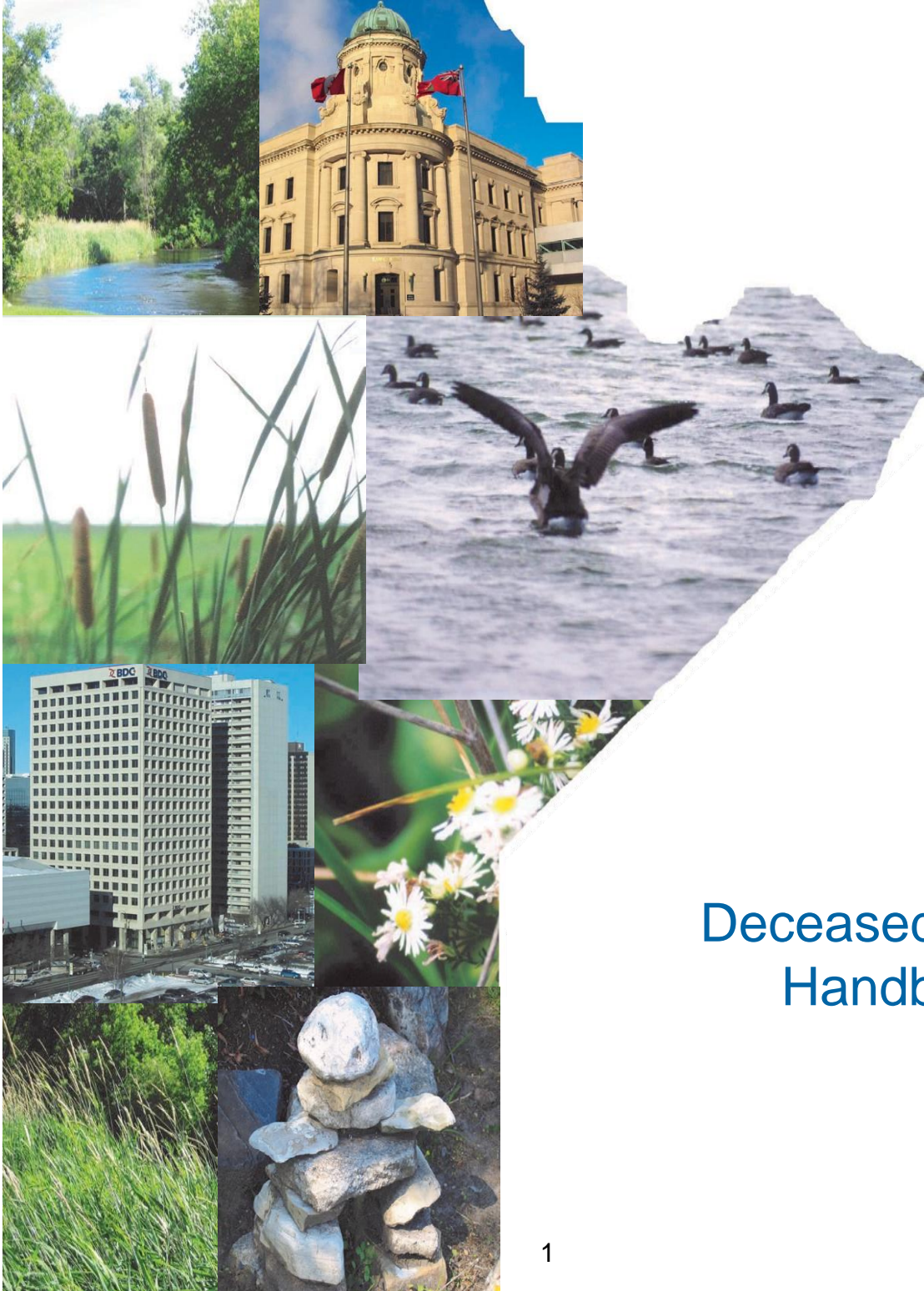




Public Guardian and Trustee of Manitoba



Deceased Estate Handbook

The Public Guardian and Trustee of Manitoba
Deceased Estates Handbook

This booklet provides information about what to do when someone dies and there is an estate to administer. There are words used in this booklet that may be unfamiliar. These words are underlined. The **Definition** section at the end of the booklet explains these words.

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Note: This booklet is not a legal document. It is not intended to provide nor should it be relied upon as legal advice to the reader. It contains general information to assist you when a death occurs and there is an estate to administer. To obtain a detailed explanation about what to do when someone dies, please contact your lawyer for legal advice or refer to the appropriate legislation.

This publication is available in multiple formats upon request.
For further information, please contact the Public Guardian and Trustee's Office at 204-945-2700

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Introduction

The death of a family member or close friend is difficult. In addition to the grief of personal loss, decisions have to be made about the deceased person and his or her affairs. This handbook provides information about what things have to be done right away when someone dies and what things can be done later on, by the personal representative of the estate.

Chapter 1: At the Time of Death

In Manitoba, all deaths must be registered with Manitoba Vital Statistics. A physician or coroner will complete the death registration form. If the death took place in a hospital, the staff there will arrange for this to be done.

If the death occurred at home or somewhere else, the family or those nearby at the time of death, may call the deceased's physician, or local fire/paramedic or police department. An autopsy might be requested by the physician or by the family.

Funeral Director – Initial Contact

Unless a deceased made arrangements for his or her body to be used in medical research upon death, the next step is to contact a funeral director to take control of the body. When a person dies and there is no family willing or able to do this, the Medical Examiner's Office may take control of the body and arrange for transfer to a local funeral home. Please see the section entitled *The Medical Examiner: Unclaimed Bodies* for more information about the role of the Medical Examiner.

Organ or Tissue Donation

In Manitoba, organ and tissue donations are regulated by *The Human Tissue Gift Act*. The deceased person may have made a decision to donate his or her body or organs and tissue. At the time consent was given, the deceased must have been at least 16 years of age. The consent should be in writing and signed by the deceased. The deceased may have filled out the organ and tissue donor card attached to his or her Manitoba Health registration card or a pledge card from one of a number of agencies, such as Lions's Eye Bank of Manitoba or the Kidney Foundation of Canada.

As the donation of organs or human tissue is time-sensitive, looking for a consent document should be done as soon as possible after the person's death. Many people keep the consent document in their wallet or purse, so that would be a good place to look. Consent to organ or tissue donation might also be stated in a person's will. However, unless the will is located and read very soon after death, it will not be helpful to determine the wishes of the deceased in regard to organ and tissue donation.

The deceased person may have stated how his or her whole body is to be used. For example, the deceased may want his or her body to be used only for medical education or scientific research. The deceased may have wanted only certain organs or tissue to be donated. It is very important, therefore, to try and determine the full wishes of the deceased regarding organ or tissue donations.

In any event, it is important to talk to the family of the deceased to find out whether he or she had discussed his or her wishes. Even if a written consent exists, family members may object to the donation, in which case, medical personnel may not be willing to act on the wishes of the deceased at the time of death.

On the other hand, if a person dies without having given consent to the use of his or her body, organs or tissue for medical purposes, his or her next-of-kin may still consent to a donation, so long as it is not contrary to any religious beliefs of the deceased or where the death is being investigated under *The Fatality Inquiries Act*.

If the person wished to donate his or her entire body for medical research and education, family can contact the Department of Human Anatomy and Cell Science at the University of Manitoba. Their contact information is located in the *Other Resources* section of this booklet.

Burial or Cremation

The executor named in a will has the legal responsibility for dealing with the body and arranging the funeral. If there is no named executor, or the named executor is unwilling or unable to act, the common law sets out who can make decisions about making funeral arrangements.

The executor is generally not required by law to strictly obey the deceased's wishes about funeral arrangements, but it is rare that such wishes are ignored. If the deceased's wishes are followed, they may affect what is done with the body immediately after death.

Burial of a human body requires the purchase of a designated plot, unless the deceased had pre-paid for a plot prior to death. Prices for plots vary. Some plots are available for purchase through one's church, synagogue or temple. Plots are also available from cemeteries connected with local funeral homes. As well, most communities may have one or more public cemeteries.

Cremation is an alternative to burial. Crematoriums are located throughout Manitoba and are generally connected with a funeral home. Cremated remains can be returned to the family, or interred in a cemetery plot or cremation niche. Those who wish to scatter the deceased's remains, or inter them somewhere else must consult with local municipal authorities or the property owner first.

A veteran with documented military service may qualify for a full or partial burial allowance from Veterans Affairs Canada, or from the Last Post Fund. Most large cemeteries in Manitoba have a Field of Honour or soldier's plot. Veterans or members of the Canadian Forces can be buried in these plots by providing the deceased's regimental number or discharge certificate. Plots are for the veteran or member only, and cannot be used by the spouse or other family.

Funeral Pre-Arrangements

Many people arrange or pre-arrange for funeral services and/or cemetery plots. Sometimes, a special type of insurance policy is purchased in which the funeral home is the named beneficiary. A copy of the pre-paid or pre-arranged contract, or the funeral insurance policy may be among the deceased's papers. If such a document is located, the named funeral home and cemetery should be contacted immediately. Note that contracts or policies may only cover certain goods and services. Any additional charges not covered under the contract or policy, if applicable, will be invoiced at the time of the funeral.

Any questions about burials or cremations can be directed to the Funeral Board of Manitoba. Their contact information is located in the *Other Resources* section of this booklet.

The Medical Examiner – Unclaimed Bodies

If after 48 hours, no one claims a deceased person's body to make funeral arrangements, the remains come under the control of the Inspector or Sub-inspector of Anatomy as directed under *The Anatomy Act*. She or he arranges to transfer the deceased's body to a funeral home, usually close to the place of death. The funeral director may be told to embalm the body to preserve it.

The Inspector or Sub-inspector of Anatomy works for the Office of the Chief Medical Examiner. She or he may go to the deceased's last residence, usually with a local police officer, to look for names and addresses of family and friends. She or he will try to find documents, like a will or pre-arranged funeral contract that says what the person's wishes were about funeral arrangements. The Sub-inspector will also try to find out if the person was associated with a particular religion.

If family or friends of the deceased are located, the body may be released to them to make the funeral arrangements. Sometimes, friends or family just give information to the Sub-inspector about the deceased's wishes and let the Sub-inspector carry out the arrangements.

Sometimes, no one comes forward to make funeral arrangements for an unclaimed body. After 28 days, the Sub-inspector of Anatomy is required by law to claim the body and make the arrangements.

Payment of Funeral Expenses for Unclaimed Bodies

If there were no pre-paid funeral arrangements, the Sub-inspector must find out what funds there are at the time of death to cover the funeral expenses. Sometimes, the Sub-inspector will ask the Public Guardian and Trustee's Office to help find out that information.

If the Sub-inspector finds out that the deceased person does not have funds to cover the cost of the arrangements, an application is made to Employment and Income Assistance (EIA) for payment of the funeral expenses.

Only basic goods and services are covered by EIA. Family or friends wanting to upgrade the goods and services should be careful when agreeing to pay for additional expenses. If the estate does not have funds to cover the additional goods or services, the family or friends may not receive reimbursement for these items.

Funeral Arrangements - Role of the Public Guardian and Trustee (PGT)

The Public Guardian and Trustee of Manitoba (PGT) is only authorized to make funeral arrangements for a deceased person, when it is named as the executor or alternate executor under the person's will.

If the PGT was the committee, power of attorney, trustee or substitute decision maker for a person and the person dies, the PGT checks to see if the person had a valid will or any funeral pre-arrangements. If there is a will, the executor will be contacted and advised of the person's death. The executor is legally responsible for making the funeral arrangements with guidance, if appropriate, from the person's family.

If there are pre-arrangements, the PGT contacts the funeral home to advise them of the death. The funeral director will meet with the family of the deceased and work with them to carry out the person's wishes.

If there is no will and no pre-arrangements, the PGT will contact the family of the deceased and ask them to make the arrangements.

Where there is no known family or the family cannot be located, the PGT will report the death of the client to the Chief Medical Examiner's Office as an unclaimed body. Please see *The Medical Examiner: Unclaimed Bodies* section of this booklet.

Financial Responsibility for Funeral Costs

While the costs of a funeral is generally paid by the estate, if the estate has insufficient assets to pay the funeral bills, the person signing the contract with the Funeral Home may find themselves personally responsible for this potentially large cost. Care must therefore be taken by any person signing a contract for funeral services to ensure that the estate has sufficient funds to pay for the funeral.

Chapter 2: Administering an Estate

Who will Administer?

An executor appointed under a will is entitled to administer an estate. For more information, please see the *When There is A Will* section of this booklet.

If there is no will, the next-of-kin to the deceased who live in Manitoba may apply to the Court of Queen's Bench to become the administrator of the estate. For more information, please see the *When There is No Will* section of this booklet.

If an estate is insolvent, any of the creditors to whom the deceased person owed money can apply to administer the estate. Please see the *Insolvent Estates* section of this booklet for more information.

The PGT is an administrator of last resort and only administers estates in certain situations. Please see *The Role of the PGT as Administrator – Other Situations* in this booklet.

Responsibilities of an Executor or Administrator

Whether acting as an executor or administrator, the steps in administering an estate are the same. The difference is that an executor distributes the estate according to the wishes of the deceased as stated in the will, while an administrator may have to distribute the estate according to the *Intestate Succession Act*, if there is no will. Many of the same duties as they relate to collecting estate assets and paying debts apply to both.

For more information about the steps in administering an estate, please see the ***Checklist for Personal Representatives*** (Attachment 1) at the back of this booklet.

Assets of the Estate

Before taking on the role of personal representative for an estate, it is important to determine if the estate is solvent. This is done by identifying the total assets and total debts of the estate.

For estate purposes, there are two categories of assets:

1) Moveable assets:

- Cash – bills and coins, chequing or savings accounts in financial institutions which are not held jointly with a right of survivorship, investments (stocks, bonds, mutual funds), benefits paid by government agencies, such as Old Age Security, or income from an employer or pension plan.
- Personal property - jewellery, household goods, vehicles, electronic equipment, artwork, antiques and collectables, precious metals, such as gold or silver.

- Funds owed to the deceased which were payable, but not actually paid to him/her before death. Examples include unused contributions to a pension plan, proceeds of a life insurance policy where there is no named beneficiary or the estate is the named beneficiary, monies lent by the deceased to another person or company.

and

2) **Immoveable assets:**

- Real property - Land or buildings and land in which the deceased is an owner (except where the deceased person owns property jointly with someone else).
- Subsurface mineral or oil rights.
- Condominiums – one unit or a building containing multiple units.

See **Sample Inventory** (Attachment 2) at the back of this booklet. This is a form that is filed with a Request for Probate or Administration. It is used to calculate probate fees.

What is Not an Asset of an Estate?

There are certain assets which are not considered estate assets. Here are some examples:

- Real property (a house, cottage or other real estate), bank accounts or automobiles, owned by the deceased and one or more living persons and which contain a right of survivorship. These assets become the property of the survivor(s) immediately on death.
- Insurance policies which name a designated beneficiary.
- Registered investments such as Registered Retirement Savings Plans, Registered Retirement Income Funds and Tax Free Savings Accounts which have a designated beneficiary. Some of these types of assets have special rules which allow Canada Revenue Agency and other creditors of the estate to look to the recipient designated beneficiary of these funds for payment of their debt when the estate has insufficient assets.

Debts of the Estate

If a person owed any money (debt) at the time of death, his or her estate is usually responsible to pay it. Debts can include:

- a mortgage on real property.
- a loan for a car or other possessions.
- money owing on a credit card.

Recent bank or credit card statements may show if the estate owes any money.

Relatives are not responsible for the debts of a deceased person because they are that person's relative. Relatives are not personally responsible to pay a deceased's debts, except when the debt is jointly held by the relative or he or she has signed as a guarantor on the debt.

A debt that is life insured may not be a debt of the estate. Life insured debt is paid off by an insurance company to whom the deceased person was paying premiums.

The deceased person's recent bank or credit card statements may show the payment of such insurance premiums. If statements are not available, the personal representative should call the financial institution or credit card company. The financial institution or credit card company will ask for proof of death before the insurer pays the debt.

Creditors as Administrators

In cases where the deceased person's debt, such as a mortgage or a line of credit is secured by a valuable asset, such as real property, a creditor may foreclose on the real property or take other steps that they are entitled at law to take to recover the amount owed by seizing estate assets. Creditors, including those who hold unsecured debt, such as credit card companies may be interested in applying to administer an insolvent estate to recover the amounts owed by the estate.

Is a Court Application Necessary?

Whenever there is real property owned by a deceased that does not automatically transfer to one or more living persons because of survivorship rights, it is necessary to obtain a court grant. This is because The Property Registry (Land Titles) will only allow a court appointed personal representative to sell or transfer land on behalf of an estate.

Some financial institutions may not release funds to anyone except the personal representative named in a court grant. Many financial institutions have their own policies regarding when and to whom they will release funds without a court grant.

Chapter 3: When There is a Will

Must an Executor Act if Appointed in a Will?

Sometimes, the named executor in a will is not willing or able to take on the role of a personal representative. By signing a renunciation form, the executor formally gives up his or her right to be appointed. See the **Sample Renunciation** (Attachment 3) at the back of this booklet.

If there is an alternate executor named in a will, he or she has the next right to apply to the court for the Grant of Probate. If the alternate executor applies for the Grant of Probate, she or he must attach the completed renunciation form, signed by the named executor, to the Request for Probate.

If there is no alternate executor, a next-of-kin residing in Manitoba may apply to be the Administrator with Will Annexed. In addition to the renunciation from the executor, if applicable, the next-of-kin must obtain signed renunciations from all other next-of-kin living in Manitoba who have an equal or prior right to apply to administer the estate. These renunciations must be filed with the Request for Letters of Administration with Will Annexed.

Instead of a renunciation, a next-of-kin or the named executor may nominate someone living in Manitoba to be appointed as Administrator of the Estate with Will Annexed. See **Sample Nomination** (Attachment 4) at the back of this booklet.

The completed nomination form and renunciation form(s) if applicable must be filed in court with the Request for Letters of Administration with Will Annexed.

As a last resort, the next-of-kin may ask the PGT to apply as the Administrator with Will Annexed. Please see *The PGT as Administrator-Other Situations* section of this booklet for further information.

Once an executor starts to administer the estate, she or he must continue to complete it. If, for some reason, the executor is not able to complete the administration and there is no alternate executor, the court will have to appoint an administrator. This will result in additional costs to the estate.

Grant of Probate

The Grant of Probate is the court grant issued by the Manitoba Court of Queen's Bench (the court) confirming that a will is valid. It shows that the named executor(s) has authority to make decisions about the estate. To get the Grant of Probate, the personal representative of the estate must file the deceased person's original last will, affidavit of execution, and codicil(s) if applicable in court, along with any other forms, such as renunciations or nominations. Probate fees must also be paid.

For estates with assets up to \$100,000.00, please see the **Manitoba Probate Guide for Small Estates**. It provides information about the process and forms that are needed to request probate. The Guide is available online or from Community Legal Education Assistance (CLEA). Please see

the *Other Resources* section of this booklet for their contact information. It is advisable to seek legal advice.

See **Sample Request for Probate** (Attachment 5) at the back of this booklet.

For estates with large investments or complex assets or where there are disagreements about the estate, it is strongly recommended to seek legal advice and retain a lawyer to make the request for probate. The Law Society of Manitoba's legal referral service can provide a list of lawyers who practice estate law. See the *Other Resources* section of this booklet for their contact information.

If there is no real property, or the value of the estate before the funeral expenses are paid is \$10,000.00 or less, it may not be necessary to obtain a Grant of Probate. See the *Administration Order Small Estates (Under \$10,000.00)* section of this booklet.

Chapter 4: Where There is No Will or No Executor

Administration Order (Small Estates Under \$10,000.00)

An Administration Order is a court grant issued by the court when someone dies and their estate is worth \$10,000.00 or less (before funeral expenses are paid). To be appointed as an Administrator for a small estate, a next-of-kin residing in Manitoba must file the application for Administration Order in court and pay the probate fee.

The process and forms are simple and can be used whether there is a will or not. Please see the **Manitoba Probate Guide for Small Estates** for information about the process and forms needed to apply for an Administration Order.

Letters of Administration (Estates over \$10,000.00)

Letters of Administration is a court grant issued by the court for estates worth more than \$10,000.00, usually when there is no will. Sometimes, Letters of Administration are needed, even when there is a will. This is called Letters of Administration with Will Annexed. It is used when:

- the will does not name an executor.
- the named executor or alternate executor is dead or is unwilling or unable to act.

Letters of Administration name the administrator appointed by the court to deal with an estate. A beneficiary of the estate or next-of-kin residing in Manitoba may apply to court to be the administrator.

In order of priority, an administrator can be:

- the spouse or common-law partner;
- an adult child (biological or legally adopted);
- a parent;
- a brother or sister (biological, half-sibling or sibling legally adopted by the parents of the deceased person);
- a niece or nephew; or
- in certain situations, the PGT, as a last resort.

Please see the **Manitoba Probate Guide for Small Estates**, for information about the process and forms needed to apply for Letters of Administration.

Frequently Asked Questions (FAQs) About Letters of Administration

What is a Bond/Surety?

When a person applies to become the administrator of an estate, she or he may have to provide the court with a bond. The bond is a kind of insurance which may be payable to the estate if the administrator does not perform his or her duties properly.

The bond must be worth double the value of the estate, when it is guaranteed by two individuals called sureties. The administrator may purchase a bond from an insurance or surety company if there are no individuals willing to act as sureties. In this case, the bond is only for the value of the estate, not double the value. The premium to purchase a bond will be based on the value of the estate. An administrator applying for a bond from an insurance company or surety company must meet the financial qualification requirements of that company before the company issues a bond.

When all the beneficiaries or heirs are adults, or where the value of the estate is less than \$50,000.00, the court may not require a bond from the administrator.

The PGT is not required to obtain a bond when making an application for administration.

What is a Renunciation?

If more than one person in Manitoba has the same right or a greater right to apply to be the administrator of an estate, the proposed administrator will need to have them each sign a renunciation (QB Form 74P). These forms are filed in court with the Request for Letters of Administration. See **Sample Renunciation** (Attachment 3) at the back of the booklet.

A renunciation form tells the court that those in Manitoba with the same or a greater right to apply as administrator do not wish to do so. By signing a renunciation, a person gives up his or her right to administer the estate, but not his or her right to inherit from the estate, if applicable.

What is a Nomination?

A person with the same or greater right to apply to administer an estate may complete a nomination form (QB Form 74N) to be filed in court with the Request for Letters of Administration. See **Sample Nomination of Administrator** (Attachment 4) at the back of the booklet.

This form tells the court that a person with a right to apply as administrator agrees to the appointment of another person as the proposed administrator.

Chapter 5: Responsibilities of an Executor or Administrator

Take Possession and Protect the Property of the Estate

The executor or administrator is legally responsible for all of the estate assets. This includes not only the deceased person's home, motor vehicles or other valuable items, but the papers and documents as well. Examples of papers that must be protected are:

- the will – original or copy;
- contents of the deceased person's wallet, purse or briefcase;
- statements from the deceased person's financial institution and credit card companies;
- utility companies such as Hydro or telephone/cell phone providers;
- insurance policies;
- income tax, including Social Insurance and Social Security information, if applicable;
- recent mail – such as memberships or subscriptions.

Credit cards should be secured so that no one can make charges on them. The issuing company should be notified as soon as possible of the death of the card holder.

The executor or administrator must secure the deceased's home and secure important papers and valuables. If the deceased was a tenant, the personal representative of the estate must work with the landlord to go into the home to secure the assets. The executor or administrator may need to find a new home for any pets and take in the mail.

Insurance

Proper insurance must be put in place for any valuable assets. Examples of valuable assets include but are not limited to:

- real property (home, cottage etc);
- motor vehicles or equipment such as farm machinery;
- art and jewellery.

If the house is unoccupied, it is important to advise the insurance company of this fact. The insurance company may require the executor/administrator to arrange someone to perform regular house checks and yard care as a condition of insurance coverage. The estate is responsible for the cost of insurance and ongoing care of the home until the property is sold or transferred.

Pay Estate Debts

The personal representative of the estate is responsible for identifying any debts that must be paid by the estate before any distribution can be made to beneficiaries or heirs. Personal papers are often an important source of information regarding debts. To find out what other debts may exist, the personal representative places a Notice to Creditors in a newspaper in the city or town where the deceased person was living. As well, a Notice to Creditors is published in the Manitoba Gazette www.gov.mb.ca/queensprinter/manitobagazette/. This is a publication to which lawyers and other businesses can subscribe.

By publishing this notice, creditors are officially notified about someone's death. The creditors then send a claim to the personal representative about the money they believe is owed to them or the organization they represent. The Notice to Creditors contains an expiry date. Publishing the Notice to Creditors provides protection for the personal representative. The personal representative will not be personally responsible for an unknown claim against the estate if he or she distributes the estate after the expiry of the notice, if the creditor does not submit a claim to the personal representative. See **Sample Notice to Creditors** (Attachment 7) at the back of this booklet.

After the expiry date of the Notice to Creditors, the personal representative reviews the claims that have been presented by the creditors. The claim(s) must be supported by sufficient evidence so that the personal representative is satisfied that the claim is valid. As well, each claim must be reviewed to ensure that the debt or other claim is not statute barred.

If the personal representative does not think that a claim is valid, a process exists to give the claimant notice that the claim has been rejected by the personal representative. A time limit is then placed on the claimant to take legal action against the estate to establish the claim, or the claim will be legally barred.

If there is not enough money left in the estate to pay the full amount owed to all creditors the estate is considered to be insolvent. Partial or prorated payments may be offered to the creditors. In this case, heirs or beneficiaries do not receive any inheritance.

In either case, although not required, the personal representative will usually have each creditor sign a release before issuing payment from the estate to cover the claim.

The personal representative must also take into consideration the nature of claims which are presented. This is because certain debts must be paid in priority.

This is the order in which debts of the estate must be paid:

- a) Secured Creditors are paid first. Examples include:
 - Holders of mortgages on real property
 - Holders of liens on personal or real property
- b) Funeral and estate administration expenses are paid next. Examples include:
 - Reasonable funeral expenses;
 - Costs incurred to obtain probate/Letters of Administration;
 - Debts incurred after death to protect estate property (e.g. storage charges, insurance premiums);
 - Estate administration charges.
- c) Canada Revenue Agency – for any unpaid income or other tax, along with penalties and interest, if applicable.
- d) All other unsecured debts (e.g. unsecured credit cards)

Secured debts take priority over unsecured debts. If all the debts are unsecured, the debts will be paid proportionately. If there is only enough money in the estate to cover secured debt, the unsecured creditors may not be able to collect on the debt owed by the estate.

In the case of wills, if there is not enough money in the estate to pay all debts, there are legal rules that set out the class of beneficiary which will be required to pay the shortfall.

Sometimes, it is not possible to distribute estate assets until certain specific statutory claims have been dealt with. For example:

1) ***The Family Property Act***

Where a notice under *The Family Property Act* has been served on a spouse or common-law partner of the deceased, the personal representative is not allowed to distribute the estate until:

- a) the surviving spouse or common-law partner consents in writing to the proposed distribution;
- b) six (6) months have passed since the court grant issued and no application has been made by the surviving spouse or common-law partner(s); or
- c) an application under *The Family Property Act* has been dealt with (Subs. 32(1) and Sec. 29 of *The Family Property Act*).

2) ***The Dependant's Relief Act***

Where one or more dependants claim that they need financial support from the deceased's estate, they may bring an application to court for relief under *The Dependant's Relief Act*. The application should be made within six (6) months of the date of the court grant.

Once a claim has been brought, the personal representative is not allowed to distribute any estate assets until the court decides on the dependant's claim. If the personal representative distributes the estate before the claim is settled, she or he is personally legally responsible for paying the full amount of relief ordered by the court to the dependant.

If an estate must deal with statutory claims of this nature, legal advice is highly recommended to avoid possible legal liability on the part of the personal representative.

Income Tax and Clearance Certificate

The personal representative of the estate must file the deceased's tax return to report all income earned up to the date of death.

Tax returns must be filed by Canada Revenue Agency's deadlines to avoid penalties and interest. The month of death is used to determine the filing deadline for a deceased taxpayer.

Income which is earned by the estate after the date of death must also be reported to Canada Revenue Agency. A special tax return called a T3 trust income tax and information return is used. The T3 return must be filed once a year, until the estate is completely paid out.

When an estate is ready to be distributed, and the Notice of Assessment has been received for the final T3 trust income tax and information return, the personal representative applies to Canada Revenue Agency for the Clearance Certificate. This certificate is proof that the deceased taxpayer has paid all amounts owing to Canada Revenue Agency under the *Income Tax Act*.

It can take Canada Revenue Agency several months to issue the Clearance Certificate. During this time, some of the estate assets can be distributed, but the personal representative must be careful to hold back enough money for unpaid taxes or fees owed by the estate. Otherwise, the personal representative may face personal liability for any shortfall.

Once the Clearance Certificate is received and any remaining legal or estate administration fees are paid, all of the remaining estate assets can be distributed to the beneficiaries or heirs. See the *Fees* section of this booklet.

Canada Revenue Agency has special guides and forms to help a personal representative with the deceased person's tax returns. Please contact Canada Revenue Agency to obtain the most recent guides and forms. Their contact information is in the *Other Resources* section of this booklet.

The above information is about the role of the personal representative in tax matters. It is not tax advice. The personal representative of an estate should contact a tax professional about specific tax matters regarding estates.

Chapter 6: Fees

The personal representative makes sure the estate pays any administrative or other fees and charges for which the estate is responsible. There are three main types of administrative fees owed by an estate:

1) *Probate Fees*

These fees are payable to the Minister of Finance when the personal representative files the request for the court grant in the Court of Queen's Bench. The fee is based on the value of the estate assets at the time of death. The probate calculator, located at the Manitoba Court Registry website www.jus.gov.mb.ca/registry/ shows how these fees are determined.

2) *Legal Fees*

A lawyer who is retained by a personal representative on behalf of an estate is entitled to the fees authorized by the *Queen's Bench Rules* (74.14). The types of services for which the lawyer can charge for estate administration is detailed in Queen's Bench **Form 74AA Information for Personal Representatives and Beneficiaries**. See Attachment 8 at the back of this booklet. The lawyer must give this form to the personal representative of the estate, as well as the beneficiaries and/or heirs by the deadline indicated in Form 74AA.

3) *Executor/Administrator Fees*

The law does not state a fixed amount or a percentage of the estate that can be charged as fees by a personal representative. Queen's Bench **Form 74AA** states that a personal representative of an estate is entitled to "fair and reasonable compensation for their care, pains and trouble".

Chapter 7: Distributing Estate Assets

Once all debts of the estate are paid, including any income taxes and fees, and the Clearance Certificate has been issued by Canada Revenue Agency, the personal representative of the estate may pay out the balance of the estate assets.

Generally, this means that if there was a will, each adult beneficiary will receive his/her gift in accordance with the will, subject to the provisions of *The Wills Act*.

If there is no will, each heir receives his/her share of the estate, as directed by *The Intestate Succession Act*.

The personal representative is entitled to compensation at the end of the estate administration. An accounting must be given to the competent adult beneficiaries or heirs to show how the estate assets and debts were administered. The adult beneficiaries or heirs review the accounting. If they are satisfied with the accounting and agree that the fees are reasonable, they sign a release to the executor or administrator. See **Sample Accounting (Statement of Receipts and Disbursements)** - Attachment 9 at the back of this booklet.

If a competent adult beneficiary or heir does not agree with the accounting or the proposed fees, the personal representative may obtain court approval before taking the fees. The process is called passing of accounts. There are additional court costs and legal fees for this. These charges will generally be paid by the estate.

If any beneficiaries or heirs are minors, or are not competent to approve the personal representative's fees and the estate accounting, the personal representative must obtain court approval before his/her fees can be charged to the estate.

Please note that corporate executors and administrators, such as trust companies or other financial institutions have established fee schedules for providing estate administration services. This information is available from the trust company or financial institution on request.

The PGT also has an established fee schedule for administering estate. Please contact the PGT or refer to the PGT's website for the current fee schedule.

Minor Beneficiary or Heir

The share of a beneficiary or heir who is a minor must be held in trust by the personal representative until the child reaches the age of majority (18 years in Manitoba.)

If there is a will and a trustee is named to hold the share of a child, the payment may be made to that person “in trust” for the child. Much depends on the wording of the specific will.

If there is no named trustee in a will, the parents or guardians of the child may apply to court for an order appointing them as the guardian of the minor’s “estate”.

As a last resort, the personal representative may request to pay the funds to the PGT to be held in trust until the child attains the age of majority. The personal representative should contact his or her lawyer for direction in this case.

Foreign Beneficiaries or Heirs

When some or all of the beneficiaries or heirs of an estate do not reside in Canada, the personal representative may need to send certain forms to Canada Revenue Agency before distributing the estate. The personal representative should contact a tax professional before distributing any funds to non-resident beneficiaries or heirs.

Chapter 8: First Nations Estates

The Federal Minister of Indigenous and Northern Affairs Canada has authority over the estates of deceased persons who have status or are eligible to be registered under *The Indian Act* and had been an ordinarily resident on reserve or Crown Land.

The Minister may:

- appoint an executor or administrator for an estate.
- probate wills for a deceased person who died testate.
- approve land transfers for reserve or crown lands where the deceased person held a Certificate of Possession.
- act as administrator of an estate where there is no family member willing or able to do so.

If you are the family member of a deceased Indigenous person, please contact the Department of Indigenous and Northern Affairs Canada (INAC) as soon as possible after the death. Their contact information is located in the *Other Resources* Section of this booklet.

Please note that *The Indian Act* may not apply when:

- the deceased person was an Indigenous person who did not have status or was not eligible to be registered under *The Indian Act*.
- the deceased person was an Indigenous person that had status but was not ordinarily resident on reserve.

In these cases, the laws of Manitoba regarding estate administration will apply. The previous sections of this booklet give information about these situations.

Chapter 9: Role of the Public Guardian and Trustee

When the PGT May Act as Executor/Administrator

While the PGT may administer estates, it is not obligated to do so. The PGT is the administrator of last resort. Family members who are eligible to act as personal representative generally have priority over the PGT.

The PGT may act as interim personal representative for a person for whom it was committee, substitute decision maker, trustee or attorney under an enduring power of attorney before that person died and where there were assets requiring administration. The PGT's authority to act on behalf of the person's estate comes from *The Public Guardian and Trustee Act*, *The Mental Health Act* or *Vulnerable Persons Living with a Mental Disability Act*. The authority is limited by the legislation and in most cases comes to an end when an executor or administrator (or the PGT) is appointed by the court to administer the estate.

If the PGT is named as an executor or alternate executor in a deceased person's will, it will agree to act. A person who wishes to appoint the PGT as executor or alternate executor should consult with a lawyer first. The lawyer must contact the PGT and obtain the PGT's agreement to act as executor or alternate executor.

The PGT may agree to apply to the court to be appointed administrator of an estate, but only as a last resort. Here are some examples of when the PGT may apply to administer an estate:

- There is no named executor under a will, or the executor is unable or unwilling to act, and there are no next-of-kin living in Manitoba, willing or able to apply to be the administrator with will annexed; or
- The only next-of-kin residing in Manitoba with a right to administer the estate is not mentally competent or is a minor child under the age of 18 years;
- There is no will and no next-of-kin living in Manitoba who have a right to apply to be the administrator of the estate; or
- There is a dispute about an estate matter, and the court appoints the PGT to administer the remaining estate.

Generally speaking, the PGT does not administer insolvent estates.

When the PGT is asked to administer the estates of persons who die in Manitoba where there is no one else willing or able to do so, the PGT conducts an investigation with information from the person/agency making the referral, to determine the following:

- That there is no will, naming an executor who is willing and able to act;
- If there is no will, that there is no one else in Manitoba with a prior right to apply to administer the estate, who is willing and able to do so.
- That the estate is solvent AND that there will be funds remaining in the estate to distribute to heirs/beneficiaries, after the funeral expenses are paid and the PGT's estate administration fees (minimum \$1,500.00) and legal administration fees (minimum \$1,500.00) are taken.

PGT's Investigation Process

The steps in the PGT's investigation may include:

- Contacting financial institutions to obtain information about the deceased person's assets and liabilities
- Preliminary searches for next-of-kin in Manitoba who may wish to administer,
- Attending the deceased person's former residence to review financial records and personal papers,
- Searching the Land Titles and Personal Property Registries for real property or liens in the deceased person's name.
- Searching the Queen's Bench Court Registry to determine if there are current or completed court actions involving the deceased person, such as judgments (for/against), bankruptcy proceedings, and divorce or probate files.

Results of PGT's Investigation

The PGT of Manitoba will consider all of the information gathered during its investigation and decide whether or not to administer.

If the PGT decides not to administer the estate, the decision is documented and the person/organization who requested the PGT's involvement is notified accordingly. No further action is taken.

If the PGT decides to administer the estate, a file will be opened and the PGT will assign the file to an Estates Officer who will then be responsible to complete the application for the court grant (i.e. probate, letters of administration, or an administration order) and complete the administration of the estate. For further details about the PGT's Estate Administration and fees, please refer to the *PGT's Estate Administration Questions and Answers Booklet*.

Chapter 10: Other

Legislation

The following is a list of the laws which most commonly relate to estate administration in Manitoba.

The Anatomy Act
The Court of Queen's Bench Surrogate Practice Act
Court of Queen's Bench Rules (Rule 74)
The Dependant's Relief Act
The Escheats Act
The Family Maintenance Act
The Family Property Act
The Fatality Inquiries Act
The Funeral Directors and Embalmers Act
The Prearranged Funeral Services Act
The Homesteads Act
The Human Tissue Gift Act
*The Income Tax Act**
*The Indian Act**
The Insurance Act
The Intestate Succession Act
The Law of Property Act
The Law Fees and Probate Charge Act
The Mental Health Act
The Public Guardian and Trustee Act
The Trustee Act
The Vulnerable Persons Living with a Mental Disability Act
The Wills Act

**Federal Legislation*

Other Resources

Here is a list of organizations that have information about deceased estates.

Indigenous and Northern Affairs Canada (INAC)

365 Hargrave Street Room 200
Winnipeg, Manitoba
R3B 3A3
Phone: 1-800-567-9604
Fax: 1-866-817-3977
E-mail: Infopubs@aadnc-aandc.gc.ca
Website: www.aadnc-aandc.gc.ca

Community Legal Education Assistance (CLEA)

205 – 414 Graham Avenue
Winnipeg, Manitoba
R3C 0L8
Phone: (204) 943-2382
Fax: (204) 943-3600
Website: www.communitylegal.mb.ca/

Canada Revenue Agency (CRA)

325 Broadway
Winnipeg MB R3C 4T4
Phone: 1-800-959-8281
Fax: 204-984-5164
Website: www.cra-arc.gc.ca/deceased/

Compensation for Victims of Crime Program

1410 - 405 Broadway,
Winnipeg MB R3C 3L6
Phone: 204 945-0899
Toll Free in Manitoba: 1-800-262-9344
Website: www.gov.mb.ca/justice/victims/index.html

Employment & Income Assistance (EIA)

1-111 Rorie Street
Winnipeg MB
R3B 3N1
Phone: 204-948-4000
Toll free: 1-877-812-0014
Website: www.gov.mb.ca/fs/eia

Funeral Board of Manitoba

254 Portage Avenue
Winnipeg MB R3C 0B6
Phone: 204-947-1098
Fax: 204-945-0424
Email: funeralboard@gov.mb.ca
Website: www.funeraldirectorsboard.mb.ca/

Last Post Fund

401-505 René-Lévesque W
Montreal QC H2Z 1Y7
Toll Free: 1-800-465-7113
Fax: (514) 866-1471
Email: info@lastpost.ca
Website: www.lastpostfund.ca/

Law Society of Manitoba

219 Kennedy St
Winnipeg, Manitoba R3C 1S8
Telephone: 204-942-5571
Fax: 204-956-0624
Lawyer Referral Service: 204-943-2305
Toll free 1-800-262-8800
Email: admin@lawsociety.mb.ca
Website: www.lawsociety.mb.ca/for-the-public

Manitoba Court of Queen's Bench – Probate Division

Law Courts Building
Main Floor, 408 York Avenue
Winnipeg, Manitoba R3C 0P9
Registry Office
Phone: (204) 945-0344
Fax: (204) 948-2369
Website: www.manitobacourts.mb.ca/

Manitoba Public Insurance Corporation (MPI)

Manitoba Public Insurance
Box 6300
Winnipeg, MB R3C 4A4
Phone: 204-985-7000
Toll-Free: 1-800-665-2410
Website: www.mpi.mb.ca/

Service Canada

Portage Place Mall, Ground Floor
393 Portage Avenue, Unit 122
Winnipeg, Manitoba
Toll Free: 1 800 622-6232
Website: www.servicecanada.gc.ca/

Veterans Affairs Canada

610 - 234 Donald St.
P.O. Box 6050
Winnipeg, MB R3C 4G5
Toll Free: 1-866-522-2122
Website: www.veterans.gc.ca/

University of Manitoba

Department of Human Anatomy and Cell Science

Faculty of Medicine, University of Manitoba
Room 130 Basic Medical Sciences Building
745 Bannatyne Avenue
Winnipeg, Manitoba R3E 0J9
Phone: 204-789-3652
Fax: 204 789-3920
Email: Service_After_Death@umanitoba.ca

Vital Statistics Agency

254 Portage Avenue
Winnipeg, MB R3C 0B6
Phone: 204-945-3701
Toll Free: 1-866-949-9296
Fax: 204-948-3128
Email: vitalstats@gov.mb.ca
Website: www.vitalstats.gov.mb.ca

Attachment 1

Checklist for Personal Representatives

- Locate the will, if there is one.
- Locate the assets of the deceased and determine their value.
- Obtain proof of death. The funeral home usually provides proof of death at no charge. A death certificate can be purchased from Manitoba Vital Statistics, upon completion of the application form. Their contact information is located in the *Other Resources* section of this booklet.
- Prepare a list of beneficiaries or heirs and their addresses. Send them a copy of **Form 74AA Information for Personal Representatives and Beneficiaries** (Attachment 8) within 60 days of retaining a lawyer to act on behalf of the estate, if applicable.
- Obtain the appropriate court grant – Grant of Probate or Letters of Administration or Administration Order. **See Sample Request for Probate** (Attachment 5) or **Sample Request for Administration** (Attachment 6).
- File claims for life and health insurance, pension plans, death benefits.
- If applicable, serve notice under the *Family Property Act* to the surviving spouse and/ or common-law partner(s) as defined in the Laws of Manitoba, within one month of date the court grant is issued.

Checklist for Personal Representatives

- Advertise for creditors in the proper format to protect against personal liability. **See Sample Notice to Creditors** (Attachment 7).
- Gather in the assets, arrange for the sale of those not specifically left to a named beneficiary, and place all monies into a financial institution in an account under the estate name.
- Arrange to have title of the real property transferred to the estate.
- Complete Income Tax Returns and obtain the Clearance Certificate from Canada Revenue Agency. This document is required before final distribution of the estate can be made to the beneficiaries.
- Provide an accounting to the beneficiaries.
- Obtain signed releases from the beneficiaries, to confirm their agreement with the executors or administrators fees and the accounting. **See Sample Accounting (Statement of Receipts and Disbursements)** (Attachment 9)
- Arrange for passing of accounts, if applicable.
- Distribute the estate according to the will or the *Intestate Succession Act*.

**Attachment 2
Sample Inventory**

INVENTORY AND VALUATION OF THE
PROPERTY OF THE DECEASED

Description of Immoveable Property (including any interest in a real property mortgage)	Value of Property In Manitoba	Value of Property Outside Manitoba
456 Rainbow Street, Winnipeg Manitoba	\$20,000.00	\$0.00
	\$0.00	\$0.00
	\$0.00	\$0.00
	\$0.00	\$0.00
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Description of Moveable Property (list on a separate sheet if necessary)	Value of Property In Manitoba	Value of Property Outside Manitoba
Furnishing and household effects in primary residence and clothing and personal effects Personal Effects \$100.00 Coins and Jewellery \$900.00		\$0.00
Furnishings and household effects in other properties \$0.00		\$0.00
Motor vehicles and recreation vehicles such as boats, etc. List each separately 2013 Honda Civic \$2,000.00		\$0.00
Bank accounts -- list each institution separately and indicate the type of account(s) (i.e. savings) and the amount of each account Bank of Montreal Savings Account \$10,000.00		\$0.00
Investments managed by investment companies (including stocks, shares, bonds and debentures) -- list each investment company separately and indicate the total value of the investments with each company \$0.00		\$0.00
Stocks, shares, bonds and debentures held by the deceased -- list each separately by company and category and indicate the value by category \$0.00		\$0.00
Life insurance payable to the estate -- list each separately by insurance company and the amount payable on each policy Manulife Financial \$1,000.00		\$0.00
Annuities, pensions, RRSP's, RRIF's, etc. payable to the estate -- list separately by company and give the value of each Bank of Montreal RRSP \$14,900.00		\$0.00
Miscellaneous Property not previously mentioned Old Age Security \$1,100.00		\$0.00
TOTAL VALUE OF ALL MOVEABLE PROPERTY	\$30,000.00	\$0.00
GRAND TOTAL OF ALL PROPERTY		\$50,000.00

NOTE:

Do not include (i) the address of any financial institution, insurance or other company; (ii) the account numbers of any bank accounts; (iii) the serial numbers of any bonds; or (iv) the serial number of any vehicle that can be sufficiently described without using a serial number.

NOTE TO ANY INTERESTED PERSONS, INCLUDING A CREDITOR:

Any interested person, including a creditor, may request more information about the estate assets from the executor(s) or administrator(s) under *Queen's Bench Rule 74.06.1*. Any interested person, including a creditor, who believes that an asset of the deceased has not been disclosed may give notice to the executor(s) or administrator(s) under *Queen's Bench Rule 74.06.02*.

**Attachment 3
Sample Renunciation of Administration**

**THE QUEEN'S BENCH
Winnipeg Centre**

IN THE MATTER OF THE ESTATE OF MICHAEL FUNK, Deceased.

Whereas MICHAEL FUNK, late of the City of Winnipeg, in the Province of Manitoba, deceased, died on or about the 23rd day of November, 2013, being at the time of his death habitually resident in the City of Winnipeg, in Manitoba;

And whereas he made and duly executed his Last Will and Testament, bearing date the 28th day of September, 2010, and thereby appointed me, executorix, as I am informed and believe.

Now I, KATHERINE FUNK, do hereby expressly renounce all my right and title to the probate and execution of the Will of the deceased.

IN WITNESS WHEREOF I have hereunto set my hand, this 28th day of December, 2013.

Signed in the presence of

Katherine Funk
KATHERINE FUNK

Mark Dueck

I, Mark Dueck, of the City of Winnipeg in Manitoba, Postal Worker

Make Oath and Say:

1. THAT I was personally present and did see the above renunciation duly signed and executed by KATHERINE FUNK at Winnipeg in Manitoba and I am a subscribing witness to said renunciation.
2. THAT I know the said KATHERINE FUNK and am satisfied that she is of the full age of eighteen years.

SWORN before me at the)
 City of Winnipeg, in)
 the Province of Manitoba,)
 this 28th day of December,)
 2013.)

Mark Dueck

Nancy Johnson

A Commissioner for Oaths
in and for the Province of Manitoba.
My Commission Expires: June 8, 2015

**Attachment 4
Sample Nomination of Administrator**

**THE QUEEN'S BENCH
Winnipeg Centre**

NOMINATION OF ADMINISTRATOR

IN THE ESTATE OF **John Smith**, deceased.

Whereas **John Smith** died on the **15th** day

Of **March, 2014**, intestate and the undersigned is/are his/her

- widow
- widower
- surviving common-law partner
- other: **Son**
(specify relationship to deceased)

and his/her next of kin (as the case may be).

I/We do nominate **Bill Jones** to make a request in The Court of Queen's Bench
for a grant of administration of the property of **John Smith** deceased.

IN WITNESS WHEREOF I have hereunto set **my** hand(s)

this **20th** day of **April, 2014**.

Signed in the Presence of

Martha Birdman
Martha Birdman**

Fred Smith
Fred Smith

Note: the above may be varied so as to apply to a grant of administration with the will annexed.

The witness, Martha Birdman, will have to sign an Affidavit of Execution (Form 74T)

**Attachment 5
Sample Request for Probate**

**THE QUEEN'S BENCH
Winnipeg Centre**

IN THE ESTATE OF FREDERICK SAMUEL BROWN, deceased.

I, MARY SMITH of the City of Winnipeg, in the Province of Manitoba, Retired, hereby request that probate of the last will of the deceased be granted to me based on the following information:

1. THAT FREDERICK SAMUEL BROWN, late of the City of Winnipeg, in Manitoba, died on the 27th day of October, 2013, having duly made his last will on the 21st day of April, 2008, which is identified by my signature.

2. THAT at the time of his death, the deceased: [choose all statements below that apply]

- had never married
- was married to: (name)
- was divorced from: (name)
- was predeceased by his spouse: (name)

(Note: Complete paragraph 3 only if the deceased died on or after June 30, 2004.)

3. THAT at the time of his death, the deceased: [read the explanatory notes following paragraph 3, then choose all statements below that apply]

- had never cohabited with a common-law partner
- was cohabiting with (his/her) common-law partner: (name)
- was separated from (his/her) common-law partner, (name), but their relationship had not been terminated
- had a common-law relationship with (name) that had been terminated
- was predeceased by (his/her) common-law partner: (name).

NOTE: For the purposes of this Form.

"common-law partner" of a deceased person means

- (a) a person who, with the deceased, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, or
- (b) a person who, not being married to the deceased, cohabited with him or her in a conjugal relationship
 - (i) for a period of at least three years, or
 - (ii) for a period of at least one year and they are together the parents of a child.

"termination of a common-law relationship" means

- (a) where the common-law relationship was registered with Vital Statistics (under section 13.1 of *The Vital Statistics Act*), the dissolution of the relationship has been registered with Vital Statistics; or
- (b) where the common-law relationship was not registered with Vital Statistics, the parties to the common-law relationship have lived separate and apart for a period of at least three years.

- 4. THAT the deceased was of the full age of 18 years at the time of execution of the will, and did not marry since then.
- 5. THAT I am the executor named in the said will.
- 6. THAT I have not released my rights to be the executor.
- 7. THAT the deceased died possessed of or entitled to immovable property worth \$20,000.00, and moveable property worth \$30 000.00, true particulars of which are set out in the attached inventory.

Dated this 16th day of January, 2014.

MARY SMITH

THE QUEEN'S BENCH
WINNIPEG Centre

IN THE ESTATE OF FREDERICK SAMUEL SMITH, deceased.

I, MARY SMITH, of the City of Winnipeg, in the Province of Manitoba, retired,

make oath and say:

1. THAT the allegations set forth in the request for Probate and in the inventory and valuation are true to the best of my knowledge and belief.
2. THAT now produced to me, and marked as exhibit "A" to this affidavit, is the last will of the deceased who, at the time of death was habitually resident in Winnipeg, Manitoba.
3. THAT I do solemnly swear to faithfully administer the property of the said testator according to law and render a full and true account of its executorship when lawfully required.

SWORN before me at the)
City of Winnipeg, in the)
Province of Manitoba, this)
day of January,)
2014.)

Mary Smith

A Commissioner for Oaths in and
for the Province of Manitoba.
My Commission expires: _____

FILE # _____

THE QUEEN'S BENCH

WINNIPEG
(Centre)

I certify that no other Request or Notice of Application in respect to the property of the deceased has been received by me; that no caveat against a Grant of Probate or Administration of the property of the deceased has been received by me; and that no will of the deceased has been deposited in the Court of Queen's Bench. *

IN RE:

ESTATE OF FREDERICK SAMUEL BROWN

Deceased.

Dated this _____ day of _____
20____.

REQUEST FOR PROBATE

LET PROBATE ISSUE AS REQUESTED

Deputy Registrar

Date _____ 20 _____

Justice of the Court of Queen's

Filed _____ 20 _____

Deputy Registrar

Filed by: Mary Smith
250-465 Corydon Ave
Winnipeg MB R3M 1A4
Lawyer: Martin, Martin, Granger LLP
Telephone: 204-949-1141

(If Caveat filed, certify that a notice to caveator has been filed and served and that no probate action has been recommended within 30 days after service.)

Attachment 6
Sample Request for Administration

THE QUEEN'S BENCH
WINNIPEG Centre

IN THE ESTATE OF SUSAN JONES, deceased.

I ELIZABETH SMITH, of the City of Winnipeg, in the Province of Manitoba, Teacher, hereby requests that administration of the property of the deceased be granted to me based on the following information:

1. THAT SUSAN JONES, late of the City of Winnipeg, in Manitoba, retired, died intestate on the 19th day of September, 2013.
2. THAT at the time of her death, the deceased: [choose all statements below that apply]
 - had never married
 - was married to: (name)
 - was divorced from: (name)
 - was predeceased by her spouse: (GEORGE JONES).

(Note: complete paragraph 3 only if the deceased died on or after June 30, 2004.)

3. THAT at the time of her death, the deceased [read the explanatory notes following paragraph 3, then choose all statements below that apply]
 - had never cohabited with a common-law partner
 - was cohabiting with her common-law partner: (name)
 - was separated from her common-law partner, (name), but their relationship had not been terminated
 - had a common-law relationship with (name) that had been terminated
 - was predeceased by her common-law partner: (name).

If, at the time of her death, the deceased had one or more common-law partners, specify the date(s) when the relationship began and, if applicable, the date(s) when the partners separated or the common-law relationship terminated.

If, at the time of her death, the deceased had a spouse in addition to one or more common-law partners, also specify the date of the marriage, and, if applicable, the date when the spouses separated.

NOTE: For the purposes of this form;

"**common-law partner**" of a deceased person means:

- (a) a person who, with the deceased, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, or
- (b) a person who, not being married to the deceased, cohabited with him or her in a conjugal relationship
 - (i) for a period of at least three years, or
 - (ii) for a period of at least one year and they are together the parents of a child.

"**termination of a common-law relationship**" means:

- (a) where the common-law relationship was registered with Vital Statistics (under section 13.1 of *The Vital Statistics Act*), the dissolution of the relationship has been registered with Vital Statistics; or
- (b) where the common-law relationship was not registered with Vital Statistics, the parties to the common-law relationship have lived separate and apart for a period of at least three years.

4. THAT no marriage of the deceased or any form of marriage she went through was ever dissolved or annulled, the deceased was not separated from a spouse or common-law partner, and no common-law relationship of the deceased was ever terminated.

NOTE: If otherwise, give particulars of any dissolution or annulment of a marriage or any termination of a common-law relationship, and state whether there has been a remarriage or subsequent common-law relationship. If there has been a remarriage or subsequent common-law relationship, also state whether the deceased's former spouse and/or common-law partner was alive at the time of the deceased's death.

If at the time of the intestate's death, the intestate was living separate and apart from a spouse and/or one or more common-law partners, state this fact and whether, in each case:

- (a) during the period of separation, either the intestate or the spouse, or both, filed a petition for divorce and whether such petition is pending or has been dealt with by way of final order at the time of the intestate's death; or
- (b) if the common-law relationship of the intestate and his/her common-law partner was registered under section 13.1 of *The Vital Statistics Act*, the dissolution of the common-law relationship was registered under section 13.2 of that Act before the intestate's death; or
- (c) if the common-law relationship of the intestate and his/her common-law partner was not registered under section 13.1 of *The Vital Statistics Act*, they had been living separate and apart for a period of at least three years at the time of the intestate's death; or
- (d) during the period of separation, either the intestate or the spouse or common-law partner, or both, made an application for an accounting or equalization of assets under *The Marital Property Act* or *The Family Property Act* and whether such application is pending or has been dealt with by way of final order at the time of the intestate's death; or
- (e) before the intestate's death, the intestate and the spouse or common-law partner divided their property in a manner that was intended by them, or appears to have been intended by them, to separate and finalize their affairs in recognition of their marriage or common-law relationship breakdown.

5. THAT the deceased had the following issue:

<u>Name</u>	<u>Date of Birth</u>	<u>Name of Other Parent</u>
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NONE

6. THAT I believe that the deceased died without having left a will.

7. THAT there are no known next-of-kin residing in the Province of Manitoba to administer the estate of the deceased.

8. THAT particulars of those having equal or prior superior right to grant of administration of the estate are as follows:

<u>Name</u>	<u>Address</u>	<u>Kinship</u>	<u>Age</u>
-------------	----------------	----------------	------------

Elizabeth Smith	101-465 Fairfield Ave. Winnipeg MB R3B 1D7	sister	18+
-----------------	---	--------	-----

9. THAT the deceased died possessed of or entitled to immovable property worth \$0.00, and moveable property worth \$118,571.00 true particulars of which are set out on the following page hereof.

10. THAT your petitioner's residence is above correctly stated and she claims to be entitled to administration of the estate as sister of the deceased.

Dated this 23rd day of January, 2014.

Elizabeth Smith

THE QUEEN'S BENCH
WINNIPEG Centre

IN THE ESTATE OF SUSAN JONES, deceased.

I, ELIZABETH SMITH, of the City of Winnipeg, in the Province of Manitoba, receptionist,

make oath and say:

1. THAT the allegations set forth in the Request for Administration and in the Inventory and Valuation are true to the best of my knowledge and belief.
2. THAT at the time of her death, the deceased was habitually resident in Winnipeg, Manitoba.
3. THAT I have made or caused to be made a careful search in all places where the deceased might have been expected to keep papers but I have been unable to discover any testamentary paper, and I verily believe that the deceased died without having left any will.
4. THAT I do solemnly swear that I will faithfully administer the property of the deceased according to law and render a full and true account of its administration when lawfully required.

SWORN before me at the)
City of Winnipeg, in the)
Province of Manitoba, this)
day of January,)
A.D. 2014.)

Elizabeth Smith

A Commissioner for Oaths in and
for the Province of Manitoba.
My Commission expires:_____

FILE #

THE QUEEN'S BENCH

WINNIPEG
(Centre)

I certify that no other Request
or _____

Notice of Application in respect of the
property of the deceased has been
received by me; and that no caveat
against a Grant of Probate or Administration
of the property of the deceased has been
received by me; and that no Will of the
deceased has been deposited in
the Court of Queen's Bench. *

In Re:

SUSAN JONES

Deceased.

Dated this _____ day of _____

20____.

No. _____

**REQUEST FOR
LETTERS OF ADMINISTRATION**

LET GRANT ISSUE AS REQUESTED

Deputy Registrar

Date _____ 20

Justice of the Court of Queen's Bench

Filed
20_____

Deputy Registrar

Filed by: Elizabeth Smith
101-465 Fairfield Ave.
Winnipeg, MB R3C 1D7
Phone: 204-334-7890

*(If Caveat filed, certify that a notice to caveator has been filed and served and that no probate action has been recommended within 30 days after service.)

**Attachment 7
Sample Notice to Creditors**

NOTICE TO CREDITORS

In the matter of the Estate of **John Smith**, late of **Winnipeg**, Manitoba, Deceased.

All claims against the above estate, supported by Statutory Declaration must be sent to the attention of: **Bill Jones, 123 Any Street, Winnipeg Manitoba** on or before the **10th** day of **June, 2014**.*

**(Note: This date should be 6 weeks from the date below, to give creditors time to send in their claims)*

Dated at Winnipeg, Manitoba, this **25th** day of **April, 2014**.

**Bill Jones
123 Any Street, Winnipeg, MB R3J 3X5
Executor****

*** (Note: State the Personal Representative's authority)*

Attachment 8

FORM 74AA INFORMATION FOR PERSONAL REPRESENTATIVES AND BENEFICIARIES

NOTE: Under Queen's Bench rule 74.14(4), the lawyer retained by the personal representative of an estate must serve this form on the personal representative of the estate and those beneficiaries whose interests in the estate may be affected by the lawyer's fees or disbursements, no later than 60 days after the lawyer is retained by the personal representative.

PART A PERSONAL REPRESENTATIVE OF AN ESTATE

1 Role of the Personal Representative

The property of a deceased person is placed in the hands of a trustee, known as a personal representative who may also be called an executor (executrix) or administrator (administratrix). The personal representative must collect the assets, pay the debts of the deceased and then distribute the assets of the estate to the beneficiaries in compliance with all applicable laws and the terms of any will of the deceased. A lawyer can be the personal representative of an estate. Further information about the role of the personal representative can be found in the *Revised Statement of Principles — Fees in Estate Matters* approved by The Law Society of Manitoba which is available on the Law Society's website at www.lawsociety.mb.ca or by calling the Law Society at 204-942-5571.

The actions of a personal representative may be subject to review by the court. Any person interested in the estate may, on reasonable grounds, require the personal representative to appear before the court to give an account of the handling of the estate.

2 Compensation for Personal Representative

A personal representative is entitled to fair and reasonable compensation for their care, pains and trouble. The compensation is not a fixed amount or percentage but will vary according to the work done and the trouble and time expended. If all beneficiaries are adults and are satisfied with the work of the personal representative, they may agree on the amount of the compensation and sign releases when the estate work is completed and they have received their share of the estate.

A beneficiary who is not satisfied with how the estate was handled, or the amount of the compensation being claimed, has the right to request that the actions of the personal representative be reviewed by the court and to have the court set the personal representative's compensation.

PART B

LAWYER FOR THE PERSONAL REPRESENTATIVE

1 Role of the Lawyer for the Personal Representative

A personal representative is permitted to retain a lawyer to provide legal advice to assist with the completion of the duties imposed on a personal representative by law. Queen's Bench rule 74.14 sets out the services that are generally provided by the lawyer retained by the personal

representative for an estate of average complexity. The *Queen's Bench Rules* are posted on the Manitoba Laws website at web2.gov.mb.ca/laws/rules/qbr1e.php.

2 Fees and Disbursements of the Lawyer for the Personal Representative

The fees and disbursements for the personal representative are paid out of the estate and the amount is governed by the *Queen's Bench Rules*, particularly rule 74.14.

It should be understood that the lawyer retained by the personal representative acts only as the lawyer for the personal representative and not the beneficiaries. In the event of any dispute, a beneficiary is free to obtain independent legal advice from another lawyer.

The fees of the lawyer for the personal representative must be fair and reasonable and disclosed in a timely manner. In assessing if the fees are fair and reasonable, the court looks at the services provided by the lawyer to the personal representative and the results achieved.

Basic legal fees are calculated as a percentage of the total value of the estate assets that are under probate or administration and are intended to cover the work involved in estates of average complexity. These services are listed in *Queen's Bench* rule 74.14(8). To determine the total value of the estate, the following assets are not included:

- (a) gifts made by the deceased during his or her lifetime;
- (b) insurance, annuities and pensions not payable to the estate;
- (c) property held in joint tenancy where the beneficial interest is intended to pass by right of survivorship;
- (d) the death benefit under the *Canada Pension Plan*.

The basic legal fees (allowable fees) for the lawyer for the personal representative for an estate of average complexity are calculated as follows:

- 3% on the first \$100,000, or the portion of that amount, of the total value of the estate, subject to a minimum fee of \$1,500;
- 1.25% on the next \$400,000, or the portion of that amount, of the total value of the estate;
- 1% on the next \$500,000, or the portion of that amount, of the total value of the estate;
- 0.5% on the total value of the estate over \$1,000,000.

However, if the personal representative is:

- (a) an individual who is a lawyer and, while acting as the personal representative, also acts as the lawyer for the personal representative; or
- (b) a trust company; or
- (c) the Public Guardian and Trustee;

the lawyer performing the legal services for that personal representative may only charge 40% of the fees calculated as above, or a minimum fee of \$1,500.

The lawyer for the personal representative is also entitled to charge for the following additional services, as specified in *Queen's Bench* rule 74.14(9):

- (a) appearances in court, in an amount set by the court;
- (b) legal services with respect to a review by the court of the handling of estate assets by the personal representative under *Queen's Bench* rule 74.12, in an amount set by the court;
- (c) acting on the sale of an estate asset;

- (d) finding a purchaser of an estate asset;
- (e) assisting the personal representative with estate administration duties, including
 - (i) keeping and preparing the accounts of the personal representative,
 - (ii) listing and valuing the assets and debts, and
 - (iii) safekeeping, insuring and disposing of estate assets;
- (f) advising the personal representative with respect to an estate of above-average complexity;
- (g) advising and assisting the personal representative as to ongoing trust matters, including
 - (i) the personal representative's duties,
 - (ii) the personal representative's powers of sale, investment and encroachment, and
 - (iii) the allocation of assets as capital or revenue.

Adult Beneficiaries May Consent to the Lawyer's Interim Fees or Final Fees

The lawyer for the personal representative is permitted to be paid interim fees and disbursements for services completed to date or final fees and disbursements on completion of an estate, without court approval, if

- all beneficiaries whose interests in the estate may be affected by the lawyer's fees or disbursements are adults and they consent, in writing, to the fees and disbursements requested by the lawyer;
- all beneficiaries are served with a copy of this form (Information for Personal Representatives and Beneficiaries) and are given an itemized statement setting out the lawyer's fees and disbursements, with the fees and disbursements for basic estate services under rule 74.14(8) set out separately from those for additional services under rule 74.14(9), if any; and
- the personal representative consents, in writing, to the requested fees and disbursements.

Collecting interim fees that are within the basic allowable amount

The lawyer for the personal representative is permitted to be paid interim fees for basic estate services under rule 74.14(8) if they are within the allowable amounts under rule 74.14(6) or (7), as well as disbursements, with the consent of the personal representative, if all beneficiaries whose interests in the estate may be affected by the lawyer's fees or disbursements have been served with a copy of Information for Personal Representatives and Beneficiaries (Form 74AA) and given an itemized statement setting out the lawyer's fees and disbursements, with the fees and disbursements for basic estate services under rule 74.14(8) set out separately from those for additional services under rule 74.14(9), if any.

If any beneficiary is a minor or mentally incompetent, the documents must be served in accordance with Queen's Bench rule 74.14(11.1).

3 Court Review of the Lawyer's Fees and Disbursements

The court may review the fees and disbursements at the time the accounts of the personal representative are placed before the court to be passed (or approved) under Queen's Bench rule 74.12. Or, they may be reviewed when an application is made to court for an assessment of the lawyer's fees and disbursements under Queen's Bench rule 74.14(13). The personal representative, the lawyer for the personal representative or a beneficiary whose interest in the estate may be affected by the lawyer's fees and disbursements can apply to court for this assessment.

**Attachment 9
Sample Accounting
(Statement of Receipts and Disbursements)**

**STATEMENT OF MONIES RECEIVED AND DISBURSED
AND ESTATE RECONCILIATION
As at September 22, 2013**

Re: The ESTATE of DORIS ANDERSON

MONIES RECEIVED:

Received from the Assiniboine Credit Union as net proceeds of Account	\$ 33,953.68
Received from La Caisse Populaire de Lourdes Ltee. as net proceeds of Account	\$ 3,525.35
Received as interest earned on monies held in Trust by McCulloch Law Office as at September 1, 2013	<u>\$ 85.14</u>

TOTAL MONIES RECEIVED: \$ 42,564.17

MONIES DISBURSED:

Paid to The Court of Queen's Bench as fee for filing Application for Letters of Administration	\$ 515.00
Paid to McCullough Law Office as legal fees and disbursements, including G.S.T & P.S.T (as approved)	<u>\$ 2,224.84</u>

TOTAL MONIES DISBURSED: \$ 2,739.84

HOLDBACK (for outstanding income taxes): \$ 1,824.33

**AMOUNT ON HAND FOR FIRST DISBURSAL TO
RESIDUAL BENEFICIARIES: \$ 38,000.00**

TOTAL: \$ 42,564.17

Definitions

Accounting: A written statement showing the money and property received, managed and paid out by the personal representative(s) of an estate.

Administration Order: A court order naming an administrator when an estate is worth \$10,000.00 or less.

Administrator/Administratrix: A person named by the court to administer an estate when there is no will, or when the executor is not willing or able to act.

Administrator with Will Annexed: A court grant for a will where someone other than the named executor is appointed as the administrator.

Alternate Executor: The second choice for executor, if the first choice is not willing or able to act.

Autopsy: A medical procedure done on the body of a deceased person to determine the cause of death.

Bankruptcy: When there is not enough money to pay all of the estate's debts. See also *insolvent*.

Beneficiary: A person who receives money or other property under a will, trust or insurance policy.

Bond: An agreement between an estate administrator and his/her *sureties*, (see *surety*) and the court.

Clearance Certificate: A document issued by Canada Revenue Agency (CRA) which states that a deceased person does not owe any more taxes.

Codicil: A written addition that changes something in a will. It is considered to be part of the will.

Committee: A person or persons, including the PGT who have been appointed pursuant to *The Mental Health Act* to administer the affairs of a person found to be incapable of managing their affairs.

Competent: A person who has the legal mental capacity to administer their own affairs.

Coroner: A government official who certifies the death of a person. A *coroner* may also conduct or order an investigation or autopsy to determine cause of death.

Court grant: The court order that appoints an executor or administrator to administer an estate.

Creditors: A person or company to whom money is owed.

Cremation: Incineration of a deceased's body.

Crematorium: A building that is used to turn the deceased's remains to ashes.

Designated Beneficiary: Person(s) named to receive funds or other property directly, as the result of someone else's death.

Embalm: A process used to preserve a deceased person's remains.

Estate: All of the property of a deceased person.

Executor/Executrix: A person(s) named in a will to administer the estate of a deceased person.

Financial Institutions: Banks, investment companies, credit unions or caisses populaire.

Grant of Probate: A court grant that gives authority to the executor of an estate, where there is a valid will.

Guarantor: A person or organization that agrees to pay for another person's debt if that person does not.

Heir(s): Person(s) with a right to inherit an estate when there is no valid will.

Immoveable assets: Real Property, such as a house or cottage.

Inheritance: Money or other property that is received from an estate.

Insolvent: When the value of assets are not enough to pay all debts, taxes, and the administrative expenses of an estate.

Inter or Interment: The burial of a deceased in a grave.

Judgment: A court decision usually ordering that money is owed.

Lien: A right to take, hold or sell property belonging to a debtor as security or payment for a debt.

Life Insured: When an outstanding debt is paid by an insurance company on the death of the debtor.

Minor: A person who has not reached the legal age of majority. In Manitoba, legal age is 18 years.

Moveable assets: Assets such as bank accounts, investments, personal possessions and vehicles are moveable assets.

Next-of-Kin: A person's closest living family member.

Niche: A small space in a building which holds the cremated remains of a deceased.

Nominate: To give consent to the court to name another person in Manitoba (or the PGT) to be the administrator of an estate. (see Attachment No. 4 – *Nomination*)

Non-Resident: A person who does not live in Canada.

Notice to Creditors: A public notice that gives creditors a deadline to submit claims for debts owed by a deceased.

Passing of Accounts: A Court process whereby approval of an executor's or administrator's proposed fees for administering an estate is requested.

Personal Representative: An executor or administrator, who administers the estate of a deceased person.

PGT: Public Guardian and Trustee

Power of Attorney: A written document signed by a person called the donor. That names a person or institution (does not have to be a lawyer) to look after some or all of the donor's financial affairs.

Premiums: Payments made to an insurance company for coverage under an *insurance* policy.

Probate Fees: The fee charged by the Court of Queen's Bench to file the request for a court grant (Probate, Letters of Administration, etc.) when someone dies.

Proportionately: See *prorated*.

Prorated: Payment of a determined equal fraction of a debt, when there is not enough money to pay the full amount.

Real Property: Land and buildings including condominiums. It is also referred to as Real Estate.

Registered investments: Investments that are not taxable until a later date or happening of an event.

Release: A document signed by one party that ends the *legal* responsibility of another party.

Renunciation: A form signed by someone who gives up the right to administer an estate. (see Attachment No. 3- *Renunciation*)

Right of Survivorship: The *right* of surviving owners to continue owning property when one of the other owners dies.

Secured Debt: A debt in which a person or company (called the debtor) borrows money from another person or company (called the creditor) and agrees to pledge property (called collateral) as security, if the money cannot be repaid.

Solvent: An estate that is able to pay all legal debts.

Statement of Receipts & Disbursements: See *accounting*.

Statute barred: When the time limit to file a claim has expired and no legal action can be taken. See *The Statute of Limitations Act*.

Substitute Decision Maker (SDM): Person(s), or the PGT, appointed by The Vulnerable Persons Commissioner to make decisions about the property and/or the personal care of a vulnerable adult.

Sureties: Person(s) or an insurance company that agrees to pay the amount of a bond into court. (See also *Bond*)

Trustee: A person or organization that has been given responsibility to manage property and/or money for someone else.

Unsecured Debt: When a person (called the debtor) agrees to pay another person or company (called a creditor) a sum of money, but no collateral (see *secured debt*) has been given by the debtor.

Will: A written document signed by a person (see *testator*) that directs how to deal with the person's property after death. The will may also name an executor. (See also *executor*).