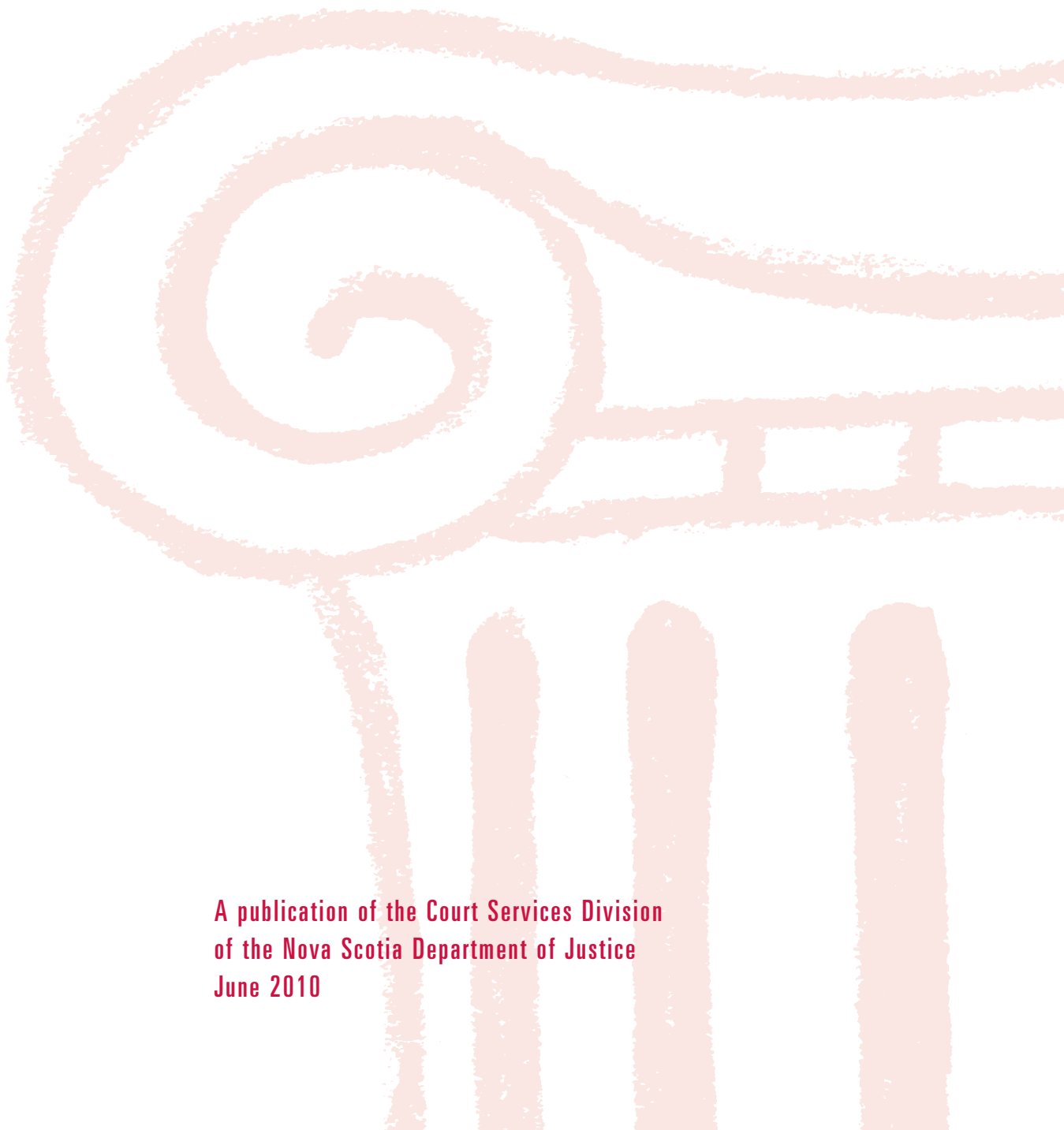


Dealing with an Estate at Probate Court

A Guide for the applicant acting without a lawyer



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This guide is prepared to help you deal with an estate in Probate Court. It does not replace the advice of a lawyer. For legal advice, contact a lawyer. Look in the yellow pages of the telephone book under “lawyers.”

The Legal Information Society of Nova Scotia can be reached at 455-3135 or toll free 1- 800-665-9779.

Before you start ...

Please read through this booklet carefully before you start to complete the application forms. The following information will help you decide whether you need the probate court. It should answer general questions about the probate process. If you have difficulties filling in the forms, please contact your local Probate Court. Court staff may be able to assist you, but they can not fill in the forms for you or give you legal advice. The information in this booklet only applies to Nova Scotia probate law.

Finding other information

Copies of the Probate Act are available on the internet at <www.gov.ns.ca/legislature/legc>. The regulations and forms are available on the internet at <www.gov.ns.ca/just/regulations/regs/probregs.htm>. Forms and regulations are also available in print at the Probate Court. Other probate information may be found at <www.courts.ns.ca> and <www.gov.ns.ca/just>.

What is probate and why is it necessary?

When a person dies, somebody has to deal with their estate, which includes the money, property, and possessions left. Whoever deals with the estate must collect all the money, pay any debts, and distribute what is left to those people entitled to it. To get this authority, they usually need a legal document called a “grant” from the Probate Court.

Organizations that hold assets in the deceased’s name may require a grant to know who that money should be paid to. The grant is the legal proof that the person named as the personal representative may deal with the assets of the deceased.

When a person dies, their estate passes to the people named in their will. If there is no valid will, it passes to their heirs-at-law.

When is a grant required?

A grant is always required to sell or transfer land held in the name of the deceased person, unless they owned it as a joint tenant.

A grant may be required in other circumstances. Here are a few examples:

- when financial organizations hold assets in the name of the deceased
- when someone dies without a will
- when there is a dispute concerning the will

Where do I probate the estate?

You will find a probate court in 11 locations in Nova Scotia, one in each justice centre area. An estate is “probated” at the probate court in the district where the deceased person resided during the last two or more years of life. Check at the back of this guide for the address and telephone number of each Probate Court location.

If the deceased person did not live in one district for 24 consecutive months before death, the Registrar of Probate will help you decide which of the Probate Courts is the appropriate one. To do this, they will rely principally on two factors: the length of time the deceased resided in a probate district other than the one in which the deceased died and the location of the deceased’s property.

Types of grants

The most commonly used grants are:

Probate—Issued to one or more of the executors named in the will.

Administration—Issued when the deceased has not made a will.

Administration with Will Annexed—Issued when there is a will but there is no executor named or when the executors are unable or unwilling to apply for the grant.

Other types of grants are limited to either a part of the deceased's property or are for a limited time or purpose. Examples of these types of grants are:

Extra-Provincial Grant—Issued by the court for a grant or order made by an authority outside Nova Scotia to deal with an asset of the deceased in Nova Scotia.

Grant for a limited time—These grants can be issued by the court if the person named in the will as executor is temporarily unable to take on that role. For example, they are issued when the named executor is under the age of 19 and there is no alternate executor able to step into the position, or when an executor is temporarily absent from the province, or when an executor is mentally incompetent and someone else is taking on the role of personal representative during that period.

Grant of Unadministered Property—These grants cover situations where a personal representative has been removed from that position by court order, or when a personal representative dies and there is no other person to step in to their position under the terms of any will. The purpose of this grant is to provide for the continued administration of the estate by the replacement personal representative.

Grant Pending Litigation—Issued by the court pending any court case concerning the estate.

Am I entitled to a grant?

The Probate Act governs who may be entitled to a grant. A grant can be issued to a person under the age of 19 only if they are married.

The executors named in the will are the first people to be entitled to a grant.

If the deceased has not made a will, an application for a grant is normally made by the next of kin. The court will appoint a personal representative (also called an administrator) using the following priorities, which are established in the Probate Act:

- 1 spouse and children of the deceased who reside in Nova Scotia
- 2 persons who reside in Nova Scotia and who are entitled to share in the distribution of the estate by reason of the Intestate Succession Act, or because they are adult residuary beneficiaries under the will
- 3 the Public Trustee of Nova Scotia
- 4 persons who do not reside in the Province and who are entitled to share in the distribution of the estate under the Intestate Succession Act, or because they are adult residuary beneficiaries under the will
- 5 creditors or persons having a cause of action against the estate

If there is no person who is entitled to a Grant of Administration, the court may grant administration to any person the court thinks fit. If more than one person is entitled to administration, the court may grant administration to one or more of those persons.

Can I nominate someone to be a personal representative for the estate?

If you are entitled to a grant and you are not a creditor or person having a cause of action, then you may nominate another person. You need the written consent of the Public Trustee to do this. You may also nominate a trust company as a personal representative of all or part of the property of a deceased person.

Your rights to the grant then pass to that other person, who we call the nominee.

Before a grant will be issued by the Registrar to a nominee, the forms must be filed with the Court or a Court Order dispensing with the forms must be on file. The regulations contain the consent forms.

How much will it cost to get a grant?

The cost will depend on the value of the assets held in the name of the deceased person. It is called a probate tax (in other provinces it may be called probate "fees"). Ask for a copy of the probate tax list at the probate court

administration office. Before submitting an application for a grant, you should work out the tax payable and be prepared to pay it when the application is filed at the court.

For this payment, you will receive an original grant, a certified copy of the grant, a certified copy of the will (if applicable), a certificate of status of the grant, and the court will send a certified copy of the grant and the will to the Land Registration Office, if land is being transferred. For additional certified copies of the grant, you will be asked to pay a fee. Court staff will help you to calculate the fee.

What is security?

Security means a bond that provides a financial commitment for the performance of the duties of the personal representative of an estate. There are three types of security: a bond from a guarantee company, a personal bond and affidavit of justification (for which there are forms in the regulations), and letters of credit from a financial institution.

More than one form of security may be given for an estate. You may want to consider this because it will limit the liability of any one surety and may save some costs. The amount of security required for an estate is 1.5 times the calculated value of the estate to be probated.

Is security necessary?

Unless the administrator of an intestate estate is its sole beneficiary, the administrator will be required to post security for their role. This applies to administrators who live in Nova Scotia and those who live elsewhere.

If the deceased left a will and the executor lives outside Nova Scotia, the executor may need to post security before receiving a Grant of Probate. Check the will to see if

- it is dated before October 1, 2001
- it contains a waiver of the need to post security
- there is a co-executor who lives in Nova Scotia

If any of these conditions exist, there will not be a need to post security.

In addition, if the beneficiaries of the estate are all over the age of 19 and mentally competent, and they have agreed to waive the requirement to post security, the executor who lives outside Nova Scotia may file their agreement with the Probate Court instead of posting security.

Trust companies and the Public Trustee are not required to give security for the performance of their duties.

Who can be a surety on a personal bond?

The amount of security required is 1.5 times the value of the estate. A personal bond will need only one person to act as surety if the estate value is \$100,000 or less.

Otherwise, two people will be needed as sureties. Personal sureties must be residents of Nova Scotia, and between them must have property of a value equal to or greater than 1.5 times the value of the estate over and above the total amount of all mortgages and other encumbrances registered against their own property. Neither a personal representative nor their spouse can be a surety.

How do I apply for a grant?

1. Get the forms

You can get the forms from the Probate Court administration office staff and at the internet website www.gov.ns.ca/just/regulations/regs/probregs.htm.

In addition to the forms, there are three procedural checklists to choose from, depending upon the type of estate: probate, administration, and administration with will annexed.

These checklists are available online at <http://gov.ns.ca/just/srl/>. Ask court staff to help you select the correct checklist if you have difficulty deciding which one applies to the estate you will be administering.

The checklist refers to forms you may also need from the Land Registration Office.

How does the new Land Registration Act affect my application for a grant?

The Land Registration Act will be in force across the province by March 2005. This act affects what is required to apply for a grant if the estate contains real property. You may have to complete a Land Registration Form 44 or 24 in support of your application for a grant. If the real property is registered in the new land registration system you will need to file a Form 24. If the real property is not yet registered in the new land registration system, you will need to file a Form 44. For more information about the act go to <www.servicens.ca/property/landreg> on the internet.

2. Complete the forms

Complete the relevant forms and make sure you have enclosed all the necessary paperwork and accompanying documents required. Please refer to the checklist to assist you.

3. Return the forms

Contact the court office to schedule an appointment for court staff to review your documents and make any necessary arrangements for having the documents signed. Please consult the checklist to ensure you bring all the necessary forms and documents with you. Bring the payment of probate tax with you. Make cheques payable to the “Registrar of Probate.”

What happens after the grant is issued?

Court staff will review your application to ensure the documents are ready for a grant. The court will issue a grant and send it to you.

Next, you must prepare and serve a notice of the grant to each person entitled to share in the distribution of the estate. There are four different types of notice which may be used. Please refer to the checklist for help with this task. You must choose which notice(s) are to be sent out.

You must also advertise the estate in the provincial newspaper called the *Royal Gazette* for 6 months. You must file at the court a form called an inventory, which gives details

of the deceased’s estate assets at the date of death. You must also pay the debts and deal with any claims against the estate. It is important to keep all invoices, cancelled cheques, receipts, releases, and other financial paperwork concerning the estate.

How do I finalize my role as personal representative?

The final requirement of the probate process is to make an accounting to the court of the administration of the estate. There are two methods available to pass the accounts of an estate. One is a paper process called “application to pass accounts without a hearing.” The other is called “application to pass accounts with a hearing.”

The second method will be used when any party wants to be heard by the registrar of the court before the accounts are finalized and when there is a dispute about any aspect of the accounts. Please refer to the procedural checklist *Passing the Accounts of an Estate* for assistance with this stage of the probate process. This is also called “closing an estate” or “passing the accounts” of the estate.

The regulations set out the types of information you will need to provide to the court. You must file all supporting documents at the court with the accounts. These will include receipts, releases for all debts paid, expenditures, and vouchers. If you are charging a fee for your services, you must include a statement of account with your estate accounts. Also, if there are legal fees, you must include the solicitor’s proposed bill of costs.

Are all estates closed?

No, but having the estate closed discharges you of your liability as personal representative.

If all of the following conditions are met, then the process of accounting to the court—closing the estate—is not required:

- the person died leaving a will

- all the unpaid beneficiaries under that will are adults and mentally competent
- all the unpaid beneficiaries and any surety agree in writing that the accounting is not required

However, the personal representative must file with the court the appropriate form that confirms this information. The court will not issue a “closing” order. This means you will not have a court order discharging you from your duties as personal representative, nor will the sureties be released.

Please note that court staff can offer only limited assistance in dealing with the probate process after a grant has been issued. If you have problems in administering an estate, you should seek legal advice.

Probate terms and definitions

Accounting

A procedure used by the personal representative to report on their administration of the *estate*.

Administrator

Person or institution appointed by Probate Court to administer and settle the *estate* of a deceased person.

Advertisement

A notice placed in the *Royal Gazette* to advertise the existence of the estate and call on claimants and creditors of the estate to file a claim. The advertisement is run for 6 months.

Affidavit

A written statement of facts that is sworn under oath as being the truth.

Applicant

A person who makes an application for a *grant* or another court process.

Application

The completed document requesting that a grant be issued by the Probate Court.

Appraisal

An estimate of the *value of estate* assets. There is an optional process for requesting a formal appraisal in the regulations to the Probate Act.

Beneficiary

A person who receives gifts of any kind under the terms of a will; also the heir to estate when the deceased is *intestate*.

Codicil

A document signed by a *testator* for changing, explaining, or confirming a previously made *will*. The proof of a codicil is conducted in the same way as the proof of a will.

Estate

The assets, right, title, and interest in any property, both real and personal, owned by the deceased at the date of death.

Executor

The person(s) or institution named in a will to administer an *estate* according to the directions of the *testator* that are contained in the will and the law.

Extra-provincial grant

The document that gives the *personal representative* the authority to deal with an asset of a deceased that is in the Province of Nova Scotia if the original *grant* has been issued by another province, state, or country.

Grant

The court document that authorizes the *personal representative* to administer the *estate* of a deceased person. There are many types of grants: a grant of probate, of administration, or of administration with will annexed; an extra-provincial grant; and limited or special purpose grants.

Heir-at-law

A person who inherits part or all of an *estate* by a law because of their blood or kin relationship to a deceased person. The law in Nova Scotia is called the Intestate Succession Act.

Intermeddling

Interfering with the assets of a deceased person without having the legal authority to do so.

Intestate

A person who dies without a will. A partial intestacy is created when a valid will does not dispose of the whole estate.

Inventory

A detailed list of both the real and personal property owned by the deceased at the date of death that must be filed by the personal representative at the Probate Court within 3 months of the date the *grant* was made.

Legatee

Someone to whom a legacy is bequeathed.

Limited grant

A *grant* that contains any limitations.

Non-residuary beneficiaries

Persons to whom a specific gift is given in a will. They do not share in the residue of the *estate*.

Notice of grant

The document that the *personal representative* sends to each person who is or may be entitled to share in the distribution of the estate. It notifies them the *estate* has received a *grant* from the Probate Court. The notice must be sent within 20 days after a grant has been issued. The notice forms and rules for sending them can be found in the regulations to the Probate Act.

Notice of objection

The document that is completed by a person who wishes to object to the estate *accounting* or an *application* made to Probate Court. The notice forms and rules for sending them out can be found in the regulations to the Probate Act.

Notice of rejection

A notice from the Probate Court that sets out the errors and omissions in an application for a *grant*.

Personal property

All assets, other than real property (such as cars, jewelry, bank accounts, RRSPs, stocks, bonds) owned by the deceased person at the date of death.

Personal representative

Person or institution named in the *grant* to administer the *estate* of the deceased person. More than one person can share this responsibility. It includes *executors* or *administrators*.

Probate Act

The law in Nova Scotia which sets out how a deceased person's estate is to be administered after their death. If a person dies without a will, the Intestate Succession Act of Nova Scotia is also relevant. Both laws can be found online at <www.gov.ns.ca/legislature/legc>.

Probate Court

Provides for the protection of heirs, *legatees*, and estate creditors. The court provides a forum for adjudication without monetary limits and also holds the authority for the appointment of executors, administrators, appraisers, and guardians ad litem in relation to all estate matters. The Probate Court in each of the justice centres in Nova Scotia consists of a Judge of Probate (who is a Supreme Court Justice) and the *Registrar of Probate*.

Probate district

The justice centre area where you will find a Probate Court and Registry. There are eleven of them in Nova Scotia.

Probate

The process that proves a *will* by law and registers it in the Probate Court. It also endorses the authority of the *personal representative* to administer the estate.

Probate taxes

Cost of opening an *estate* at the Probate Court of Nova Scotia.

Proof of will in common form

The procedure which proves a *will* in ordinary cases. One of the two witnesses to the signature of the deceased on the will states by way of *affidavit* that they were present and saw the deceased and the other witness sign the will.

A Notary Public, Barrister of the Supreme Court, Registrar, or Deputy Registrar of Probate can complete the affidavit in proof of a will. A Commissioner of Oaths cannot do so.

Proof of will in solemn form

A more complicated probate procedure to prove a *will*. It is used when there is likely a dispute as to the validity of the will.

Proof of death certificate

A form provided by the funeral home or the Registry of Vital Statistics.

Proof of service

An *affidavit* stating that all interested persons have received notification of the action within the required time limits.

Real property

All land and buildings, including mobile homes, owned by the deceased at the date of death.

Registrar of Probate

A Registrar of Probate is a court official who is responsible for performing judicial and quasi-judicial duties as set out in the Probate Act, regulations and other relevant acts. The Registrar of Probate protects the interests of heirs, *legatees* and creditors by ensuring all estate matters are properly conducted in accordance with the *will* or statutory provisions.

Renunciation

The act by which a person abandons their right to act as a *personal representative* of an estate.

Residence of deceased

The *probate district* where the deceased lived during the last two or more years of life. If the deceased did not live in one district for 24 consecutive months before death, the *Registrar of Probate* will determine the appropriate district.

Residuary beneficiaries

Persons named to share in the remainder of the deceased's *estate* after all the debts have been paid and other gifts mentioned in the *will* have been distributed.

Royal Gazette

Provincial government newspaper in which the *notice of grant* is published for 6 months.

Service

The delivery of documents. Unless otherwise specified in the Probate Act or regulations, it means delivery of all notices and other documents by personal service or registered mail or service on a lawyer authorized to accept service on behalf of a person, or such other means as are directed by the Court.

Surety

The person or business that is providing security to the court in the event that the *personal representative* fails to perform her or his duties. There can be more than one surety.

Tax clearance certificate

A certificate issued by Canada Customs and Revenue Agency (CCRA) on request after all of a deceased's income taxes and other taxes have been paid.

Testator, Testatrix

A deceased person who has left a valid *will* is said to have died testate. A man is called a testator, a woman a testatrix.

Value of estate

The value of the assets of the deceased person, as of the date of death of the deceased, calculated on the gross value of the personal property of the deceased and the fair market value of the real property of the deceased less the amount of any mortgages and encumbrances registered against the real property at the Registry of Deeds.

Will

A written document in which you specify what is to be done with your property when you die. It includes a testament, a *codicil*, and every other testamentary instrument of which a *grant* may be issued.

