** An ancillary grant must not be issued under this section until

- (a) a certificate has been issued by the registrar, clerk or other officer of the court that issued the foreign grant that security in a sum sufficient to cover the property of the deceased person in Alberta has been given to that court or is not required by that court, and

- (b) security in a sum sufficient to cover the property of the deceased person in Alberta has been given to the Court as in the case of an application for an original grant, or is not required by the Court.

## **Part 4 Administration of the Estate**

### **Division 1 Estate Property**

#### **Personal representative's authority**

**20(1)** Subject to the will, if any, and this Act or any other enactment, a personal representative has the following authority in regard to the property included in the estate of the deceased person:

- (a) to take possession and control of the property;
- (b) to do anything in relation to the property that the deceased person could do if he or she were alive and of full legal capacity;
- (c) to do all things concerning the property that are necessary to give effect to any authority or powers vested in the personal representative.

**(2)** Any action taken, decision made, consent given or thing done by a personal representative with respect to a matter within the personal representative's authority has the same effect for all purposes as if the deceased person had taken the action, made the decision, given the consent or done the thing while he or she was alive and of full legal capacity.

#### **Devolution of real property**

**21** Despite any testamentary disposition, real property in which a deceased person has an interest not ceasing on death devolves to and vests in the personal representative as if it were personal property and must be dealt with in the same manner as personal property.

## **Division 2 Estate Obligations and Assets**

### **Definitions**

**22** In this Division,

- (a) “gift” includes both legacies and devises;
- (b) “mortgage” includes
  - (i) a charge, whether equitable, statutory or of any other nature,
  - (ii) a lien or claim for unpaid purchase money,
  - (iii) a security interest as defined in the *Personal Property Security Act*, and
  - (iv) an agreement for sale;
- (c) “valid money claim” means
  - (i) a debt owed by a deceased person, including a debt to the Crown in right of Alberta, and
  - (ii) any other claim, including a claim by the Crown in right of Alberta, that, following a determination of validity by a court or other competent authority, would result in a money judgment against the deceased person.

### **Duties and liabilities of personal representative**

**23** A personal representative is subject to all the liabilities and compellable to discharge all the duties in respect of the exercise of any authority or powers vested in the personal representative by this Act or any other enactment and any other law that applies, and in respect of any property received by the personal representative through the exercise of that authority or those powers, the liabilities and duties that are imposed by a will, if any, by law or by the Court.

### **Notice to claimants**

**24** When providing notice to claimants, a personal representative must comply with the Rules.

**Verification of claims**

**25** Every claimant must, if required to do so by the personal representative, verify his or her claim in accordance with the Rules.

**Deciding contested claims**

**26(1)** If a claim is made against an estate or if the personal representative receives notice of a claim, the personal representative may apply to the Court to contest the claim in whole or in part.

**(2)** If, within 2 months after the receipt of the notice of contestation under subsection (1), the claimant does not make an application in accordance with the Rules, the claimant's claim is barred.

**(3)** This section applies to a claim not presently payable and for which, for that reason, an action for the recovery of the claim could not be brought, but if such a claim is established under this section, no proceeding may be commenced to enforce payment without the permission of the Court.

**Ranking of debts**

**27(1)** Except as otherwise provided in an enactment, if there is a deficiency of assets necessary to satisfy the valid money claims against the estate, the claims must be paid proportionately and without any preference or priority.

**(2)** Nothing in this section prejudices

- (a) a mortgage existing during the lifetime of the deceased person on the deceased person's property, or
- (b) a common law priority given to the payment of funeral and estate administration expenses.

**(3)** If the personal representative pays more to a claimant than the amount to which the claimant is entitled under this section, the overpayment does not entitle any other claimant to recover more than the amount to which that claimant would have been entitled if the overpayment had not been made.

### **Marshalling**

**28(1)** The order in which property is applied as among beneficiaries toward the payment of funeral and estate administration expenses and unsecured debts and liabilities is as follows:

- (a) property specifically charged with the payment of debts or left in trust for the payment of debts;
- (b) property passing by way of intestacy and property passing by way of residue;
- (c) general gifts of property;
- (d) specific gifts of property;
- (e) property over which the deceased person had a general power of appointment that has been expressly exercised by will.

**(2)** Each class referred to in subsection (1) includes both real and personal property.

**(3)** Each asset within a class referred to in subsection (1) must, according to its value, contribute proportionately to the payment of funeral and estate administration expenses and unsecured debts and liabilities.

**(4)** The order set out in subsection (1) applies unless a contrary intention is signified in the will of the deceased person.

**(5)** A contrary intention is not signified

- (a) by a general direction for the payment of debts of the deceased person;
- (b) by a general direction that a personal representative pay the debts of the deceased person;
- (c) by the imposition of a trust that debts of the deceased person be paid.

**(6)** Nothing in this section affects the right of a claimant to obtain payment or satisfaction of his or her claim out of the property of the deceased person or otherwise.



### **Mortgage on estate property**

**29(1)** Subject to a contrary intention expressed in a will or other document, an interest in property that at the time of the deceased person's death is subject to a mortgage is, as between the different persons claiming through the deceased person, primarily liable for the payment of the mortgage.

**(2)** Each part of the interest referred to in subsection (1), according to its value, must bear a proportionate part of the whole of the mortgage.

**(3)** A contrary intention is not signified

(a) by a general direction for the payment of all or any debts of the deceased person out of that person's personal property or residuary real and personal property, or both, or

(b) by a charge of debts on the property referred to in clause (a).

**(4)** A contrary intention is signified by words referring, expressly or by necessary implication, to all or any part of the mortgage referred to in subsection (1).

**(5)** Nothing in this section affects the right of a person entitled to the mortgage referred to in subsection (1) to obtain payment or satisfaction of it out of the other property of the deceased person or otherwise.

### **Relief from liability under certain agreements**

**30(1)** A personal representative is not liable in respect of a lease, an agreement to lease, the conveyance of a rent charge, an agreement to convey a rent charge or any similar agreement, that was not fully performed by the deceased person before the deceased person's death, provided that the personal representative

(a) satisfies all liabilities that have accrued and are claimed under the lease, conveyance or agreement until the time of the assignment referred to in clause (b),

(b) validly assigns the lease, conveyance or agreement to a purchaser, and

(c) sets aside a reserve from the estate in an amount fixed by agreement or by the Court on application by the personal representative, to meet future claims that may be made in respect of a fixed or determined amount that the deceased person agreed to pay or for which the deceased person was liable under the lease, conveyance or agreement.

(2) Nothing in this section affects the right of a claimant to pursue a claim in respect of the property of an estate against a person to whom it has been distributed.

### **Division 3 Distribution of Property**

#### **Distribution of property**

**31(1)** On complying with this Act and the Rules regarding notice to claimants, the personal representative may distribute property of the estate among the entitled persons, having regard only to the claims of which the personal representative has notice at that time.

(2) A personal representative who complies with this section is not liable in respect of any claim in respect of any of the property distributed of which the personal representative does not have notice on the date of the distribution of the property.

(3) Nothing in this section affects the right of a claimant to pursue a claim in respect of property of an estate against a person to whom it has been distributed.

### **Division 4 Accounting and Expenses**

#### **Requirement for accounting**

**32** A personal representative must comply with the Rules regarding accounting for the personal representative's administration of the estate.

#### **Review and assessment of lawyer's charges**

**33** An account for a lawyer's charges is subject to review and assessment in accordance with the *Alberta Rules of Court* (AR 124/2010).

**Part 5  
Technical and Court  
Matters**

**Division 1  
General**

**Application for order to restrain intermeddling**

**34** At any time before the issue of a grant a person may apply to the Court for an order restraining any person from dealing or intermeddling with the property of a deceased person.

**Procedure to avoid duplication of grant applications**

**35(1)** In this section, “clerk” means the clerk, deputy clerk or acting clerk of the Court at a judicial centre and includes a person authorized by the clerk.

**(2)** If 2 or more applications for a grant have been made, all the applications for a grant are stayed and the clerk must send a notice of the stay by mail to each of the applicants.

**(3)** Any of the applicants may apply to the Court for an order as to which application is to proceed.

**(4)** The Court may order costs to be paid by any applicant or out of the estate.

**(5)** The orders provided under this section are final.

**Only personal representative to act**

**36** After the issue of a grant, no person other than a personal representative to whom it is issued has the authority to act with respect to the estate affected by the grant until the grant has been revoked or the personal representative has been discharged.

**Concurrence of personal representatives**

**37** If there are 2 or more personal representatives, they must act unanimously unless the will directs otherwise or the Court orders otherwise.

### **Renouncing**

**38(1)** If a person named in a will as a personal representative renounces probate of the will,

- (a) the person's authority under the grant ceases, and
- (b) the person's authority with respect to any trusteeship under the will ceases, except insofar as the renunciation expressly reserves the trusteeship.

**(2)** If a person named in a will as a personal representative renounces probate of the will, any subsequent application for a grant must be made and dealt with as if the person had never had or been granted the authority to administer the estate.

### **Substitute personal representative**

**39** If a will contains a provision for a substitute personal representative that is operative if a personal representative named in the will

- (a) dies before the testator,
- (b) dies at the same time as the testator, or
- (c) dies in circumstances rendering it uncertain which of them survived the other,

and the named personal representative dies before or at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, the substitute personal representative is deemed to have the authority to administer the estate as provided by the will.

### **Failure to prove will**

**40** If the personal representative named in a will is ordered to prove a will and fails to do so within the time limited by the order, the authority of that personal representative with respect to the administration of the estate and any trusteeship under the will cease, and any application for a grant must be made and dealt with as if that personal representative had never been named as a personal representative or trustee.

### **Death of named personal representative**

**41** If the personal representative named in a will survives the testator but dies without obtaining a grant, the authority of that personal representative with respect to the administration of the estate and any trusteeship under the will cease, and any application for a grant must be made and dealt with as if that personal representative had never been named as a personal representative or trustee.

### **Survivorship**

**42** If there are 2 or more personal representatives of the estate of a deceased person and one or more of them die, their authority and powers vest in the surviving personal representative or personal representatives.

### **Legal proceedings after grant revoked**

**43** If a grant is revoked while legal proceedings by or against the personal representative named in the grant are pending,

- (a) the court in which the proceedings are pending may, on application, order that a notation of the revocation be made on the record, and
- (b) the proceedings must be continued in the name of the new personal representative, when appointed, in the same manner as if they had originally been commenced by or against the new personal representative, but subject to the conditions and variations, if any, that the court directs.

### **Acting under revoked grant**

**44(1)** If a grant is revoked, a payment made in good faith to a personal representative under the grant before its revocation is, to the extent of the payment, a legal discharge to the person who made the payment.

**(2)** A person acting pursuant to a grant who in good faith makes or permits a payment or transfer to be made is not liable with respect to the payment or transfer despite any defect or circumstances affecting the validity of the grant.

**(3)** A conveyance made by a personal representative in good faith and for adequate consideration to a bona fide purchaser is valid

despite a subsequent revocation or variation of the grant to the personal representative.

## **Division 2 Security**

### **Bond or other security requirement**

**45** Except where otherwise provided by the Rules or another enactment, no grant shall issue unless the applicant has given a bond or other security in accordance with the Rules.

## **Division 3 Caveats**

### **Filing of caveat**

**46(1)** Before or after an application for a grant is made a person may, in accordance with the Rules, file a caveat against the issue or resealing of a grant.

**(2)** Despite the filing of a caveat, an application for a grant may be made by any person.

**(3)** After a caveat is filed no further proceedings may be taken with respect to the application for a grant until the caveat has expired or has been discharged or withdrawn.

### **Expiry of caveat**

**47(1)** Unless it is discharged or withdrawn in accordance with this Act and the Rules, a caveat remains in force for 3 months from the date it is filed, unless the Court orders otherwise.

**(2)** If a caveat has expired or has been discharged or withdrawn in accordance with this Act and the Rules, no further caveat in respect of the same estate may be filed by or on behalf of the same caveator without the permission of the Court.

### **Discharge of caveat**

**48** A person whose application for a grant is affected by a caveat may apply in accordance with the Rules requesting that the caveator be required to show cause why the caveat should not be discharged.

## **Division 4 Applications for Directions**

### **Application for advice or directions**

**49(1)** A personal representative may apply for the advice or direction of the Court on any question respecting the management or administration of an estate.

**(2)** A personal representative who is acting on the advice or direction of the Court given under this section is deemed, so far as regards the personal representative's own responsibility, to have discharged the personal representative's duty as personal representative in respect of the subject-matter of the advice or direction.

**(3)** Subsection (2) does not indemnify a personal representative if the personal representative has been guilty of any fraud, wilful concealment or misrepresentation in obtaining the advice or direction of the Court.

## **Part 6 Regulations**

### **Regulations**

**50** The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without limiting the generality of the foregoing, may make regulations

- (a) defining any word or expression used, but not defined, in this Act;
- (b) respecting any other subject or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

## **Part 7 Transitional Provisions, Consequential and Related Amendments, Repeals and Coming into Force**

### **Application to existing proceedings**

**51(1)** In this section,

- (a) “existing administration, application or grant” means the administration of an estate or an application commenced or a grant issued under the former Acts that has not been concluded;
- (b) “former Acts” means the *Administration of Estates Act*, RSA 2000 cA-2, and the *Devolution of Real Property Act*, RSA 2000 cD-12, in effect immediately before this Act comes into force.

(2) Except as otherwise provided in an enactment or by an order under subsection (4), this Act applies to an existing administration, application or grant.

(3) An order or judgment made under the former Acts and everything done in the course an existing administration, application or grant are considered to have been made or done under this Act and to have the same effect under this Act as they had under the former Acts.

(4) If there is doubt about the application of this Act to an existing administration, application or grant, or if any difficulty, injustice or impossibility arises as the result of this section, a person may apply to the Court for an order

- (a) suspending the operation of a provision of this Act,
- (b) relying on a provision from the former Acts as if it were in force, or
- (c) applying or modifying the application of this Act to an existing administration, application or grant as the Court considers necessary to resolve the doubt or rectify the difficulty, injustice or impossibility.

**Amends RSA 2000 cM-14**

**52(1) The *Metis Settlements Act* is amended by this section.**

**(2) Section 222(1)(v) is amended by striking out “the *Administration of Estates Act*, the *Devolution of Real Property Act*,” and substituting “the *Estate Administration Act*,”.**



## Explanatory Notes

**52** Amends chapter M-14 of the Revised Statutes of Alberta 2000. Section 222(1)(v) presently reads:

*222(1) The General Council, after consultation with the Minister, may make, amend or repeal General Council Policies*

*(v) providing that one or more of the Administration of Estates Act, the Devolution of Real Property Act, the Dower Act, the Unclaimed Personal Property and Vested Property Act and*

**Amends SA 2004 cM-18.1**

**53(1) The *Minors' Property Act* is amended by this section.**

**(2) Section 1 is amended**

**(a) by renumbering clause (a) as clause (a.1) and adding the following before clause (a.1):**

(a) “clerk” means the clerk, deputy clerk or acting clerk of the Court at a judicial centre and includes a person authorized by the clerk;

**(b) by adding the following after clause (f):**

(g) “Rules” means the *Surrogate Rules* (AR 130/95), or any successor to those rules, and the *Alberta Rules of Court* (AR 390/68 and AR 124/2010), or any successor to those rules;

(h) “trusteeship order” means an order under section 10(1) appointing a trustee.

**(3) The following is added before section 10:**

**Jurisdiction**

**9.1(1)** An affidavit made in support of an application to the Court for a trusteeship order and deposing that the minor is a resident of Alberta or owns property in Alberta is proof, in the absence of evidence to the contrary, for the purposes of giving the Court jurisdiction.

**(2)** If an application is pending and it is proved that the minor neither is a resident of Alberta nor owns property in Alberta, the Court may stay the proceedings and make any order as to the costs of the proceedings that the Court considers appropriate.

**Procedure to avoid duplication of applications**

**9.2(1)** If 2 or more applications for a trusteeship order have been made, all the applications are stayed and the clerk must send a notice of the stay by mail to each of the applicants.

*Parts 2 and 3 of the Wills and Succession Act do not apply to specified interests in patented land that are held by settlement members;*

**53** Amends chapter M-18.1 of the Statutes of Alberta, 2004.  
Sections 1(a) and 15(4) presently read:

*1 In this Act,*

*(a) “Court” means the Court of Queen’s Bench;*

*15(4) Subsection (1) does not apply to applications governed by the Administration of Estates Act.*

(2) Any of the applicants may apply to the Court for an order as to which application is to proceed.

(3) The Court may order costs to be paid by any applicant or out of the minor's property.

(4) The orders provided under this section are final.

**(4) The following is added after section 12:**

**Filing of caveat**

**12.1(1)** Before or after an application is made under section 10(1), a person may, in accordance with the Rules, file a caveat against the issue of a trusteeship order.

(2) Despite the filing of a caveat, an application for a trusteeship order may be made by any person.

(3) After a caveat is filed no further proceedings may be taken with respect to the application for a trusteeship order until the caveat has expired or has been discharged or withdrawn.

**Expiry of caveat**

**12.2(1)** Unless it is discharged or withdrawn in accordance with this Act and the Rules, a caveat remains in force for 3 months from the date it was filed, unless the Court orders otherwise.

(2) If a caveat has expired or has been discharged or withdrawn in accordance with this Act and the Rules, no further caveat in respect of the same trusteeship order may be filed by or on behalf of the same caveator without the permission of the Court.

**Discharge of caveat**

**12.3** A person whose application for a trusteeship order is affected by a caveat may apply in accordance with the Rules requesting that the caveator be required to show cause why the caveat should not be discharged.

**(5) Section 15(4) is amended by striking out “Administration of Estates Act” and substituting “Estate Administration Act”.**



**Amends SA 2004 cP-44.1**

**54(1) The *Public Trustee Act* is amended by this section.**

**(2) Section 9(2) is amended by striking out “*Administration of Estates Act*” and substituting “*Estate Administration Act*”.**

**Amends SA 2010 cW-12.2**

**55(1) The *Wills and Succession Act* is amended by this section.**

**(2) Section 1(1)(i) is amended by repealing subclauses (iii) and (iv) and substituting the following:**

- (iii) any right or interest that can be transferred for value from one person to another,
- (iv) any right, including a contingent or future right, to be paid money or receive any other kind of property, and
- (v) any cause of action, to the extent that it relates to property or could result in a judgment requiring a person to pay money;

**Repeals**

**56 The following Acts are repealed:**

- (a) *Administration of Estates Act*, RSA 2000 cA-2;
- (b) *Devolution of Real Property Act*, RSA 2000 cD-12.

**Coming into force**

**57 This Act comes into force on Proclamation.**

**Schedule**

**Core Tasks**  
(Section 7(2))

This Schedule provides examples of activities that may be included in the core tasks referred to in section 7(1).

**54** Amends chapter P-44.1 of the Statutes of Alberta, 2004.  
Section 9(2) presently reads:

*(2) Subsection (1) does not apply to applications governed by the Administration of Estates Act.*

**55** Amends chapter W-12.2 of the Statutes of Alberta, 2010.  
Section 1(1)(i) presently reads:

*1(1) In this Act,*

*(i) "property" includes*

*(i) real and personal property, as well as rights or interests in them,*

*(ii) anything regarded in law or equity as property or as an interest in property,*

*(iii) any right or interest that can be transferred for value from one person to another, and*

*(iv) any right, including a contingent or future right, to be paid money or receive any other kind of property;*

**56** Repeals chapters A-2 and D-12 of the Revised Statutes of Alberta 2000.

**57** Coming into force.

**1** Identifying the estate assets and liabilities may include, but is not limited to,

- (a) arranging with a bank, trust company or other financial institution for a list of the contents of a safety deposit box,
- (b) determining the full nature and value of property and debts of the deceased person as on the date of death and compiling a list, including the value of all land and buildings, a summary of outstanding mortgages, leases and other encumbrances, and online accounts, and
- (c) applying for any pensions, annuities, death benefits, life insurance or other benefits payable to the estate.

**2** Administering and managing the estate may include, but is not limited to,

- (a) creating and maintaining records,
- (b) regularly communicating with beneficiaries concerning the administration and management of the estate,
- (c) examining existing insurance policies, advising insurance companies of the death and placing additional insurance, if necessary,
- (d) protecting or securing the safety of the estate property,
- (e) providing for the protection and supervision of vacant land and buildings,
- (f) arranging for the proper management of the estate property, including continuing business operations, taking control of property and selling property,
- (g) retaining a lawyer to advise about the administration of the estate,
- (h) applying for a grant in accordance with this Act or applying to bring any matter or question before the Court if appropriate or necessary for the administration of the estate,
- (i) commencing or defending a claim on behalf of the estate,
- (j) preparing and providing financial statements, and





(k) performing any other duties required by law.

**3** Satisfying debts and obligations of the estate may include, but is not limited to,

- (a) determining the income tax or other tax liability of the deceased person and of the estate, filing the necessary returns, paying any tax owing and obtaining income tax or other tax certificates before distributing the estate property,
- (b) arranging for the payment of debts and expenses owed by the deceased person and the estate,
- (c) determining whether to advertise for claimants, checking all claims and making payments as funds become available, and
- (d) taking the steps necessary to finalize the amount payable if the legitimacy or amount of a debt is in issue.

**4** Distributing and accounting for the administration of the estate may include, but is not limited to,

- (a) determining the names and addresses of those beneficially entitled to the estate property and notifying them of their interests,
- (b) informing any joint tenancy beneficiaries of the death of the deceased person,
- (c) informing any designated beneficiaries of their interests under life insurance or other property passing outside the will,
- (d) administering any continuing testamentary trusts or trusts for minors,
- (e) preparing the personal representative's financial statements, a proposed compensation schedule and a proposed final distribution schedule, and
- (f) distributing the estate property in accordance with the will or intestate succession provisions.



