



Your community law firm.<sup>TM</sup>

## Probate and Estate Administration

### Are you the Executor?

If you are appointed as Executor or Co-Executor in someone's Last Will and Testament (a "Will"), your first tasks should include obtaining legal advice and determining if you require Probate. Probate can be required whether or not the Estate is 'testate' (when the Deceased left a Will) or 'intestate' (when Deceased left no Will, also known as an intestacy). When there is a Will typically a Grant of Probate is sought, versus a Grant of Administration in an intestacy.

The Grant of Administration process is similar to the Grant of Probate process, but includes an additional part whereby someone is appointed to administer the Estate as there was no Will appointing an executor. Who has the right to apply as Administrator is governed by the Wills, Estates, and Succession Act along with the Supreme Court Civil Rules – Part 25 – Estates, most of which legislation applies to testate estates as well.

### Probate Process

Generally, in British Columbia when a person passes away with more than \$25,000 in assets solely in their name (regardless of whether or not they have a Will) Probate is required to transfer and/or liquidate the assets. Unfortunately, some institutions require Probate to deal with estates valued at less than \$25,000, mostly in cases where the Deceased left no Will. Probate is not required where an estate is valued at less than \$3,000.

Often what determines whether Probate is required is the nature of the Deceased's assets. For example, if the Deceased was the sole owner of a property, then the Land Title Office requires a Grant of Probate, or a Grant of Administration, be provided to them before they permit any transfer of title. Similar requirements may be found with other assets, such as bank accounts.

Probate is a court application governed by each province (or territory) in Canada, and occurs at the Supreme Court level in British Columbia. It is a process by which the Court orders that the Will presented is indeed the last Will of the Deceased and that the Executor named therein is the person authorized to administer the Estate, summarized in the Grant of Probate. A Grant of Administration is the Court's order that the person named as the Administrator is the person lawfully authorized to administer the Estate.

Good news is court attendance is seldom required and the applicant or their lawyer can file Probate documents at a Supreme Court registry closet to them. The document package includes a few different documents that the Court requires in order to review and approve the application.

## Will Registration

One of the first steps is to confirm registration of a Will or the absence of a Will with British Columbia's department of Vital Statistics. Anyone can pay for a Search for Results of Wills Notice however this task is typically carried out by the law firm drafting the Probate application. This step is required to help confirm if the Will the applicant wishes to use is indeed the last Will, or to help confirm there was no Will. The results of the Wills Notice search are then submitted as part of the Probate application.

## Assets

A Probate application includes a snapshot of the fair market value of each asset owned by the Deceased at the time of death, along with a description of the asset. The applicant, as part of the application, is required to swear or affirm an affidavit confirming the applicant has diligently searched for assets and confirms the value of the assets. If subsequent assets are discovered after the application has been filed, the applicant would file a supplementary affidavit.

Based on the value of the assets, the Court will assess a Probate fee to be paid before the Court will release the Grant. The applicant would either pay this from the Estate's assets, or pay it themselves and seek reimbursement from the Estate.

Another one of the Executor's responsibilities is to secure the assets of the Deceased. This includes securing vacancy insurance for any vacant real property, and adding storage insurance to any vehicle(s) that are not currently being driven. Various government bodies, financial institutions, and asset-holders need to be notified of an application for Probate.

## Notifying Beneficiaries and Intestate Successors

Part of the Probate process is notifying all beneficiaries of an estate, along with other individuals or institutions who may be entitled to Notice. This is one reason your solicitor may request full legal names, civic addresses, and emails for all beneficiaries listed in the Will as well as other relatives who may not inherit anything. There is no formal "reading of the Will" required in British Columbia, but the above noted persons are required to receive a copy of the Will from the Executor. Alternatively, if there is no Will, the person wishing to apply to be an administrator needs to notify the other persons who would have an equal or greater right to apply to be an administrator.

## Summary

The above is a brief summary of what is needed for the Probate application. The process can take several months depending on the obtainment of information required and the processing times of the Court. Once the Grant of Probate or Administration has been obtained, the Executor or Administrator, as the case may be, can then proceed with the other parts of administering the Estate, including paying debts, selling assets and distributing the inheritances and gifts to the beneficiaries.

Please call CBM Lawyers LLP today at 604.533.3821 to book your initial consultation.

### CONTACT US

(604) 533-3821 | [willsstates@cbmlawyers.com](mailto:willsstates@cbmlawyers.com) | [info@cbmlawyers.com](mailto:info@cbmlawyers.com) | [cbmlawyers.com](http://cbmlawyers.com)

Langley  
#200-4769 222nd St.  
Langley, BC V2Z 3C1

Aldergrove  
#100-26641 Fraser Hwy  
Aldergrove, BC V4W 3L1

Maple Ridge  
#203- 22471 Lougheed Hwy  
Maple Ridge, BC V2X 2T8