Estate Administration

Nisg̲a’a Lisims Government

Sayt-K’il̓im-G̲oot

one heart, one path, one nation

WHAT IS AN ESTATE?

When someone passes away, what they own, their assets, are called their estate.

IF THE DECEASED DID NOT HAVE A WILL

- The British Columbia law sets out who will inherit everything they own:
  - If the deceased left a spouse and no children, the deceased's entire estate goes to the spouse.
  - If the deceased left a spouse and children with that spouse, the spouse receives the first $300,000.00 of the estate and half of the remainder; the other half is divided equally among the children.
  - If the deceased left a spouse and children from a prior relationship, the spouse receives the first $150,000.00 of the estate and half of the remainder; the other half is divided equally among the children.
  - If the deceased left children and no spouse, their estate is divided equally among the deceased's children.
  - If the deceased did not have a spouse or children, their estate is divided between the deceased's parents or the descendants of the parents if the deceased's parents are not alive.
  - If the deceased left a spouse, the spouse receives the household furnishings and has the right to acquire the spousal home, if the spouse is not already an owner.
- A spouse can include someone that the deceased lived in a marriage-like relationship for at least two years at the deceased's date of death.
- When you make a Will, you choose your executor who will manage your estate after you pass away. If you pass away without a Will, a family member or someone else may need to apply to the British Columbia Supreme Court for permission to handle your estate, as no one can deal with assets, like your home or vehicle, if they are in your name alone.
- The person who applies to the Court for permission to manage the deceased's estate is called the administrator, and the law sets out the order of priority of who can apply to become the administrator.

- If the deceased had a minor child and there is a surviving parent with custody of the child, that parent will be the guardian of the minor child.
- If the deceased had a minor child and there is no surviving parent with custody of the minor child, the Public Guardian and Trustee of British Columbia will become responsible for the child's financial and legal affairs, and the Nisga'a Child & Family Services will become responsible for the child's living arrangements, health and education.
- If the deceased had a minor child, that child's share of the deceased's estate will be held in trust by the Public Guardian and Trustee until that child turns 19.

IF THE DECEASED HAD A WILL

- The deceased has named an executor, who is the person that manages the estate.
- The deceased has named a guardian for any minor children.
- The deceased has decided who will receive their estate.
- The deceased has established trusts in their Will for their minor children so that someone they know will manage these trusts.
- The deceased may have set out funeral wishes.
- The duties and responsibilities begin at the death of the deceased, and the executor must take all steps to safeguard the estate assets.

IF THE DECEASED DID NOT HAVE A WILL, DO YOU NEED TO APPLY TO THE COURT FOR A REPRESENTATION GRANT?

- If the deceased owned registered assets, like a home, bank accounts or vehicle in their name alone, you will typically need to apply to the Court for a Representation Grant, also called an Estate Grant, Grant of Administration or Letters of Administration. It will depend on the financial institutions and agencies that hold those assets whether they require a Representation Grant before you can access those assets.
- Typically, if the assets of the deceased's estate are together worth more than $25,000.00, you will need to apply to the Court for a Representation Grant.

+ When the Court issues a Representation Grant, the Court confirms that you have been appointed by the Court and gives you the authority to deal with the deceased's estate.

+ **The law sets out the order of priority of who can apply to be appointed the administrator, as follows:**
  - The spouse of the deceased or someone nominated by the spouse.
  - An adult child of the deceased with the consent of the majority of the deceased's children.
  - A person nominated by a child of the deceased, who has the consent of the majority of the deceased's children.
  - An adult child without the consent of the majority of the deceased's children.
  - An intestate successor (a person entitled to a share of the deceased's estate), other than a spouse or child of the deceased having the consent of the intestate successors, or a person nominated by that intestate successor who has the consent of the intestate successors.
  - An intestate successor of the deceased without the consent of the majority of the intestate successors.
  - Any other person the Court considers appropriate to appoint.

IF THE DECEASED HAD A WILL, DO YOU NEED TO APPLY TO THE COURT FOR A REPRESENTATION GRANT?

+ If the deceased owned registered assets like a home, bank accounts or vehicle in their name alone, you will typically need to apply to the Court for a Representation Grant, also known as a Grant of Probate or Estate Grant. It will depend on the financial institutions and agencies that hold those assets whether they require a Representation Grant before you can access those assets.
+ Typically, if the assets of the deceased's estate are together worth more than $25,000.00, you will need to apply to the Court for a Representation Grant.
+ If the deceased owned a Nisga'a Village Entitlement, Nisga'a Nation Entitlement or Fee Simple in the deceased's name alone you always need to apply to the Court for a Representation Grant.

Spouses should try to hold all of their assets jointly so that if one of them passes away, the process is simple and does not require applying for a Representation Grant.

DO YOU NEED A REPRESENTATION GRANT FOR ASSETS THAT ARE HELD JOINTLY OR WITH DESIGNATED BENEFICIARIES?

+ Assets that are held in joint tenancy, like a home, pass to the surviving joint tenant. As well, joint bank accounts pass to the surviving joint account holder.
+ Assets that have a designated beneficiary, like life insurance policies, Tax-Free Savings Accounts and Registered Retirement Savings Plans, are distributed directly to the person the deceased named as beneficiary with the financial institution; this person is called the designated beneficiary.

WHAT IS THE PROCESS TO APPLY FOR A REPRESENTATION GRANT IF THE DECEASED HAD A WILL OR DID NOT HAVE A WILL?

+ **The first step** is to conduct a Wills Search with British Columbia Vital Statistics to ensure the deceased did not make a later-dated Will, find a Will that is located somewhere else or ensure the deceased did not file a wills notice. The Wills Search must be conducted in the names that the deceased held assets, like the name registered on the title to their home and bank accounts. If the deceased used more than one name, you will need to pay for the search to be conducted in the additional names used by the deceased.
+ **The next step** is to mail the Court's form of notice that you intend to apply for a Representation Grant to the beneficiaries of the Will with a copy of the Will or intestate successors of the deceased's estate if the deceased did not leave a Will (the people entitled to a share of the deceased's estate as set in out in the *Wills, Estates and Succession Act*). If the deceased was a Nisga'a citizen, you must also give notice to the Nisga'a Lisims Government. You must give notice to the Public Guardian and Trustee if any of the intestate successors are minors or mentally incapable. You must deliver this notice at least 21 days before submitting your application for a Representation Grant with the Court. This gives the beneficiaries or intestate successors, Nisga'a Lisims Government and Public Guardian and Trustee the opportunity to dispute your application.
+ **The next step** is to prepare your application to the Court, which is made up of the following:
    - Submission for Estate Grant that gives details about your application.
    - Affidavit of the applicant that identifies you and your relationship to the deceased.
    - Affidavit of assets and liabilities where you set out the deceased's assets and liabilities and their market values at the date of death that form the deceased's estate.
    - Affidavit of delivery that confirms that you gave notice to the beneficiaries of the will, the intestate successors, Nisga'a Lisims Government and the Public Guardian and Trustee if applicable.
    - Two copies of a certificate of wills search and the original Will if applicable.
    - Additional documents may be required.
+ Once the 21-day notice period has expired and you have everything you need for your application to the Court, you can file your application in a probate registry of the Supreme Court of British Columbia. When you file the application, you will have to pay a Court filing fee of $200.00 if the estate has a value of more than $25,000.00.
+ Once your application is reviewed, the probate registry will assess the probate fees you need to pay. These must be paid before the Court will issue the Representation Grant. Probate fees are based on the gross value of the estate assets when the deceased died. If the estate assets have a value of more than $25,000.00, you must pay the Minister of Finance $6 for every $1,000.00 (or part of $1,000.00). For example, if the estate has a value of $50,000.00, the probate fees will be $150.00 in addition to the Court filing fee of $200.00. If the estate assets have a value of $50,000.00 or more, you must pay the Minister of Finance $14 for every $1,000.00 (or part of $1,000.00).
+ Once you have paid the probate fees to the Minister of Finance by filing the bank draft with the Court, the Court will issue the Representation Grant.
+ How long this process to receive a Representation Grant will take depends on the time it takes for the probate registry to review and approve your application and to receive the probate fees. Generally, this process may take two to three months once your application is filed with the probate registry.

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ONCE YOU RECEIVE THE REPRESENTATION GRANT, WHAT ARE THE NEXT STEPS?

- The executor or administrator has one year from the date of death of the deceased to collect the assets and pay the liabilities of the estate to be in a position to distribute the estate to the beneficiaries or intestate successors. This is known as the "executor's year."
- Once you have the Representation Grant, you can present it to the financial institutions and agencies and complete their required documents in order to access the deceased's assets. For example, for the deceased's bank accounts, once the Representation Grant is presented to the bank, a letter of direction, proof of identity and account agreements may be required before the bank will open an estate account and transfer all of the deceased's funds into that estate account.
- A child or spouse of the deceased may commence a Court proceeding if they feel they were not adequately provided for in the deceased's Will. They must file their proceeding with the Court within 180 days from the date of the Representation Grant and have an additional 30 days to serve their proceeding on the executor.
- Because a child or spouse may challenge the Will, unless the beneficiaries of the Will consent the executor is prohibited from distributing any assets of the estate or transferring real property to a beneficiary until 210 days after the date the Representation Grant was issued.
- If an executor makes a distribution to a beneficiary prior to the expiry of the 210 days without the consents of the beneficiaries and the persons entitled to vary the Will or a Court order, the executor may be personally liable to repay the full amount of the distribution to the estate.

- An administrator is also prohibited from distributing any assets of the estate or transferring real property to an intestate successor until 210 days after the Representation Grant unless they obtain the consents of all of the intestate successors.
- The executor or administrator has a duty to be ready at all times to account to the beneficiaries or intestate successors (the "Accounts"). Your Accounts need to show what the estate consisted of at the date of death and provide details of each financial transaction that has occurred since then. You must be able to produce all receipts and provide full explanations for the administration of the estate. A failure to account for or explain expenses may lead to personal liability. You should present your Accounts for approval by the beneficiaries or intestate successors before distributing any assets to them. If you are unable to obtain their consent to your Accounts, you are required to present your Accounts to the Court.
- The executor or administrator must file a T1 Tax Return for any year before the year of death if the deceased had missed filing a return. You must also file a T1 Tax Return for the year of death. These returns must be filed within six months from the date of death or on April 30 of the year following the date of death, whichever date is later. You may also need to file a T3 Return for the estate within 90 days of each fiscal period of the estate.

- The executor or administrator is required by section 159 of the *Income Tax Act* to obtain a Clearance Certificate from the Canada Revenue Agency ("CRA") before distributing to the beneficiaries or intestate successors the assets of the estate. CRA does not issue a Clearance Certificate until all taxes of the deceased and potentially the estate are paid. If the executor or administrator distributes the assets of the estate before receiving a Clearance Certificate from CRA and there are no assets to pay income tax that may be owing, the executor or administrator is personally liable for paying that tax.

THE DECEASED HELD A NISG̱A'A VILLAGE ENTITLEMENT / NISG̱A'A NATION ENTITLEMENT / FEE SIMPLE AT THE NISG̱A'A LAND TITLE OFFICE IN THEIR NAME ALONE. WHAT DO YOU DO ONCE YOU RECEIVE THE REPRESENTATION GRANT?

- If the deceased gifted their entitlement in their Will, the executor must first apply to the Nisg̱a'a Land Title Office ("NLTO") with a Court-certified copy of the Representation Grant and a Court-certified copy of the Affidavit of Assets and Liabilities to transmit the entitlement from the deceased's name into the name of the executor who will then hold the entitlement in their capacity as the executor. Following registration at the NLTO, the executor will then apply to the NLTO to transfer the entitlement to the beneficiary gifted the entitlement in the Will.
- If the deceased did not gift their entitlement in their Will or passed away without a Will, the executor or administrator will first apply to transmit the entitlement at the NLTO as described above. Following registration at the NLTO, the executor or administrator will then need to obtain the consents from all the beneficiaries of the Will or intestate successors as to whom the entitlement will be transferred.

- Once the executor or administrator has received all of the originally signed consents, the executor or administrator will then provide these to the NLTO and provide a declaration that the consents are from all of the beneficiaries of the Will or intestate successors of the deceased in order for the NLTO to transfer the entitlement to the person that everyone agrees should receive the entitlement.
- For most transactions at the NLTO, the NLTO requires two pieces of unexpired identification. Please review the NLTO website (nisgaalandtitle.ca/identification-eligibility/) to determine if your identification is acceptable to the NLTO. The name and address on your identification should be your full legal name and address and match your records with your Village Government.
- The NLTO has eligibility requirements for a person to be able to hold a Nisg̱a'a Village entitlement or Nisg̱a'a Nation entitlement. For a Nisg̱a'a Village entitlement, you will need an unexpired Nisg̱a'a Citizenship Card and a Certificate of Indian Status card, or if you no longer have an Indian Status card a letter from your Village Government confirming that you were a member of that Village before May 11, 2000, your full legal name and status number. For a Nisg̱a'a Nation entitlement, you will only need an unexpired Nisg̱a'a Citizenship Card.

THE INFORMATION IN THIS BOOKLET PROVIDES GENERAL INFORMATION ONLY. IT IS NOT MEANT TO BE USED AS LEGAL ADVICE FOR SPECIFIC LEGAL PROBLEMS. IF YOU NEED LEGAL HELP WITH AN ESTATE, CONTACT THE NISGA'A LISIMS GOVERNMENT WILLS & ESTATES CLINIC OR A LAWYER. THE INFORMATION IN THIS BOOKLET APPLIES ONLY TO BRITISH COLUMBIA, CANADA. INFORMATION ABOUT THE LAW IN THIS BOOKLET WAS CHECKED FOR LEGAL ACCURACY AT THE TIME IT WAS PUBLISHED BUT MAY BECOME OUTDATED AS LAWS OR POLICIES CHANGE.