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Resealing and other Limited Grants Canada and Florida

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RESEALING AND OTHER LIMITED GRANTS
CANADA and FLORIDA

by

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When a person dies, there is always an estate to deal with. It may be a big estate, a small estate, a simple estate, a complex estate or a combination of all of the above. Regardless of the size and complexity, no one dies without leaving something behind that needs to be dealt with. The process that sets in place the authority to allow another person to deal with those things that need to be done, is known as probate. Probate ensures that the assets, liabilities and heirs of the deceased are dealt with by the person with the legal authority to do it. In essence it the process that ensures the debts and creditors of the deceased are dealt with and that any assets remaining are transferred.

As there is no uniform international rule of inheritance, jurisdiction is one of the first issue that comes up when talking about probate and succession. A preliminary question that is asked is which jurisdiction governs and accordingly which laws apply. In Anglo-American jurisdictions there are basically two systems; one where the administration of the estate is a formal matter done by a court appointed official either nominated by the testator or designated by the court, and the other, as in the civil law jurisdictions, where the deceased's property passes immediately to the heirs who then administer it themselves and the court becomes involved only if a problem arises that cannot be resolved. Jurisdiction also requires the consideration of other factors such as the jurisdiction's approach to intestacy, the rights of 'forced heirs', the position of spouses or partners, the validity of succession pacts and mutual wills, the renunciation of rights, and the relationship between matrimonial property regimes and succession rights. Jurisdiction becomes particularly important when dealing with land.

This paper and presentation is narrow in focus to the “foreign grant”. It reviews in a summary fashion with legislative references the use of a foreign grant in the various Canadian provinces and then looks specifically at the probate process in Florida all with a particular focus on real property.

Canada and the Foreign Grant

Ontario¹ and most other common-law jurisdictions have traditionally resolved conflict of the jurisdiction based on the law of the deceased’s domicile² and the law of the *situs*.³

Other jurisdictions may use different criteria of “connecting factors”, or the law of nationality of the deceased. Accordingly, the applicable *lex successionis* (succession law) may be the law of:

- The deceased’s last nationality, or
- The deceased’s last habitual residence, or
- The deceased’s last ‘domicile’, or
- With immovables, the *situs* of the immovables.

With respect to land, or an interest in land such as a life estate, the law of the general rule is that place where that land is located governs. If there is a land located in Ontario then the Ontario court has jurisdiction over the matter, regardless of where the deceased died

¹ See sections 34-41 of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26.

² ‘Domicile’ is defined as that place in which a person has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, with the present intention of making it his permanent home.

³ ‘*Situs*’ refers to the physical location of property. Just as every individual has a domicile, all property, whether tangible or intangible, has a *situs*. In respect of land, its *situs* is where the land itself lies and that *situs* never changes] of the deceased’s assets

domiciled and regardless of there is a will or not. Likewise, the formal validity of a will therefore in so far as it relates to an interest in land is governed by the *lex situs* (the law of the place where the property in question is located) as confirmed by section 36(1) of the *Succession Law Reform Act* which provides that the manner and formalities of making a valid will as it relates to an interest in land is governed by the internal law of the place where the land is situated. This basic rule of conflict of laws created a system of recognizing grants made in jurisdictions other than where the land is situated, as for example, in a foreign jurisdiction.

In Canada, the provinces have enacted legislation to provide the process by which a foreign grant can be recognized in the province where the land may be located. Known as “resealing”, the process in essence takes the original grant from a foreign jurisdiction and recognizing it through a simplified probate process, creates a grant of the jurisdiction. Although probate is still required, reliance is placed on the process that resulted in the original grant being made as well as on the principle of recognition of acts of a foreign court, in order to permit the “resealing” of the grant.

The chart that follows was part of a very helpful larger project undertaken by the Trusts and Estates section of the Canadian Bar Association which created a summary of the various legislative references for the various aspect of a will and the administration of an estate. The following chart highlights the process and corresponding reference for resealing a grant in the various provinces of Ontario as it relates to land:

PROCESS	REFERENCE
Nova Scotia	
Application for an extra-provincial grant in Form 11, 11A or 11B filed with Probate Court	Probate Court Practice, Procedure and Forms Regulations, Regulations 33(4) and 39.
New Brunswick	
File certified copy of extra-provincial grant with court with applicable tax under Probate Court Act and thereafter the foreign grant is of the same force and effect in New Brunswick as if granted by the New Brunswick court	Probate Court Act, S.N.B. 1982, c.P-17.1, s.73 Forms 2S, 2T, 2U, 2V
Prince Edward Island	
File certified copy of extra-provincial grant with court with applicable tax under Probate Court Act and security	Probate Act, R.S.P.E.I. 1988, c.P-21, s.43, 44
Newfoundland	
Application for an extra-provincial grant in Supreme Court as if provincial grant except only the assets of the deceased in the province need to be shown along with a copy of the foreign grant, foreign court certificate and affidavit evidence	Rules of Supreme Court, 1986, S.N.L., 1986, c.42, Sch.D, s.56.20 Resealing of Foreign Grants of Probate and Administration Order, C.N.L.R. 744/96
Ontario	
File appropriate documents and obtain confirmation by Resealing of Appointment of Estate Trustee With or Without a Will in Superior Court of Justice – Estate Division	Rule 74.08 of the Rules Civil Procedure Forms 74.27 and 74.28
Manitoba	
File grant with an inventory of the assets located in Manitoba with the Court of Queen's Bench	The Court of Queen's Bench Surrogate Practice Act C.C.S.M. c. C290 provides for the process under s. 48(1). The Queen's Bench Rules prescribe the required forms at Rule 74.06
Saskatchewan	
File certified copies of original grant of probate. The information and documentation is quite similar to an original application for Letters Probate or Letters of Administration (as the case may be), except that: (1) there are specific documents for such an application; and (2) two court certified copies of the original Letters Probate or Letters of Administration and a notarial copy of the Letters Probate/Letters of Administration are filed in place of the original will.	The Court of Queen's Bench Rules, Rule 722 The Court of Queen's Bench Forms, forms 117 and 118.

<p>Proof of the execution of the will in accordance with Saskatchewan law must be filed with the application for resealing, by filing a court certified copy of the original Affidavit Proving Execution of the Will filed on the original application for Letters Probate/Letters of Administration in the foreign jurisdiction; or by providing the Affidavit covers the same facts as required in the Saskatchewan form of Affidavit. In the alternative, a new Affidavit Proving Execution of the Will, in the form prescribed by the Saskatchewan Rules of Court, may be prepared, sworn and filed.</p> <p>Schedule of Assets required and depending on situation other documents may be required pursuant to the Rules of Court.</p>	
Alberta	
<p>File appropriate documents with the Court of Queen's Bench of Alberta, Surrogate Division and thereafter the foreign grant is of the same force and effect in Alberta as if granted by the Alberta Court.</p>	<p>Surrogate Rules, A.R. 130/95, Rules 35, 13(5) and (6) and forms Administration of Estates Act s. 29(2)(a)</p>
British Columbia	
<p>The applicant must declare that he or she has made a diligent search and inquiry to ascertain the assets and liabilities of the deceased, and disclose the assets and liabilities of the deceased, irrespective of their nature, location or value, which pass to the deceased's personal representative on the deceased's death.</p>	<p>Estate Administration Act, R.S.B.C.1996, c.122, s.111 Supreme Court Rules B.C. Reg. 221/90, Rule 61 Supreme Court Civil Rules, B.C. Reg. 168/2009 Rule 21 <i>not yet in force</i></p>
Northwest Territories	
<p>File certified copy of extra-provincial grant with court with applicable tax under Judicature Act with Supreme Court and with security required, and thereafter the foreign grant is of the same force and effect as if originally granted by the Northwest Territories court</p>	<p>Judicature Act, R.S.N.W.T. 1988, c.J-1, c.14</p>
Nunavut	
<p>Filing the appropriate documents with the court including an inventory and valuation of the property situate in Nunavut and thereafter the foreign grant is of the same force and effect as if originally granted by the Nunavut court</p>	<p>Probate and Administration Rules of the Nunavut Court of Justice, SOR/79-515, s.29 Forms 20 and 21</p>
Yukon	
<p>Not necessary if there is a Grant of Probate or Administration from a proper court in Canada or the United Kingdom</p>	<p>Land Titles Act, R.S.Y., 2002, c.130, s.108(4)</p>

Quebec	
Not necessary if issued by a competent foreign public officer and may be deposited with a notary	Civil Code of Quebec, C.C.Q. S.Q. 1991, c.64, s.2822, 2824

Probate and Land in Florida

In Florida, where there is a will, to the extent that it properly devises probate assets and designates a personal representative, it is the will that governs over the default or automatic provisions set out in the law. In the absence of a valid will, or if the will fails, then again, as in Ontario, Florida law designates the beneficiaries and designates the way to select the personal representative. For those that are interested, if there is no will the deceased's (referred to as decedent in Florida) assets are distributed to the intestate heirs as follows:

- Surviving Spouse and Lineal Descendants. If there is a surviving spouse and no lineal descendants, the surviving spouse takes all.
- Surviving Spouse and Lineal Descendants:
 1. If there is a surviving spouse and one or more lineal descendants (with the lineal descendants (with the lineal descendants all being the lineal descendants of the surviving spouse as well as the decedent), the surviving spouse receives the first \$60,000 of the probate estate plus one-half of the rest of the probate estate, and the lineal descendants share the remaining half.
 2. If there is a surviving spouse and one or more lineal descendants (one or more of which lineal descendants are not also lineal descendants of the surviving spouse), the surviving spouse receives one-half of the probate assets and the lineal descendants share the remaining half.

- No Surviving Spouse, but Lineal Descendants: If there is a no surviving spouse, but there are lineal descendants, the lineal descendants share the estate, which is initially broken into shares at the children's level, with the deceased child's share going to the descendants of that deceased child.
- No Surviving Spouse, No Lineal Descendants: If the decedent left no surviving spouse or lineal descendants, the probate property goes to the decedent's surviving parents, and if none, then the decedent's brothers and sisters and descendants of any deceased brothers or sisters. The law provides for further disposition if the decedent is survived by none of these.
- Exceptions to Above. The above provisions are subject to certain exceptions for homestead property, exempt personal property, and a statutory allowance to the surviving spouse and any lineal descendants or ascendants the decedent supported. Regarding homestead, if titled in the decedent's name along, the surviving spouse receives a life estate in the homestead, with the lineal descendants of the deceased spouse receiving the homestead property upon the death of the surviving spouse. If there are no lineal descendants, the surviving spouse receives full ownership of the homestead outright.
- If there are no intestate heirs to be found then the assets are turned over to the State of Florida.

Florida public policy also aims to protect the surviving spouse and certain surviving children from total disinheritance. Absent a marital agreement to the contrary, a surviving spouse may have what are called "homestead rights", "elective share rights",

“family allowance” “rights”, and “exempt property rights”. In addition, certain surviving children of the deceased may also have “homestead rights”, “pretermitted child rights”, “family allowance rights”, and “exempt property rights”. Other than that, under Florida law, as with most other states, a deceased may entirely disinherit other potential beneficiaries.

A foreign personal representative who produces authenticated copies of probated wills or letters of administration duly obtained in any state or territory of the United States may maintain actions in the Florida courts,⁴ whether the foreign personal representative is a corporation or an individual⁵. But, likewise, a foreign personal representative appointed in any state or country may also be sued in this state concerning property in this state and may defend actions or proceedings brought in this state⁶.

Florida has had a probate law since becoming a state in 1845. Probate in Florida is a similar process to that which we are familiar with. The purpose for probate and procedure in Florida is similar to that in Ontario. The procedure provides for a court-supervised process for identifying and gathering the assets, the payment of taxes, claims and expenses, and the distribution of assets to beneficiaries, as set out in Chapters 731 to 735 of the statute known as the Florida Probate Code. Chapter 734 of the Florida Probate Code set out that the domiciliary state’s grant or admitting of the will to probate and in the absence of a contest in Florida, then the domiciliary state’s granting of “letters probate” (assuming the domiciliary personal representative can qualify in Florida) will be

⁴ *F.S.* 734.101(1); *Barfeld v. Schmon*, 537 So.2d 1056 (Fla. 4th DCA 1989)

⁵ *Acorn Wood Realty v. Old Colony Trust Co.*, 113 Fla. 320, 151 So. 533 (1933)

⁶ *F.S.* 734.101(2)

recognized with authority in Florida. Nevertheless, for most purposes, the administration of the assets can be handled as if the deceased executed separate wills in the domiciliary and ancillary jurisdiction. A non-resident of Florida's will (other than a holographic or nuncupative will) executed in compliance with Florida law or with the laws of the state or country in which it was executed, may be probated in Florida.⁷

A Circuit Court Judge presides over probate proceedings. The judge appoints the personal representative and issues "letters of administration," also referred to simply as "letters" which is parallel to Ontario's Certificate of Appointment in purpose – it confirms to the world the authority of the personal representative to act. The judge also holds hearings when necessary and resolves all questions raised during the administration of the estate by entering written directions called "orders." The probate papers are filed with the Clerk of the Circuit Court, usually in the county where the deceased lived. A filing fee must be paid to the clerk to commence the probate administration. The clerk assigns a file number and maintains a docket sheet which lists all papers filed with the clerk for that probate administration. It should be remembered that probate proceedings establish nothing beyond the limit of the state in which the probate took place⁸ and a party can contest a will in an ancillary administration even if that will has already been admitted to probate in the domiciliary state or country⁹ and in Florida, one can contest a will even if that will has been contested and upheld in another jurisdiction.

⁷ F.S. 732.502(2)

⁸ *Trotter v. Van Pelt*, 144 Fla. 517, 198 So. 215 (1940), 131 A.L.R. 1018

⁹ *Re Estate of Barteau*, 736 So.2d 57 (Fla. 2d DCA 1999); *Re Estate of Roberg*, 396 So.2d 235 (Fla. 2d DCA 1981)

In Florida, there are two procedures for probate administration: formal and summary administration, as well as a non-administration proceeding called “Disposition of Personal Property Without Administration.”

Formal

The administration of the deceased’s state of domicile is considered the principal or primary administration; known as the “domiciliary administration”. Where a non-resident of Florida dies and leaves assets in Florida, including real property, credits due from Florida residents, liens on Florida property, or intangibles in Florida, then “ancillary” administration is likely needed.¹⁰ Ancillary administration rests on the foundation of sovereignty; no court in one state may determine the ownership of real estate inside another state. As a result, proceedings to probate a will do not fall within the “full faith and credit clause” of the United States Constitution and are governed by the laws of the state.

In summary, if a non-resident owns Florida real property ancillary administration in Florida is likely needed to properly deal with that asset. Whereas before, the law was ambiguous in specifying what assets located in Florida at death were subject to ancillary administration. *F.S. 731.106(1)* now provides:

When the will directs, tangible and intangible personal property with a Florida situs and owned by a non-resident can now be administered in Florida. *F.S. 731.106(2)*. See *Saunders v. Saunders*, 796 So.2d 1253 (Fla. 1st DCA 2001).

Thus, both real and personal property in Florida may be the subject of ancillary administration as ancillary proceedings of some sort are a necessity for the disposition of

¹⁰ *F.S. 734.102(1)*

real property in Florida. Ancillary proceedings may also become necessary, or at least be useful, when dealing with personal property or credits due from a Florida resident (assuming unavailability of a long-arm statute).

Non-resident deceased with Florida debt or tangible personal property

F.S. 734.101(3) provides in part:

Debtors who have not received a written demand for payment from a personal representative or curator appointed in this state within 90 days after appointment of a personal representative in any other state or country, and whose property in Florida is subject to a mortgage or other lien securing the debt held by the foreign personal representative, may pay the foreign personal representative after the expiration of 90 days from the date of appointment of the foreign personal representative.

Similarly, *F.S. 734.101(4)* further provides that, except as provided in *F.S. 655.936*, any person indebted to the estate of a non-resident deceased, or having possession of personal property belonging to the estate, who receive no written demand from a personal representative appointed in Florida for payment of the debt or delivery of the property, is entitled to pay the debt or deliver the personal property to the foreign personal representative after the expiration of 90 days from the date of appointment of the foreign personal representative.¹¹

A satisfaction of a mortgage or lien executed by a foreign personal representative and accompanied by an authenticated copy of the foreign personal representative letters or

¹¹ *F.S. 734.101(4)* states:

Except as provided in s. 655.936, all persons indebted to the estate of a decedent, or having possession of personal property belonging to the estate, who have received no written demand from a personal representative or curator appointed in this state for payment of the debt or the delivery of the property are authorized to pay the debt or to deliver the personal property to the foreign personal representative after the expiration of 90 days from the date of appointment of the foreign personal representative.

other evidence of authority may be recorded in the public records, and when it does this serves as an effective discharge of the mortgage or lien, regardless of whether the debtor making payment received a written demand before paying the debt.¹² Accordingly, an ancillary representative is not required if the only step that needs to be done is to receive payments of a debt secured by Florida property. As a result in many cases opening an ancillary administration for personal property can be avoided, unless the 90-day waiting period poses a problem.

A special rule applies to contents of a safe-deposit box. Under *F.S.* 655.936(2), a safe-deposit lessor may, at its discretion, deliver to a foreign personal representative all contents of the deceased's safe-deposit box if the foreign personal representative has been appointed for at least three months, and if the lessor has not received written notice of the appointment of an ancillary personal representative in Florida. Under this provision, the foreign personal representative is required to furnish the safe-deposit lessor with an affidavit setting forth the facts showing the deceased's domicile to be other than Florida and stating that there are no unpaid creditors in Florida of the deceased lessee. The personal representative is also required to furnish a certified copy of his or her letters of authority. Finally, the safe-deposit lessor who makes delivery under this law is required to maintain in its file a receipt executed by the foreign personal representative that itemizes in detail the property delivered to the foreign personal representative.

An ancillary personal representative is therefore not needed to ensure that the deceased's personal property in Florida will be delivered to the foreign personal representative. If

¹² *F.S.* 734.101(3)

ancillary letters are obtained, however, the Florida ancillary personal representative is entitled to possession of the personality in Florida at the time of appointment.¹³

Non-resident deceased with real property in Florida

If the non-resident deceased owns Florida real property at the time of death, the appointment of an ancillary personal representative is likely necessary in order to dispose of the real property. Where the will confers a *specific* power to sell or mortgage real property or a *general* power to sell any asset of the estate, authorization or confirmation of a court to exercise the power and deal with the property is not required.¹⁴ However, ancillary administration is still necessary to admit the will to probate, appoint the ancillary personal representative, and to eliminate the claims of creditors as potential liens on the property. This is because *F.S. 733.613(1)* provides:

When a personal representative of an intestate estate, or whose testator has not conferred a power of sale or whose testator has granted a power of sale but the power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until the court authorizes or confirms the sale. No bona fide purchaser shall be required to examine any proceedings before the order of sale.

As title cannot pass under the above circumstances until the court authorizes or confirms the sale, ancillary administration is always necessary in Florida before the sale can be validated. After the payment of all expenses of administration and claims, the court may also order distribution to the beneficiaries of the proceeds or transfer the remaining property to the domiciliary estate.¹⁵

Notice to creditors

¹³ *F.S. 733.607(1); 734.102(7)*

¹⁴ *F.S. 733.613(2); F.S. 734.102(7)*

¹⁵ *F.S. 734.102(6)*

To convey good title to Florida real property, the claims of creditors must be satisfied or barred. Proper notice and the expiration of the pertinent statutory filing period are mandatory. When claims are settled the property is only subject to enforceable mortgages, security interests, or other liens against the property.¹⁶ It is also important to note that creditors' rights in Florida ancillary estates are also governed by Florida law,¹⁷ not the law of the deceased's domicile. *F.S.* 734.102(7) prohibits the sale, lease, or mortgage of Florida property to pay a debt that is barred under Florida law. *F.S.* 734.102(4) provides that proceedings for the appointment and administration of the estate shall be as similar to those in original administrations as possible.

Resident deceased whose will is probated in another jurisdiction

F.S. 733.206 provides:

- (1) If a will of any person who dies a resident of this state is admitted to probate in any other state or country through inadvertence, error, or omission before probate in this state, the will may be admitted to probate in this state if the original could have been admitted to probate in this state.
- (2) An authenticated copy of the will, foreign proof of the will, the foreign order of probate, and any letters issued shall be filed instead of the original will and shall be prima facie evidence of its execution and admission to foreign probate.
- (3) Any interested person may oppose the probate of the will or may petition for revocation of the probate of the will, as in the original probate of a will in this state.¹⁸

The estate of a Florida resident must accordingly have domiciliary administration in Florida rather than ancillary administration, even when the will was admitted to probate

¹⁶ *F.S.* 733.702(4)

¹⁷ The procedures for handling creditors' claims is found in *F.S.* chapter 733, and specifically in *F.S.* 733.2121 and 733.701733.71.

¹⁸ See also *Fla.Prob.R.* 5.210

originally in another state. A petition for ancillary letters in Florida may be opposed on the ground that the deceased was a resident of Florida¹⁹.

Shorter or Summary Ancillary Administration

Summary Administration for non-residents and residents is generally available if the value of the estate subject to probate in Florida (less property which is exempt from the claims of creditors) is not more than \$75,000 or the deceased has been dead for more than two years.

Florida law contains two specific shorter forms of ancillary administration in *F.S.* 734.1025, which is available only to non-resident testate estates with property in Florida worth \$50,000 or less, and in *F.S.* 734.104, which permits the will to be admitted to record. The \$50,000 or under administration is something of a hybrid. Under the statute, the personal representative of a testate non-resident deceased's estate may file in the circuit court of the county where any property is located an authenticated transcript of so much of the foreign proceedings as will show the will and beneficiaries of the estate.²⁰ Initially, under this procedure, no personal representative is appointed, but the foreign personal representative must publish notice to creditors and serve creditors. If a claim is actually filed, a Florida personal representative must then be appointed.²¹ In effect, it is a summary procedure unless claims are filed, in which case it converts to a formal ancillary administration. The persons who receive the estate assets remain liable for

¹⁹ *Loewenthal v. Mandell*, 125 Fla. 685, 1701 So. 169 (1936)

²⁰ *F.S.* 734.1025(1)

²¹ *F.S.* 734.1025(2)

claims against the deceased for two years after the date of death. This period may be reduced by publication of notice in a local newspaper.

A petition to admit the foreign will to record in Florida may be filed by any person at any time after 2 years from the death of the deceased or at any time after the domiciliary personal representative has been discharged.²² When admitted to record in compliance with *F.S.* 734.104(1)(2), the will is deemed valid and effectual to pass title to real property in this state.²³ This procedure is useful when the domiciliary personal representative has been discharged and no sale is anticipated in the near future or when the death of the decedent was more than two years ago. The petition must allege that the will was executed as required by *F.S.* chapter 732.²⁴ Authenticated copies of the will, the foreign petition for probate, and the foreign order admitting the will to probate must be filed with the petition.²⁵ Other evidence, including an affidavit of the petitioner, may be used to establish necessary information that cannot be established by the domiciliary record. Form No. P-2.0800 is a form for a petition to admit a foreign probated will to record. A form for an order admitting the probated foreign will to record is Form No. P-2.0810.

In addition for small estates of residents and non-residents, there is a further summary administration process found in *F.S.* 735.201-735. The summary administration provisions of *F.S.* 735.201 *et seq.*, limited to estates of a value of \$75,000 or less and to estates of persons dead more than two years, are also available to non-resident estates.

²² *F.S.* 734.104(1)

²³ *F.S.* 734.104(4)

²⁴ *F.S.* 734.104(1)(a)

²⁵ *F.S.* 734.104(2)

Another alternative is the procedure under the “Disposition of Personal Property Without Administration” provision found in F.S. 735.301-302. This procedure is available if the estate assets consist solely of exempt property (as defined by law and the Florida Constitution) and non-exempt personal property, the value of which does not exceed the combined total of up to \$6,000 in funeral expenses, plus the amount of all reasonable and necessary medical and hospital expenses incurred in the last 60 days of the last illness.

Procedure for Issuance of Ancillary Letters

Who May Serve

F.S. 734.102(1) provides in part:

If a non-resident of this state dies leaving assets in this state, credits due from residents in this state, or liens on property in this state, a personal representative specifically designated in the decedents will to administer the Florida property shall be entitled to have ancillary letters issued, if qualified to act in Florida. Otherwise, the foreign personal representative of the decedents estate shall be entitled to have letters issued if qualified to act in Florida.

The personal representative²⁶ for the purposes of Florida probate, can be a person, bank or trust company (subject to some restrictions) appointed by the court to be in charge of the administration of the estate. If an individual then he or she must be either a resident of Florida, or is a spouse, sibling, parent, child, or certain other close relatives; and, if a trust company then it must be incorporated under the laws of Florida, or be a bank or savings and loan authorized and qualified to exercise fiduciary powers in Florida.

²⁶ Florida cases the generic term “personal representative” to replace “executor”, “executrix”, “administrator” and “administratrix.”

If the person with a valid will, the designated or named personal representative nominated in the will has preference to serve. A non-resident who owns property subject to administration in Florida should consider nominating a special personal representative to administer the Florida property, if the non-resident is aware that the foreign personal representative may not be qualified to serve in Florida. In a testate situation, if no special Florida personal representative is named by the will, and the foreign personal representative and all named successors in the will are not qualified to serve in Florida, a majority in interest of the estate beneficiaries are entitled to select the Florida ancillary personal representative.

If a person dies intestate and the foreign domiciliary personal representative is not qualified to act in Florida, the order of preference provided in *F.S. 733.301(1)(b)* and (3) is to be followed:²⁷ if there is no valid will then the surviving spouse has preference, with second preference going to the person selected by the majority of the heirs.

If someone other than the domiciliary personal representative applies for ancillary letters, prior notice must be given to the domiciliary personal representative.²⁸

The fee for the personal representative is usually determined in one of five ways: (1) as set forth in the will; (2) as set forth in a contract between the personal representative and the deceased; (3) as agreed among the personal representative and the persons who bear

²⁷ *F.S. 734.102(1)*

²⁸ *F.S. 74.102(1)*

the impact of the fee; (4) as the amount presumed to be reasonable as calculated under Florida law if the amount is not objected to; or (5) as determined by the judge, applying Florida law.

The fee for the lawyer for the personal representative is usually determined in one of three ways: (1) as agreed among the attorney, the personal representative and the persons who bear the impact of the fee, (2) as the amount presumed to be reasonable calculated under Florida law, if the amount is not objected to, or (3) as determined by the judge, applying Florida law. In addition the personal representative, the attorney and other professionals whose services may be required in administering the estate (such as appraisers and accountants) are entitled by law to reasonable compensation.

Venue

Because ancillary proceedings apply only to estates of non-residents of Florida, the proper venue is in any county where the deceased's property is located.²⁹ If the non-resident deceased was only a creditor of certain Florida residents, the proper venue is in the county where any of the deceased's debtors reside.³⁰ If the proceeding is filed in an improper county, the court may transfer the action to the proper county.³¹ Any action taken by the court or the parties before the transfer is not affected by the improper venue.

Petition for Ancillary Administration

An applicant for ancillary letters must include with the petition an authenticated copy of the part of the domiciliary proceedings that shows either:

²⁹ F.S. 733.101(1)(b)

³⁰ F.S. 733.101(1)(c)

³¹ F.S. 733.101(3)

- (1) for a testate estate that will, petition for probate, order admitting the will to probate, and authority of the personal representative; or
- (2) for an intestate estate the petition for administration and authority of the personal representative to act.

Formal notice must be given to³²

- (1) all known persons qualified to act as ancillary personal representative and whose entitlement to preference of appointment is equal to or greater than petitioners and who have not waived notice or joined in the petition; and
- (2) all domiciliary personal representatives who have not waived notice or joined in the petition.

On the filing of the authenticated copy of a will, the court will determine first if the will was properly executed in accordance with Florida law. If so, then the court will admit it to record in this state³³. The ancillary personal representative must also post a bond and the procedures for Florida domiciliary administration are to be followed to the extent possible.³⁴ The required probate forms obtained from the Florida Lawyers Support Services, Inc. As the following:³⁵

- Forms No. P-3.0140, P-3.0150 and P-3.0151 are forms for a petition for ancillary administration of a testate non-resident:

³² *Fla. Prob.R. 5.470(a)*

³³ Rule 5.470(c). The former requirement that the will be a probated will was removed from Rule 5.470(c) effective January 1, 1997. See the 1996 Revision in the Committee Notes to that rule.

³⁴ *F.S. 734.102(4); F.S. 733.402*

³⁵ Florida Lawyers Support Services, Inc. (FLSSI), P.O. Box 568157, Orlando, FL 32856-8157 (407/515-1501 or 800/4041-9278; www.flssi.org)

- Forms No. P-3.0160, P-0170, and P-3.0171 are forms for a petition for ancillary administration of an intestate non-resident;
- Forms No. P-3.0480 and P-3.0481 are forms for an order admitting a will of a non-resident to probate and appointing a personal representative;
- Forms No. P-3.0490 and P-3.0491 are forms for orders appointing a personal representative of an intestate non-residents estate; and
- Form No. P-3.0720 is a form of ancillary letters of administration.

Powers and Duties of Ancillary Personal Representative Management of Deceased's Property

The ancillary personal representative has the same authority as domiciliary personal representatives in Florida to manage and settle estates.³⁶ As in Ontario, the personal representative is directed by the court of administer the estate pursuant to Florida law and is obliged to:

- Identify, gather, value and safeguard probate assets.
- Publish a “notice to creditors” in a local newspaper, giving notice to file claims and other papers relating to the estate.
- Serve a “notice of administration” on specific persons, giving information about the estate administration and giving notice of requirements to file any objections relating to the estate.
- Conduct a diligent search to locate “known or reasonably ascertainable” creditors, and notify them of the time by which their claims must be filed.
- Object to improper claims and defend claims.

³⁶ F.S. 734.102(7)

- Pay valid claims, taxes and administrative expenses.
- File tax returns.
- Distribute statutory amounts or assets to the surviving spouse or family.
- Distribute assets to beneficiaries.
- Close probate administration.

An ancillary personal representative may sell Florida property to pay local debts regardless of the existence of sufficient assets in the domiciliary estate to pay these debts.³⁷ However, as stated above property may not be sold to pay a claim that is barred by any statute of limitations or any non-claim statute of Florida.³⁸

Tax Filing Requirements

For a non-resident, Florida law imposes an estate tax on the transfer of real property located in Florida, on tangible personal property with a Florida *situs*, intangible personal property with a Florida business *situs*, and on securities and obligations of corporations organized under Florida law.³⁹ The amount of estate tax due to Florida is equal to that proportion of the state death tax credit under federal law as the value of taxable Florida property bears to the value of the deceased's entire gross estate.⁴⁰ However, under the 2001 *Economic Growth and Tax Relief Reconciliation Act*⁴¹, the state death tax credit was gradually reduced until it disappeared for years after 2004 and instead, it has been replaced with a deduction for death taxes paid to any state. As a result, estates of persons

³⁷ *In re Wilsons Estate*, 143 Fla. 812, 197 So.557(1940)

³⁸ F.S. 734.102(7).

³⁹ F.S. 198.03

⁴⁰ F.S. 198.03; see *IRC*2011

⁴¹ Pub.L.No. 107-16, 115 Stat. 38

dying after 2004 will not be assessed Florida estate tax, unless and until the Florida Legislature acts or the federal law reverts to its original form in 2011.⁴²

In 2007, *F.S.* 198.13(4) was added, which provides that, with respect to deceaseds dying after December 31, 2004, through December 1, 2010, no return is required to be filed as long as there is no state death tax credit or generation-skipping transfer credit available under federal law. Thus, no return currently needs to be filed.

If the deceased owned any property outside of both Florida and the domiciliary state, the personal representative should determine the estate tax filing requirements for that state and what, if any, tax is due. If the estate was not required to file a federal estate tax return, the ancillary personal representative of a person dying on or after January 1, 2000, may sign and file with the Department of Revenue an affidavit (Form DR-3112) attesting that the estate is not taxable; the affidavit shall be subject to record and admissible in evidence to show no liability for tax.⁴³ In addition, the ancillary personal representative must file an informational income tax return (Form 1041) with the IRS and furnish a copy to the domiciliary personal representative.⁴⁴

Generally speaking if an estate is not required to file a federal estate tax return, the final accounting and papers to close the probate administration are due within 12 months (this

⁴² Under prior law, if the non-residents estate was required to file a federal estate tax return (Form 706), the personal representative was required to file a signed copy of that return, play any attachments, with the Florida Department of Revenue before the time period for filing the return with the Internal Revenue Service had expired. *F.S.* 198.13(1) see *IRC* 6075(a). If the personal representative requested an extension of time to file with the IRS, the personal representative was required to file a copy of this request with the Department of Revenue within 30 days after filing it with the IRS. *F.S.* 198.14

⁴³ *F.S.* 1983.32(2)

⁴⁴ See *Reg.* 1.6012-3(a)(3)

period can be extended, after notice to interested persons) of issuance of letters of administration. The federal estate tax return is initially due nine months after death and may be extended for another six months, for a total of 15 months. If a federal estate tax return is required, the final accounting and papers to close the probate administration are due within 12 months from the date the tax return is due. An extension is usually requested and granted by the court because as often the IRS' review and acceptance of the estate tax return are not completed within that period.

Typically estates that are not required to file a federal estate tax return and are not involve litigation often close in five or six months.

Conclusion of Probate Proceedings

As in Ontario the personal representative in Florida has an accounting obligation to the beneficiaries as well as the obligation to apply for a discharge. *F.S. 734.102(g)* states:

After the payment of all expenses of administration and claims against the estate, the court may order the remaining property held by the ancillary personal representative transferred to the foreign personal representative or distributed to the beneficiaries. A final accounting and petition for discharge should be made by the ancillary personal representative in the same manner as for domiciliary probate.⁴⁵

⁴⁵ *Fla.Prob.R.5.400*

NOVA SCOTIA

Probate Court Practice, Procedure and Forms Regulations, O.I.C. 2001-450 (September 17, 2001, effective October 1, 2001), N.S. Reg. 119/2001, as amended by O.I.C. 2008-429 (August 19, 2008), N.S. Reg. 356/2008

Applications

- 33 (1) An application for a grant of probate shall be in Form 8 or 8A.
- (2) An application for a grant of administration shall be in Form 9 or 9A.
- (3) An application for a grant of administration with the will annexed shall be in Form 10 or 10A.
- (4) An application for an extra-provincial grant shall be in Form 11, 11A or 11B.
- (5) Despite subsections (1), (2), (3) and (4), where a prescribed form is not appropriate for an application for a specific grant, the applicant for the grant may file an application in a form acceptable to the registrar.
- (6) If there is more than one applicant for a grant, joint or separate applications may be used.
- (7) All applications shall be accompanied by a covering letter indicating the number of certified copies of the grant and certificates of status required.

Application for extra-provincial grant

- 39 An application for an extra-provincial grant shall be accompanied by
- (a) 2 certified copies of the original grant or order to the like effect under the seal of the court that granted it and a certificate under the seal of that court stating that the original grant or order is still in effect;
- (b) 2 certified copies of the will, if applicable;
- (c) proof of death satisfactory to the registrar;
- (d) an affidavit of translation in Form 3, if applicable;
- (e) the security required under the Act, if applicable; and
- (f) payment of the probate tax required under the Act,

and such additional or other material as the registrar directs.

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Form 11
 Probate District:
 Probate Court File No:

IN THE COURT OF PROBATE FOR NOVA SCOTIA

IN THE ESTATE OF _____, Deceased

Application for Extra-Provincial Grant of Probate (S. 33(4))

I, _____ name in full _____, of _____ street and postal address, place, province/state, country _____, applicant,

make oath and say:

1. _____ name of deceased _____, late of _____ place, province/state, country _____, occupation _____, died on or about _____ month and day _____, 20____, at _____ place, province/state, country _____ and at the time of death the residence of the deceased was outside Nova Scotia and the deceased had, at such time, property in Nova Scotia.
2. The deceased died testate leaving a will and codicil(s) in which the applicant was named as executor.
3. A grant of probate [or as the case may be] _____, was granted in the estate of the deceased on _____ month and day _____, 20____, by the _____ name of court _____, being the court having jurisdiction in testamentary matters in _____ province/country _____, where the deceased was resident at the date of death, and the applicant is the executor named in it. [If otherwise give details.]
4. The grant is still in full force and effect and the applicant has not been discharged by the court.
5. To the best of my information and belief
 - (a) the deceased ☐ was/was not ☐ of the age of majority at the time the will was made and ☐ was/was not ☐ married and ☐ was/was not ☐ a registered domestic partner at that time;
 - (b) the deceased, at the time of death, was married / unmarried / a widower / a widow / separated / divorced / a registered domestic partner; [circle one]
 - (c) the deceased ☐ did/did not ☐ marry and ☐ was/was not ☐ a registered domestic partner after the deceased's will was made;
 - (d) neither _____ name of witness _____ nor _____ name of witness _____, the witnesses to the attached

will and codicil(s) is a beneficiary or the spouse of a beneficiary named in the will or any codicil(s); [if so, give details]

- (e) the deceased was predeceased by [list the names, addresses and ages at death and dates of death respectively of predeceasing spouse(s) and children, and beneficiaries named in will] ;
- (f) there are/are no marriage contracts, separation agreements or court orders that affect the appointment of the applicant as personal representative of the estate of the deceased; [if there are, give details]
- (g) the attached will and codicil(s) ■ is/are ■ copies of the original last will and codicil(s) certified by the court that issued the grant of probate [or as the case may be] ;
- (h) no other application has been made for a grant for this estate in Nova Scotia;
- (i) the fair market value of all the assets of the deceased in Nova Scotia that the deceased died possessed of or entitled to, that pass by a will or wills or that are transferred or will be transferred to a trust under a will or wills, whether or not the trust is described in the will as being separate from the estate, or that pass upon intestacy and for which an extra-provincial grant is applied for is

(i) ■ real property less encumbrances	\$
(ii) ■ personal property (gross value)	\$
Total:	\$

which includes all insurance, RRSP's, RRIF's, pensions, superannuation and annuities payable to the estate of the deceased. [Do not include real property outside Nova Scotia or real property held in joint tenancy, or insurance, [er] RRSP's, RRIF's, pensions, superannuation or annuities payable to a named beneficiary. Include a mobile home in real property, less any encumbrance upon it.]

- 6. The real property of the deceased is situate at place in Nova Scotia .
- 7. I will faithfully administer the property of the deceased by
 - (a) paying the just debts of the deceased and all taxes payable in respect of the estate of the deceased and the legacies contained in the attached will and codicil(s) so far as it or they extend and the law binds me;
 - (b) filing with the court a full and true inventory of all assets of the deceased in the Province in Form 29 within 3 months after the date of the grant;
 - (c) disclosing to the court the existence of any asset and any encumbrance on real property the value of which has not been disclosed in the inventory within 30 days of when I learn of it;
 - (d) undertaking to pay the Minister of Finance the taxes payable under the *Probate Act* with respect to such or any other asset that passes to me as the personal representative of the deceased and has not previously been disclosed to the court, upon a determination being made as to the value of that asset;

- (e) rendering a true account of my executorship whenever required by law to do so; and
 - (f) distributing all the property of the deceased according to law.
8. I will surrender to this court the grant to be issued to me whenever so required by the court or the registrar.
9. I request that the court issue an extra provincial grant of probate to the applicant.

Sworn before me at _____ ,)
[county, province/state, country] ,)
on _____ , 20 ____ .)
_____))
_____))
_____)

[Title] _____) Signature of applicant
_____)

[Note: the text and signature areas of this form may be adapted as required where there is more than one applicant.]

Form 11A
 Probate District:
 Probate Court File No:

IN THE COURT OF PROBATE FOR NOVA SCOTIA

IN THE ESTATE OF _____, Deceased
Application for Extra-Provincial Grant of Administration
(S. 33(4))

I, _____ name in full _____, of _____ street and postal address, place, province/state, country _____, applicant,

make oath and say:

1. _____ name of deceased _____, late of _____ place, province/state, country _____, occupation _____, died on or about _____ month and day _____, 20____, at _____ place, province/state, country _____ and at the time of death the residence of the deceased was outside Nova Scotia and the deceased had, at such time, property in Nova Scotia.
2. The deceased died intestate.
3. A grant of administration [or as the case may be] _____, was granted in the estate of the deceased on _____ month and day _____, 20____, by the _____ name of court _____, being the court having jurisdiction in testamentary matters in _____ province/country _____, where the deceased was resident at the date of death, and the applicant is the administrator named in it. [If otherwise give details.]
4. The grant is still in full force and effect and the applicant has not been discharged by the court.
5. I have caused a diligent and careful search to be made for a will, any codicil thereto or testamentary paper of the deceased but have been unable to discover any.
6. To the best of my information and belief
 - (a) the deceased, at the time of death, was married / unmarried / a widower / a widow / separated / divorced / a registered domestic partner; [circle one]
 - (b) the deceased left the following person(s) who are entitled by law to share in the estate: [list the name, address, age and relationship to deceased of each heir] ;
 - (c) the deceased was predeceased by the following person(s) who would have been entitled by law to share in the estate: [list the name, address and date of death of each

predeceased heir] ;

- (d) there ☐ are/are no ☐ marriage contracts, separation agreements or court orders that affect the appointment of the applicant as personal representative of the estate of the deceased; [if there are, give details]
- (e) no other application has been made for a grant for this estate in Nova Scotia;
- (f) the fair market value of all the assets of the deceased in Nova Scotia that the deceased died possessed of or entitled to, that pass by a will or wills or that are transferred or will be transferred to a trust under a will or wills, whether or not the trust is described in the will as being separate from the estate, or that pass upon intestacy and for which an extra-provincial grant is applied for is
 - (i) ☐ real property less encumbrances \$
 - (ii) ☐ personal property (gross value) \$
 - Total: \$

which includes all insurance, RRSP's, RRIF's, pensions, superannuation and annuities payable to the estate of the deceased. [Do not include real property outside Nova Scotia or real property held in joint tenancy, or insurance, ☐ RRSP's, RRIF's, pensions, superannuation or annuities payable to a named beneficiary. Include a mobile home in real property, less any encumbrance upon it.]

7. The real property of the deceased is situate at _____ place in Nova Scotia .
8. I will faithfully administer the property of the deceased by
 - (a) paying the just debts of the deceased and all taxes payable in respect of the estate of the deceased;
 - (b) filing with the court a full and true inventory of all assets of the deceased in the Province in Form 29 within 3 months after the date of the grant;
 - (c) disclosing to the court the existence of any asset and any encumbrance on real property the value of which has not been disclosed in the inventory within 30 days of when I learn of it;
 - (d) undertaking to pay the Minister of Finance the taxes payable under the *Probate Act* with respect to such or any other asset that passes to me as the personal representative of the deceased and has not previously been disclosed to the court, upon a determination being made as to the value of that asset;
 - (e) rendering a true account of my administration whenever required by law to do so; and
 - (f) distributing all the property of the deceased according to law.
9. I will surrender to this court the grant to be issued to me whenever so required by the court or the registrar.
10. I request that the court issue an extra-provincial grant of administration to the applicant.

03/09/2009

Probate Court Practice, Procedure ...

Sworn before me at _____ ,)
[county, province/state, country] ,)
on _____ , 20 .)
)
)
)
)

[Title]) Signature of applicant
)

[Note: the text and signature areas of this form may be adapted as required where there is more than one applicant.]

Form 11B
 Probate District:
 Probate Court File No:

IN THE COURT OF PROBATE FOR NOVA SCOTIA

IN THE ESTATE OF _____, Deceased
Application for Extra-Provincial Grant of Administration
with the Will Annexed
(S. 33(4))

I, _____ name in full _____, of _____ street and postal address, place, province/state, country _____, applicant,

make oath and say:

1. _____ name of deceased _____, late of _____ place, province/state, country _____, occupation _____, died on or about _____ month and day _____, 20____, at _____ place, province/state, country _____ and at the time of death the residence of the deceased was outside Nova Scotia and the deceased had, at such time, property in Nova Scotia.
2. The deceased died leaving a will and codicil(s) in which no executor was named or in which the named executor has renounced or has since died.
3. A grant of administration with the will annexed [or as the case may be] _____, was granted in the estate of the deceased on _____ month and day _____, 20____, by the _____ name of court _____, being the court having jurisdiction in testamentary matters in _____ province/country _____, where the deceased was resident at the date of death, and the applicant is the administrator named in it. [If otherwise give details.]
4. The grant is still in full force and effect and the applicant has not been discharged by the court.
5. To the best of my information and belief
 - (a) the deceased ☐ was/was not ☐ of the age of majority at the time the will was made and ☐ was/was not ☐ married and ☐ was/was not ☐ a registered domestic partner at that time;
 - (b) the deceased, at the time of death, was married / unmarried / a widower / a widow / separated / divorced / a registered domestic partner; [circle one]
 - (c) the deceased ☐ did/did not ☐ marry and ☐ was/was not ☐ a registered domestic partner after the deceased's will was made;

- (d) neither was/was not nor was/was not , the witnesses to the attached will and any codicil(s), is a beneficiary or the spouse of a beneficiary named in the will or any codicil(s); [if so, give details]
- (e) the deceased was predeceased by [list the names, addresses and ages at death and dates of death respectively of predeceased spouse(s), children, and beneficiaries named in will] ;
- (f) there ~~are~~/are no marriage contracts, separation agreements or court orders that affect the appointment of the applicant as personal representative of the estate of the deceased; [if there are, give details]
- (g) the attached will and codicil(s) ~~is~~/are copies of the original last will and codicil(s) certified by the court that issued the grant of administration with the will annexed
[or as the case may be] ;
- (h) no other application has been made for a grant for this estate in Nova Scotia;
- (i) the fair market value of all the assets of the deceased in Nova Scotia that the deceased died possessed of or entitled to that pass by a will or wills or that are transferred or will be transferred to a trust under a will or wills, whether or not the trust is described in the will as being separate from the estate, or that pass upon intestacy and for which an extra-provincial grant is applied for is
- | | |
|--|----|
| (i) ■ real property less encumbrances | \$ |
| (ii) ■ personal property (gross value) | \$ |
| Total: | \$ |

which includes all insurance, RRSP's, RRIF's, pensions, superannuation and annuities payable to the estate of the deceased. [Do not include real property outside Nova Scotia or real property held in joint tenancy, or insurance, ~~or~~ RRSP's, RRIF's, pensions, superannuation or annuities payable to a named beneficiary. Include a mobile home in real property, less any encumbrance upon it.]

6. The real property of the deceased is situate at place in Nova Scotia .
7. I will faithfully administer the property of the deceased by
- (a) paying the just debts of the deceased, all taxes payable in respect of the estate of the deceased and the legacies contained in the attached will and codicil(s) so far as it or they extend and the law binds me;
- (b) filing with the court a full and true inventory of all assets of the deceased in the Province in Form 29 within 3 months after the date of the grant;
- (c) disclosing to the court the existence of any asset and any encumbrance on real property the value of which has not been disclosed in the inventory within 30 days of when I learn of it;
- (d) undertaking to pay the Minister of Finance the taxes payable under the *Probate Act* with respect to such or any other asset that passes to me as the personal

03/09/2009

Probate Court Practice, Procedure ...
with respect to such or any other asset that passes to me as the personal
representative of the deceased and has not previously been disclosed to the court,
upon a determination being made as to the value of that asset;

- (e) rendering a true account of my administration whenever required by law to do so; and
 - (f) distributing all the property of the deceased according to law.
8. I will surrender to this court the grant to be issued to me whenever so required by the court or the registrar.
9. I request that the court issue an extra-provincial grant of administration with the will annexed to the applicant.

Sworn before me at _____,)
[county, province/state, country] ,)
on _____, 20 ____ .)
)
)
)
_____) _____
[Title]) Signature of applicant
)

[Note: the text and signature areas of this form may be adapted as required where there is more than one applicant.]

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NEW BRUNSWICK

Probate Court Act, S.N.B. 1982, c. P-17.1

Resealing

73(1) Where letters probate of a will or letters of administration or other legal documents purporting to be of the same nature granted by a court of competent jurisdiction in the United Kingdom, in a province or territory of Canada, in any country of the Commonwealth or in any state or territory of the United States of America or a certified copy thereof are produced to, and a copy of the original or where a certified copy is produced, the certified copy deposited with a clerk or the Registrar and the tax required under this Act is paid as on a grant of letters probate of a will or letters of administration, the letters probate or letters of administration or other legal documents or the certified copy thereof shall, under the direction of the Court, be sealed with the Seal of the Court.

73(1.1) Where letters probate or letters of administration or other legal documents, or a certified copy thereof, are sealed in accordance with subsection (1) with the seal of the Court, the letters probate or letters of administration or the other legal documents are of the like force and effect in the Province as if the original letters probate or letters of administration or other legal documents had been granted by the Court, and are, so far as regards the Province, subject to any order made by the Court, or on appeal therefrom, as if the letters probate or letters of administration or other legal documents had been granted thereby.

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Form 25- Application for Ancillary Letters Probate or for Resealing Letters Probate of a Will
Form 25

Formule 25

In The Probate Court of New Brunswick
Cour des successions du Nouveau-Brunswick
Judicial District of _____
Circonscription judiciaire de _____

Application for Ancillary Letters Probate or for Resealing Letters Probate of a Will
Demande de lettres auxiliaires d'homologation d'un testament ou de
réapposition de sceau à des lettres d'homologation d'un testament

This Application Is Filed By:
La présente demande est déposée par :

Surname of Applicant
Nom du requérant

Given Name(s)
Prénom(s)

Street or City or Town
Rue ou Cité ou Ville

Province
Province

Postal Code
Code Postal

Postal Address
Adresse postale

Details of Deceased
Renseignements relatifs à la personne décédée

Name: Surname Given Name(s) if applicable commonly known as
Nom Prénom(s) s'il y a lieu connu(e) sous le nom de

Fixed place of residence at time of death:
Lieu de résidence permanente au décès :

Street or Postal Address
Rue ou adresse postale

City or Town
Cité ou Ville

Province
Province

Postal Code
Code Postal

Place of death

Date of death

Date of last will

Lieu du décès
(city, town, etc.)
(cité, ville,

Date du décès
(day, month, year)
jour, mois, année

Date du dernier testament
(day, month, year)
jour, mois, année

Did the deceased have assets in this judicial district at the time of death?
La personne décédée possédait-elle des biens dans la présente circonscription judiciaire
au moment du décès?

(Check) Yes () No ()
(Cocher) Non () Oui ()

Value of estate in New Brunswick
Valeur de la succession au Nouveau-Brunswick

(Do not include in the total
insurance payable to a named
beneficiary or assigned for
value; or assets held jointly
(Ne pas inclure, dans le total,
l'assurance payable à un bénéficiaire
désigné, ou cédée pour valeur reçue; les biens
and passing by survivorship)
détenus conjointement et
transmis pour cause de survie.)

Personalty
Biens
(Net) (Net)
\$

Real Estate
Biens réels
\$

Total
Total
\$ \$

\$

\$

Details of Letters Probate
Renseignements relatifs aux lettres d'homologation

Letters probate of the last will of the deceased were granted by:
Des lettres d'homologation du dernier testament
de la personne décédée ont été octroyées par:

(state name and jurisdiction of court)
(nommer le tribunal et déclarer en compétence)

on the _____ day of _____, 19 _____.
le _____ 19 _____.

The original letters probate or a certified copy
Les lettres d'homologation originales ou une copie certifiée conforme de ces lettres sont
of the letters probate is attached hereto as Exhibit "A"
jointes comme Pièce « A »
(In the case of the Province of Quebec letters of verification may be used)
(S'il s'agit du Québec, les lettres de vérification peuvent être utilisées)

(Attach a separate sheet for additional Affidavits of Verification)
(Ajouter une autre feuille pour les affidavits Affidavits d'attestation supplémentaires)

I, an applicant named herein, make oath (or do solemnly affirm) and say:
Je soussigné, requérant désigné aux présentes, dépose sous serment (ou affirme
solennellement) :

- (1). I am an executor to whom letters probate of the will of the deceased were granted.
(1) Que je suis un exécuteur testamentaire à qui des lettres d'homologation du testament de la personne décédée ont été octroyées.
- (2). I have identified the letters probate marked as Exhibit "A" as shown in the application as a certified copy of the Letters Probate of the will of the deceased which were granted to me.
(2) Que j'ai identifié les lettres d'homologation figurant Pièce « A » comme l'indique la demande, comme étant une copie certifiée conforme des lettres d'homologation du testament de la personne décédée qui m'ont été octroyées.
- (3). I am not aware of any application pending or to be brought in any other judicial district in respect to the grant (or resealing) herein applied for and I will forthwith advise the clerk of this judicial district should such come to my attention before the final disposition of this application.
(3) Qu'à ma connaissance, aucune autre demande à ce sujet n'a été présentée dans une autre circonscription judiciaire ni ne doit l'être, et que j'informerai immédiatement le greffier de la présente circonscription judiciaire si je devais avoir connaissance d'un tel fait avant qu'il soit statué sur la présente demande.
- (4). I will faithfully administer the property of the deceased in New Brunswick according to the law and render a just and full account of my administration when lawfully required.
(4) Que j'administrerai fidèlement, suivant la loi, les biens de la personne décédée situés au Nouveau-Brunswick, et rendrai un compte fidèle et complet de son administration au moment requis par la loi.
- (5). The information contained in the application and in any attached schedules and sheets is true.
(5) Que les renseignements fournis dans la demande, les annexes jointes et les feuilles sheetssont véridiques.

Sworn (or Solemnly affirmed)	}
Fait sous serment (ou Affirmé)	}
before me at _____ in	}
solennellement) devant moi à _____	}
the Province of _____	}
dans la province de _____	}

this _____ day of _____ ,)
 ce _____ jour de _____ ,)
 19____.)
 19____.)

A Commissioner, etc.
 Commissaire, etc.

Signature of Applicant
 Signature du requérant

Details of Applicant's Solicitor
 Renseignements relatifs à l'avocat du requérant

Name of Solicitor: _____
 Nom de l'avocat : _____

Name of Firm (if Applicable): _____
 Nom du cabinet (s'il y a lieu) : _____

Business Address: _____
 Adresse d'affaires : _____

Telephone Number: _____
 Téléphone : _____

There is also a similar form if the applicant is a corporation. See form 2T

Form 2T- Application for Ancillary Letters Probate or for Resealing Letters Probate of a Will (Corporate Applicant)

Please note these forms should not be relied upon due to the format difficulties in downloading them.

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Form 2U- Application for Ancillary Letters of Administration or for Resealing Letters of Administration
Form 2U

Formule 2U

In The Probate Court of New Brunswick
Cour des successions du Nouveau-Brunswick
Judicial District of _____
Circonscription judiciaire de _____

Application for Ancillary Letters of Administration or for Resealing Letters of Administration
Demande de lettres auxiliaires d'administration ou de réapposition de sceau à des lettres d'administration

This Application Is Filed By:
La présente demande est déposée par

Signature of Applicant
Nom du requérant

Given Name(s)
Prénom(s)

Street or City or Town	Province	Postal Code	Postal Address
Rue ou Cité ou Ville	Province	Code Postal	Adresse postale

Details of Deceased
Renseignements relatifs à la personne décédée

Name:	Surname	Given Name(s)	if applicable commonly known as
	Nom	Prénom(s)	s'il y a lieu connu(e) sous le nom de

Fixed place of residence at time of death:	Street or Postal Address
Lieu de résidence permanente au décès :	Rue ou adresse postale

City or Town	Province	Postal Code
Cité ou Ville	Province	Code Postal

Place of death	Date of death	Date of last will
----------------	---------------	-------------------

Lieu du décès	Date du décès	Date du dernier testament
(city, town, etc.)	(day, month, year)	(day, month, year)
(cité, ville,	jour, mois, année	jour, mois, année

Did the deceased have assets in this judicial district at the time of death?
La personne décédée possédait-elle des biens dans la présente circonscription judiciaire au moment du décès?

(Check) Yes () No ()
(Cocher) Non () Oui ()

Value of estate in New Brunswick
Valeur de la succession au Nouveau-Brunswick

(Do not include in the total insurance payable to a named beneficiary or assigned for value; or assets held jointly (Ne pas inclure, dans le total, l'assurance payable à un bénéficiaire désigné, ou cédée pour valeur reçue; les biens and passing by survivorship) détenus conjointement et transmis pour cause de survie.)

Personalty	Real Estate	Total				
Biens	Biens réels	Total				
(Net) (Net)						
\$	\$	\$	\$	\$	\$	\$

Details of Letters of Administration
Renseignements relatifs aux lettres d'administration

Letters of administration in the estate of the deceased were granted by:
Des lettres d'administration de la succession de la personne décédée ont été octroyées par :

(state name and jurisdiction of court)
(nommer le tribunal et déclarer en compétence)

on the _____ day of _____, 19 _____.
le _____ 19 _____.

The original letters of administration or a certified copy of the letters of administration is attached hereto as Exhibit "A"
Les lettres d'administration originales ou une copie certifiée conforme de ces lettres sont jointes comme Pièce « A »
(In the case of the Province of Quebec letters of verification may be used)
(S'il s'agit du Québec, les lettres de vérification peuvent être utilisées)

(Attach a separate sheet for additional Affidavits of Verification)
(Ajouter une autre feuille pour les affidavits Affidavits d'attestation supplémentaires)

I, an applicant named herein, make oath (or do solemnly affirm) and say:
Je soussigné, requérant désigné aux présentes, dépose sous serment (ou affirme solennellement) :

- (1) I am an administrator to whom letters of administration of the estate of the deceased were granted.
(1) Que je suis un administrateur à qui des lettres d'administration de la succession la personne décédée ont été octroyées.
- (2). I have identified the letters of administration marked as Exhibit "A" as shown in the application as a certified copy of the letters of administration of the estate of the deceased which were granted to me.
(2) Que j'ai identifié les lettres d'administration indiquées comme Pièces « A » à la demande, comme étant une copie certifiée conforme des lettres d'administration de la succession de la personne décédée qui m'ont été octroyées.
- (3). I am not aware of any application pending or to be brought in any other judicial district in respect to the grant (or resealing) herein applied for and I will advise the clerk of this judicial district should such come to my attention forthwith before the final disposition of this application.
(3) Qu'à ma connaissance, aucune autre demande d'octroi n'a été présentée dans une autre circonscription judiciaire ni ne doit l'être, et que j'informerai immédiatement le greffier de la présente circonscription judiciaire si je devais avoir connaissance d'un tel fait avant qu'il soit statué sur la présente demande.
- (4). I will faithfully administer the property of the deceased in New Brunswick according to law, and render a just and full account of my administration when lawfully required.
4) Que j'administrerai fidèlement, suivant la loi, les biens de la personne décédée situés au Nouveau-Brunswick, et rendrai un compte fidèle et complet de mon administration au moment requis par la loi.
- (5). The information contained in the application and in any attached schedules and sheets is true.
(5) Que les renseignements fournis dans la demande, les annexes jointes et les feuilles sont véridiques.

Sworn (or Solemnly affirmed))
Fait sous serment (ou Affirmé)
before me at _____ in)
solennellement) devant moi à _____)
the Province of _____)
dans la province de _____)
this _____ day of _____)
ce _____ jour de _____ ,)
19____.)
19____.)

A Commissioner, etc.
Commissaire, etc.

Signature of Applicant
Signature du requérant

Details of Applicant's Solicitor
Renseignements relatifs à l'avocat du requérant

Name of Solicitor: _____
Nom de l'avocat : _____

Name of Firm (if Applicable): _____
Nom du cabinet (s'il y a lieu) : _____

Business Address: _____
Adresse d'affaires : _____

Telephone Number: _____
Téléphone : _____

There is also a similar form if the applicant is a corporation. See form 2V

Form 2V- Application for Ancillary Letters of Administration or for Resealing Letters of Administration of a Will (Corporate Applicant)

Please note these forms should not be relied upon due to the format difficulties in downloading them.

PRINCE EDWARD ISLAND

Probate Act, R.S.P.E.I. 1988, c.P-21

43. Nothing in this Act affects the right and power of the court to grant ancillary probate or administration and issue ancillary letters probate or to grant not affected letters of administration, subject to the rules of the court. R.S.P.E.I. 1974, Cap. P-19, s.44.

44. (1) Where any letters probate or letters of administration, or other letters probate or administration legal document purporting to be of the same nature, or having the like granted in any part effect, granted by a court of competent jurisdiction in any part of the of Commonwealth, British Commonwealth, outside this province, are presented to the court, resealing in province, effect and the prescribed fees are paid, the letters probate or letters of thereof administration or other document aforesaid, shall, under the direction of the judge, be sealed with the seal of the court, and are thereupon of the like force and effect in Prince Edward Island as if the same had been originally granted by the court, and are so far as regards this province subject to any orders of the court or on appeal therefrom, as if the letters probate or letters of administration had been granted thereby.

(2) Upon cause shown, an exemplification of any such letters probate may be resealed with the seal of the court letters probate or administration, resealing with the like effect as if the original thereof had been resealed as provided in subsection (1).

(3) The letters of administration shall not be sealed with the seal of the court until a certificate has been filed under the hand of the Registrar or other officer of the court which issued the original letters, that security had been given in the court in a sum of sufficient amount to cover as well the assets within the jurisdiction of the court as the assets within Prince Edward Island, or in the absence of the certificate, until like security is given to the judge covering the assets in Prince Edward Island, as in the case of granting original letters of administration. R.S.P.E.I. 1974, Cap.P-19, s.45.

NEWFOUNDLAND

Rules of the Supreme Court, 1986, S.N.L. 1986, c. 42, Sch. D

Resealing

56.20. (1) A grant of letters of probate or letters of administration referred to in the Act may be resealed upon application therefore in accordance with this rule.

(2) The facts to be shown and the affidavits to be taken shall be as required upon an application for probate or administration with or without will annexed, except that only assets of the deceased in the province need be shown and such grant may be accepted as proof

- (a) of death,
- (b) in cases of testacy, of the execution of the will and that it is the last will of the deceased, and
- (c) in cases of intestacy, that the deceased left no will.

(3) There shall also be filed in support of the application

- (a) an exemplification of the grant sealed with the seal of the foreign court, or
- (b) a copy of such grant certified under the direction of the foreign court,
and in addition
- (c) a certificate from the foreign court or some other evidence to the satisfaction of the judge that the grant is wholly unrevoked and of full effect,
- (d) an affidavit of the applicant verifying the facts upon which the applicant relies for a grant, and
- (e) proof to the satisfaction of the Court that the will was executed in accordance with the laws of the province, if the estate includes an interest in land in the province.

QUEBEC

Civil Code of Québec (C.C.Q.), S.Q. 1991, c. 64

2822. An act purporting to be issued by a competent foreign public officer makes proof of its content against all persons and neither the quality nor the signature of the officer need be proved.

Similarly, a copy of a document in the custody of the foreign public officer makes proof of its conformity to the original against all persons, and replaces the original if it purports to be issued by the officer.

2824. Acts, copies and powers of attorney mentioned in this section may be deposited with a notary, who may then issue copies of them.

Such a copy makes proof of its conformity to the deposited document and replaces it.

ONTARIO

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Confirmation By Resealing Of Appointment Of Estate Trustee With Or Without A Will

74.08 (1) An application for confirmation by resealing of the appointment of an estate trustee with or without a will that was granted by a court of competent jurisdiction in the United Kingdom, in a province or territory of Canada or in any British possession (Form 74.27) shall be accompanied by,

- a) two certified copies of the document under the seal of the court that granted it, or the original document and one certified copy under the seal of the court that granted it;
- b) the security required by the *Estates Act*; and
- c) such additional or other material as the court directs. O. Reg. 484/94, s. 12; O. Reg. 740/94, s. 2; O. Reg. 653/00, s. 7.

(2) A confirmation by resealing of the appointment of an estate trustee with or without a will shall be in Form 74.28. O. Reg. 484/94, s. 12.

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FORM 74.27

Courts of Justice Act

APPLICATION FOR CONFIRMATION BY RESEALING OF APPOINTMENT
OR CERTIFICATE OF ANCILLARY APPOINTMENT OF ESTATE TRUSTEE

ONTARIO

SUPERIOR COURT OF JUSTICE

APPLICATION FOR CONFIRMATION BY
RESEALING OF APPOINTMENT OR
CERTIFICATE OF ANCILLARY APPOINTMENT OF
ESTATE TRUSTEE
(Form 74.27 Under the Rules)

at

This is an application for (check one)

- ☐ confirmation by resealing of the appointment of an estate trustee with (or without) a will.
☐ a certificate of ancillary appointment of an estate trustee with a will.

This application is filed by (insert name)

DETAILS ABOUT THE DECEASED PERSON

Complete in full as applicable

First given name	Second given name	Third given name	Surname

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

First given name	Second given name	Third given name	Surname

Address (street or postal address) (city or town) (province or state) (country)

Place of death
(city or town; country)Date of death
(day, month, year)

PARTICULARS OF PRIMARY CERTIFICATE OR GRANT

Country (and province or state if applicable)
where issued

Issuing court

Date issued
(day, month, year)

VALUE OF ASSETS LOCATED IN ONTARIO

Personal property	Real estate, net of encumbrances	Total
\$	\$	\$

RCP-E 74.27 (November 1, 2005)

AFFIDAVIT(S) OF APPLICANT(S)
(Attach a separate sheet for additional affidavits, if necessary.)

I, an applicant named in this application, make oath and say/affirm:

1. I am an estate trustee named in the primary certificate (or primary grant of letters probate or letters of administration), a copy of which, certified by the court that issued it, is Exhibit "A" to this affidavit.
2. I am 18 years of age or older.
3. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration
- when lawfully required.
4. The primary certificate (or primary grant of letters probate or letters of administration) is still effective.
5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

Name (surname and forename(s))	Occupation
Address (street or postal address) (city or town) (province) (postal code)	

Sworn/Affirmed before me at the
of
in the
of
this day of, 20.....

Signature of applicant

A Commissioner for taking Affidavits (or as may be)

RCP-E 74.27 (November 1, 2005)

FORM 74.28

Courts of Justice Act

CONFIRMATION BY RESEALING OF APPOINTMENT OF ESTATE TRUSTEE

Sealed with the seal of the Superior Court of Justice by order of that court dated *(insert date)*, under subsection 52 (1) of the *Estates Act*.

DATE

.....
Registrar

Address of court office

RCP-E 74.28 (November 1, 2005)

MANITOBA

The Court of Queen's Bench Surrogate Practice Act, C.C.S.M. c. C290

Receiving foreign grants

48(1) Subject to section 50, where probate or letters of administration, or other legal document purporting to be of the same nature, granted by a court of competent jurisdiction, is produced to and a copy thereof deposited with the registrar or a deputy registrar, the requirements of the rules complied with, and the prescribed fees paid as on a grant of probate or administration, the probate, letters of administration or other document, shall, under the direction of a judge, be sealed with the seal of the court, and shall thereupon be of the like force and effect in the province as if it had been granted by the court on the date of the granting thereof by the foreign court and is, in the province, subject to orders of the court, as if the probate or letters of administration had been granted by the court.

Request for resealing of grant of probate

74.06(1) A request for resealing of a foreign grant of probate shall be in Form 74R.1 together with supporting material in Forms 74R.2 and 74R.3.

Request for resealing of administration with will annexed

74.06(1.1) A request for resealing of a foreign grant of administration with will annexed shall be in Form 74R.4 together with supporting material in Forms 74R.2 and 74R.5.

Request for resealing of administration

74.06(1.2) A request for resealing of a foreign grant of administration shall be in Form 74R.6 together with supporting material in Forms 74R.2 and 74R.7.

FORM 74R.1

REQUEST FOR RESEALING OF FOREIGN
GRANT OF PROBATE

THE QUEEN'S BENCH

_____ Centre

IN THE ESTATE OF _____, deceased.

(I/We) _____ of the _____ of _____,
in (specify jurisdiction), (occupation(s)), hereby request that the foreign grant of probate of the last will
of the deceased be resealed by this court based on the following information:

1. THAT _____, late of the _____ of _____, in (specify jurisdiction), died on the _____
day of _____, _____, having duly made (his/her) last will on the _____ day of _____, _____,
which is identified by (my/our) signature(s).

2. THAT at the time of (his/her) death, the deceased [choose all statements below that apply]

☐ had never married

☐ was married to: _____ (name) _____

☐ was divorced from: _____ (name) _____

☐ was predeceased by (his/her) spouse: _____ (name) _____.

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

3. THAT at the time of (his/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 (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 probate of the last will of the deceased (or specify equivalent document) was granted by the _____ (name of court) in _____ (specify jurisdiction), on the _____ day of _____, _____, and a grant of probate (or specify equivalent document) was issued out of that court on that date.

5. THAT the deceased was of the full age of 18 years at the time of the execution of the will and did not marry since then.

6. THAT (I/we) _____, (am/are) the executor(s) named in the said will and (am/are each) of the full age of 18 years, and (my/our) residence(s) and occupation(s) (is/are) above correctly stated.

7. THAT (I/we) have not released (my/our) rights to be an executor.

8. THAT the deceased died possessed of, or entitled to, immovable property in Manitoba worth \$_____, and moveable property in Manitoba worth \$_____, true particulars of which are set out in the attached inventory.

(date)

(signature(s) of applicant(s))

FORM 74R.2

INVENTORY AND VALUATION OF THE
PROPERTY OF THE DECEASED
IN MANITOBA

Description of Immoveable Property in Manitoba (including any interest in a real property mortgage)	Value of Property
	TOTAL

Description of Moveable Property in Manitoba (list on a separate sheet if necessary)	Value of Property
furnishings and household effects in primary residence and clothing and personal effects furnishings and household effects in other properties motor vehicles and recreation vehicles such as boats, etc — list each separately bank accounts — list each institution separately and indicate the type of account(s) (i.e. savings) and the amount in each account 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 stocks, shares, bonds and debentures held by the deceased — list each separately by company and category and indicate the value by category life insurance payable to the estate — list each separately by insurance company and the amount payable on each policy annuities, pensions, RRSP's, RRIF's, etc payable to the estate — list separately by company and give the value of each miscellaneous property not mentioned — list separately and give the value of each	
	\$
TOTAL VALUE OF ALL MOVEABLE PROPERTY	\$
GRAND TOTAL OF ALL PROPERTY	\$

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 74.06.2*.

FORM 74R.4

REQUEST FOR RESEALING OF FOREIGN GRANT
OF ADMINISTRATION WITH WILL ANNEXED

THE QUEEN'S BENCH

_____ Centre

IN THE ESTATE OF _____, deceased.

(I/We) _____ of the _____ of _____, in
(specify jurisdiction), (occupation(s)), hereby request that the foreign grant of administration with will
annexed (or specify equivalent document) of the property of the deceased be resealed by this court based on
the following information:

1. THAT _____, late of the _____ of _____, in (specify jurisdiction), died on the _____
day of _____, _____, having duly made (his/her) last will on the _____ day of _____, _____,
which is identified by (my/our) signature(s).

2. THAT at the time of (his/her) death, the deceased [choose all statements below that apply]

☐ had never married

☐ was married to: _____ (name)

☐ was divorced from: _____ (name)

☐ was predeceased by (his/her) spouse: _____ (name)

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

3. THAT at the time of (his/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 (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)

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

If, at the time of (his/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 letters of administration with will annexed (or specify equivalent document) of the property of the deceased was granted by the (name of court) of (specify jurisdiction), on the _____ day of _____, _____, and were issued out of that court on that date.

5. THAT no executor is named in that will (or codicil).

OR

5. THAT _____, the executor named in that will, has by deed duly renounced all right and title to the probate and execution of that will (or codicil) (or specify equivalent document).

6. THAT the deceased was of the full age of 18 years at the time of the execution of the will and did not marry since then.

7. THAT the deceased died possessed of, or entitled to, immovable property in Manitoba worth \$_____, and moveable property in Manitoba worth \$_____, true particulars of which are set out in the attached inventory.

8. THAT (I/we), _____, (am/are each) of the full age of 18 years, and (my/our) habitual residence(s) and occupation(s) are above correctly stated, and (I/we) claim to be entitled to administration of the estate as the duly appointed administrator(s) pursuant to the letters of administration with will annexed (or specify equivalent document) granted by the (name of court) of (specify jurisdiction), on the _____ day of _____, _____.

(date)

(signature(s) of applicant(s))

FORM 74R.5

AFFIDAVIT IN SUPPORT OF REQUEST FOR RESEALING OF
FOREIGN GRANT OF ADMINISTRATION WITH WILL ANNEXED

THE QUEEN'S BENCH

_____ Centre

IN THE ESTATE OF _____, deceased.

(I/We) _____ of the _____ of _____,
in (specify jurisdiction), (severally) make oath and say:

1. THAT the allegations set forth in the request for resealing of foreign grant of administration with will annexed (or specify equivalent document) and in the inventory and valuation are true to the best of my knowledge and belief.

2. THAT attached as exhibit "A" to this affidavit is a duly certified copy of the letters of administration with will annexed (or specify equivalent document) issued by the (name of court) together with a certified copy of the last will and testament of the deceased.

3. THAT attached as exhibit "B" to this affidavit is a certificate filed under the hand of the registrar or other proper officer of the court that issued the letters of administration with will annexed (or specify equivalent document), certifying that security has been given in that court in a sum sufficient to cover the assets within the jurisdiction of that court as well as the assets within Manitoba.

OR

3. THAT security has not been given in the court that issued the letters of administration with will annexed (or specify equivalent document) sufficient to cover the assets within Manitoba and that like security is being given, together with this request, covering the assets within Manitoba as would be required in the case of granting original letters of administration in the estate of Manitoba.

4. THAT I am (one of) the administrator(s) named in the letters of administration with will annexed (or specify equivalent document) and I do solemnly swear that I will faithfully administer the property of the deceased according to the law and render a full and true account of my administration when lawfully required.

(SWORN, etc. as in Form 4D)

SASKATCHEWAN

Administration of Estates Act, S.S. 1998, c. A-4.1

Application for resealing

38(1) A person who has been granted letters probate, letters of administration or another document purporting to be of the same nature by a court of competent jurisdiction in any province or territory of Canada, in the United Kingdom, in any other member of the Commonwealth or in any of the states of the United States of America may apply for resealing pursuant to this section.

(2) An applicant for resealing shall:

- (a) produce the document to be resealed to a local registrar and deposit a copy of it with the local registrar; and
- (b) pay the fees prescribed in the regulations for a grant of letters probate or letters of administration.

(3) Subject to section 39, under the direction of the court, the letters probate, letters of administration or other document shall be resealed by the local registrar with the seal of the court.

(4) A document resealed pursuant to subsection (3):

- (a) has the same effect in Saskatchewan as if it had been granted by the court; and
- (b) is subject to any orders of the court or the Court of Appeal as if letters probate or letters of administration had been granted in Saskatchewan.

(5) For the purposes of this section, the following have the same effect as an original:

- (a) a duplicate or an exemplification of letters probate, letters of administration or other document purporting to be of the same nature that is sealed with the seal of the court that granted it;
- (b) a copy of letters probate, letters of administration or other document purporting to be of the same nature that is certified as correct by or under the authority of the court that granted it.

Court of Queen's Bench Rules

Resealing foreign grants

722(1) An application to reseat a foreign grant shall be in Form 117 verified by affidavit in Form 118, and shall comply with the rules relating to probate or administration, as the case may be.

(2) Where the will affects immovable property, including real property and a leasehold or other interest in land in Saskatchewan, it shall be shown that the manner of making, the validity and effect of the will is in accordance with the law of Saskatchewan; the manner of making may be proved by an affidavit or a certified copy of the affidavit filed in the original application.

(3) With an application for grant under this rule there shall be filed the original foreign grant, or a copy thereof certified by the issuing court. An additional copy thereof certified by the issuing court, or a notarial copy, shall be exhibited to the affidavit of the applicant.

R.722.

F. Recalling Foreign Grants

Resealing foreign grants

722(1) An application to reseal a foreign grant shall be in Form 117 verified by affidavit in Form 118, and shall comply with the rules relating to probate or administration, as the case may be.

(2) Where the will affects immovable property, including real property and a leasehold or other interest in land in Saskatchewan, it shall be shown that the manner of making, the validity and effect of the will is in accordance with the law of Saskatchewan; the manner of making may be proved by an affidavit or a certified copy of the affidavit filed in the original application.

(3) With an application for grant under this rule there shall be filed the original foreign grant, or a copy thereof certified by the issuing court. An additional copy thereof certified by the issuing court, or a notarial copy, shall be exhibited to the affidavit of the applicant. R. 722.

G. Ancillary Grants

Ancillary grants

723(1) An application for an ancillary grant shall comply with all the rules relating to probate or administration, as the case may be.

(2) A certified copy of the original foreign grant shall be exhibited to the affidavit of the applicant.

(3) If the application is for a grant ancillary to a grant issued by a court named in section 38 of *The Administration of Estates Act*, the affidavit of the applicant shall show why the foreign grant ought not to be resealed. R. 723. Am. Gaz. Jan. 28/2000.

H. Applications for Small Estates or in Special Circumstances

Applications for small estates or in special circumstances

724(1) An application for an order under section 9 of *The Administration of Estates Act* may be made *ex parte*, or on such notice as the court may require.

(2) The application and the supporting affidavit shall be in Form 119.

(3) All receipts for payment or other dispositions of the property of the deceased made by the person named in the order of the court shall be filed in the office of the local registrar of the judicial centre at which the order was made. R. 724. Am. Gaz. Jan. 28/2000.

APPENDIX TO RULES OF PRACTICE AND PROCEDURE

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No. 117 (R. 722)

APPLICATION FOR RESEALING FOREIGN GRANT

The application of _____ states that:
(name and residence)

1 _____, late of _____,
(Name of deceased) (place of residence)

in _____, died at _____
(province or country) (place of death)

on or about the _____ day of _____, 2 _____, and had
property in Saskatchewan at the time of death.

2 The deceased died testate leaving a will in which the applicant was named as executor
(or died leaving a will in which he named no executor, or in which he named an executor who
has renounced, or has since died, as the case may be, or the deceased died intestate).

3 Letters of probate (or letters of administration or letters of administration with will
annexed as the case may be) were granted in the estate of the deceased on the _____ day
of _____, 2 _____, by the _____
(name of court)

being the court having jurisdiction in testamentary matters in _____
(province or country)

where the deceased had his domicile at the time of death and the applicant is the executor
(or administrator as the case may be) named therein and is of the full age of 18 years.

4 The grant is still in full force and effect and the estate has not been wound up nor has
the applicant been discharged by the court (in case of ad administration, add: nor has the bond
given to such court for the due administration of the estate been reduced, released or
discharged).

5

6

7 Include here paragraphs 3, 4, 5, 6, 7, 8, 13 and 14 of Form 98, modified where necessary; and, in case of the
resealing of a grant, in respect of immovable property in Saskatchewan include also paragraphs 2, 9, 10 and 12 of
Form 98.

APPENDIX TO RULES OF PRACTICE AND PROCEDURE

8

9

10

11

12

13 (In case of administration) The applicant was required by the _____
(name of court)

of _____ to give security for the due administration
(province or country)

of the estate of the deceased in the sum of _____ dollars, and in fixing the amount of such security the value of the estate of the deceased in Saskatchewan was included in the sum of _____ dollars, the total known value of the estate of the deceased being _____ dollars.

14 No other application has been made in Saskatchewan for a grant of letters probate, or letters of administration, or letters of administration with the will annexed, in respect of the estate of the deceased or to have the same resealed, to the best of the applicant(s) information and belief.

Therefore the applicant(s) request(s) that the _____
(name of grant)

issued out of the _____ of _____ in
(name of court) (province or country)
respect of the estate of the deceased be resealed.

DATED at _____, Saskatchewan, this _____ day
of _____, 2_____.

Name of applicant

ALBERTA

Alberta Regulation 130/95, Court of Queen's Bench Act/ Dependent Adults Act, Surrogate Rules

Forms required

13(5) An applicant for an order to re-seal a foreign grant of probate or administration or an ancillary grant must file the following forms and any relevant forms referred to in subrule (1) or (2):

- a. Form NC 32 application;
- b. Form NC 33 affidavit;
- c. a copy, duplicate or exemplification of the foreign grant that complies with section 29(3) of the Administration of Estates Act;
- d. a certificate from the foreign court or some other proof satisfactory to the court that the foreign grant is unrevoked and fully effective;
- e. proof that the signing formalities of any will comply with the law of Alberta if the deceased owned an interest in land in Alberta.

(6) An applicant must file any forms or documents not referred to in subrules (1) to (5) that the court or the circumstances of the estate require.

Grant of re-sealed probate or re-sealed administration

35 (1) An applicant may apply in accordance with rule 13(5) and (6) for an order resealing a foreign grant, as defined in section 29 of the Administration of Estates Act.

(2) An application under subrule (1) must show only the property and debts of the deceased in Alberta.

(3) A foreign grant is proof without more of the death of the person whose estate is dealt with in the grant and that

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

NC 32
COURT FILE NUMBER
COURT

Court of Queen's Bench of
Alberta (Surrogate Matter)

JUDICIAL DISTRICT
ESTATE NAME
PROCEDURE

Application by the personal
representative(s) for a grant of

ORIGINAL JURISDICTION
BOND
NOTICES REQUIRED
COPY OF THE
APPLICATION FILED WITH
THE PUBLIC TRUSTEE'S
OFFICE
PERSONAL
REPRESENTATIVE(S)
NAME(S)
COMPLETE ADDRESS FOR
SERVICE ON THE
PERSONAL
REPRESENTATIVE(S)

Personal Representative

Date

Name: _____

Complete address: _____

Lawyers for Personal Representative

Responsible lawyer: _____

Firm name: _____

Complete address: _____

Phone: _____

Fax: _____

File no.: _____

ORDER: ISSUE THE GRANT AS APPLIED FOR

JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

DATE

NC 33
COURT FILE NUMBER
COURT

Court of Queen's Bench of
Alberta (Surrogate Matter)

JUDICIAL DISTRICT
ESTATE NAME
DOCUMENT

Affidavit by the personal
representative(s) on application
for a grant of _____

DEPONENT(S) NAME(S)

THE DEPONENT(S) EACH SWEAR UNDER OATH OR AFFIRM THAT THE INFORMATION IN THIS AFFIDAVIT AND IN THE ATTACHED SCHEDULES IS WITHIN THE DEPONENTS' KNOWLEDGE AND IS TRUE. WHERE THE INFORMATION IS BASED ON ADVICE OR INFORMATION AND BELIEF, THIS IS STATED.

Applicant(s)

1. The applicant(s) are entitled to apply for a grant because the applicant(s) are _____.

Schedules Attached

2. The following schedules are part of this affidavit. They are correct to the deponents' information and belief.

- | | |
|----------|---------------------------------------|
| 2.1 NC 3 | Schedule 1 Deceased |
| 2.2 NC 4 | Schedule 2 Will |
| 2.3 NC 5 | Schedule 3 Personal representative(s) |
| 2.4 NC 6 | Schedule 4 Beneficiaries |
| 2.5 NC 7 | Schedule 5 Inventory |

Documents Attached

3. The following documents are part of this affidavit.

- 3.1 Certified copy of probate / administration issued by the (insert name and jurisdiction of court) _
3.2 Certificate of the (insert name and jurisdiction of court) ____ that the grant is unrevoked and fully effective.
3.3 NC 17 Affidavit to dispense with bond

The schedules and documents that are part of this affidavit provide all the information required in this application by the *Surrogate Rules* and have been prepared by me or by my lawyer on my behalf.

Notices

4. The applicant(s) have served the following notices as required and in the manner prescribed by the *Surrogate Rules*.

- | | |
|-----------|--|
| 4.1 NC 19 | Notice(s) to beneficiaries (residuary) |
| 4.2 NC 20 | Notice(s) to beneficiaries (non residuary) |
| 4.3 NC 21 | Notice(s) to beneficiaries (intestacy) |
| 4.4 NC 22 | Notice to spouse of deceased <i>Matrimonial Property Act</i> |
| 4.5 NC 23 | Notice to spouse/adult interdependent partner of deceased <i>Dependants Relief Act</i> |
| 4.6 NC 24 | Notice to a dependent child of the deceased <i>Dependants Relief Act</i> . |

BRITISH COLUMBIA

Estate Administration Act, R.S.B.C. 1996, c.122

Disclosure on application for probate or administration

- 111 (1) An applicant for a grant of or to reseal probate or letters of administration must, at the time of the application to the court,
- a. declare that the applicant has made a diligent search and inquiry to ascertain the assets and liabilities of the deceased, and
 - b. disclose the assets and liabilities of the deceased, irrespective of their nature, location or value, which pass to the deceased's personal representative on the deceased's death.
- (2) If the applicant or personal representative learns of an asset or liability of the deceased that was not disclosed or properly disclosed under subsection (1), the applicant or personal representative must disclose forthwith to the court that further or supplementary information.
- (3) The content and form of the declaration and disclosure document under this section must be as required in the Rules of Court.

NORTHWEST TERRITORIES

Judicature Act, R.S.N.W.T. 1988, c. J-1

Giving effect to probate, etc. granted outside Territories

14. (1) Where probate, letters of administration or any other legal document purporting to be of the same nature granted by a court of competent jurisdiction in

- (a) a province or the Yukon Territory,
- (b) the United Kingdom,
- (c) any British possession,
- (d) any nation or territory that is a member of the British Commonwealth of Nations,
- (e) one of the states of the United States, or
- (f) any territory or dependency of the United States,

is produced to and a copy of it deposited with the Clerk of the Supreme Court and the prescribed fees are paid as on a grant of probate or administration, the probate or letters of administration or other document shall, under the direction of the judge, be sealed with the seal of the Supreme Court, and thereupon is of like force and effect in the Territories as if it had been originally granted by the Supreme Court, and is so far as regards the Territories, subject to any order made by the Supreme Court or on appeal therefrom, as if the probate or letters of administration had been granted thereby.

(2) Letters of administration or a legal document purporting to be of the same nature granted by a court of competent jurisdiction as set out in subsection (1) shall not be sealed with the seal of the Supreme Court until

- (a) a certificate under the hand of the registrar of the court that issued the letters or legal document is filed with the Clerk, which states that security has been given in that court in a sum of sufficient amount to cover the assets within the jurisdiction of that court and the assets within the Territories; or
- (b) in the absence of the certificate referred to in paragraph (a), like security to that referred to in paragraph (a) is given to the Supreme Court so as to cover the assets within the Territories and the assets within the jurisdiction of the court granting the original letters of administration.

NUNAVUT

Probate and Administration Rules of the Nunavut Court of Justice, SOR/79-515

Resealing and Ancillary Grants

29. (1) Where any probate or letters of administration or other legal document purporting to be of the same nature or an exemplification or certified copy thereof under the seal of the Court granted by a court of competent jurisdiction in

- (a) any province of Canada, or
- (b) the United Kingdom or any British dominion, state, province, colony or dependence

is produced to and a certified copy thereof deposited with the clerk of the Court together with an inventory and valuation of the property situate in Nunavut and the affidavit of the applicant in Form 20 or 21, as the case may be, together with a certificate from the court making the original grant or an affidavit of evidence to the satisfaction of the Court that the grant is wholly unrevoked and of full force and effect, and if the prescribed fees are paid as on a grant of probate or administration, then the probate or letters of administration or such other document shall, under the direction of the Court, be sealed by the clerk with the seal of the Court and shall thereupon be of the same force and effect in Nunavut as if it had originally been granted by the Court, and shall be subject to any order of the Court or any appeal therefrom as if the probate or letters of administration had been granted thereby.

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Nunavut
(used NWT
legislation)

In witness whereof this Grant has been issued, under the seal of the Court, pursuant to the *fiat* of Mr. Justice (SEAL)

Clerk of the Court

NOTE: This document must be endorsed pursuant to Rule 69(2).

En foi de quoi le présent décret a été accordé, revêtu du sceau de la Cour, conformément au *fiat* de M. le juge (SCEAU)

Greffier de la Cour

N.B. Le présent document doit être signé au verso conformément à la règle 69(2).

FORM 20

AFFIDAVIT OF EXECUTOR FOR RESEALING PROBATE

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the estate of late of , deceased.

I, of MAKE OATH AND SAY:

1. THAT the deceased died on the day of 19 , at the of , in which place had lived for years and upwards, and where had residence, and was domiciled and that he had at such time property in the Northwest Territories and that I being the said executor named in the will duly proved the same in (state the name of the court in which letters probate were granted) on the day of 19 .

2. THAT I am applying for the probate of the will (or the certified copy of the probate of the will so granted to me and) herewith produced and marked as Exhibit "A" to this my affidavit to be resealed in this court in respect of the property of the deceased in the Northwest Territories, which probate is unrevoked and of full force and effect.

3. THAT the fair market value of the whole property of the deceased in the Northwest Territories, which he in any way died possessed of or entitled to and for and in respect to which resealing is to be granted, is under \$_____ and that full particulars and a true appraisal of all property together with a schedule of all liabilities (below) (in the Schedule of Assets and Liabilities set forth in Schedule A hereto annexed) in the Northwest Territories are set out, so far as it has been possible to ascertain.

4. THAT the beneficiaries entitled to share in the said estate are set forth in Schedule B hereto annexed.

5. THAT the deceased at the time of his/her death was (married, unmarried, widower, widow, or divorced) and left

FORMULE 20

AFFIDAVIT DE L'EXÉCUTEUR TESTAMENTAIRE VISANT À OBTENIR UNE RÉAPPOSITION DE SCEAU SUR UNE HOMOLOGATION

COUR SUPRÊME DES TERRITOIRES DU NORD-OUEST

IN RE: La succession de feu de

Je, soussigné, de , après serment, déclare et dis:

1. Le *de cuius* est décédé le 19 , dans le (la) de où il avait vécu pendant plus de ans, et où il avait sa résidence et son domicile; il avait, à ce moment là, des biens dans les territoires du Nord-Ouest; je suis l'exécuteur testamentaire nommé dans le testament dont j'ai obtenu l'homologation (donner le nom du tribunal qui a octroyé les lettres d'homologation) le jour de 19 .

2. Je demande l'homologation du testament (ou de la copie conforme de l'homologation du testament qui m'a été accordée) annexé aux présentes et coté Pièce «A» et je demande à la cour d'y réapposer son sceau pour autoriser l'administration des biens du *de cuius* qui se trouvent dans les territoires du Nord-Ouest; l'homologation originale n'a pas été révoquée et est encore en vigueur.

3. La juste valeur marchande de tous les biens du *de cuius* se trouvant dans les territoires du Nord-Ouest qu'il possédait ou auxquels il avait droit et à l'égard desquels la réapposition du sceau est demandée, est inférieure à \$_____ ; tous les renseignements concernant les biens se trouvant dans les territoires du Nord-Ouest avec une juste évaluation de ceux-ci et une liste du passif (ci-dessous) (sous la rubrique «Actif et passif» présentée à l'annexe A des présentes) dans les territoires du Nord-Ouest sont présentés avec toute l'exactitude possible.

4. Les héritiers ayant droit à une part de la succession figurent à l'annexe B.

5. A l'époque de son décès, le *de cuius* était (marié, célibataire, veuf ou divorcé); lui survivent (son conjoint et ses

him/her surviving (lawful spouse and children, here list the names, ages and addresses respectively of such spouse and children and whether the spouse or any child who is 19 years of age or over is mentally or physically disabled and by reason thereof is unable to earn a livelihood and the name of any committee appointed for the estate of any disabled spouse or child).

6. THAT neither nor the witnesses to the annexed will, is a beneficiary, nor the spouse of a beneficiary named in such will (or the contrary as the case may be).

THAT I will surrender to this court the grant to be issued to me whenever required by the court or a judge thereof.

SWORN BEFORE ME at)
in the Northwest Territories)
this day of)
19 .)

A Commissioner for Oaths in and for
the Northwest Territories.

FORM 21

AFFIDAVIT LEADING TO RESEALING LETTERS OF ADMINISTRATION

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the estate of
late of , deceased.

I, of , MAKE OATH
AND SAY:

1. THAT the deceased died on the day of
, 19 , at the of in the
of , in which place had lived for
years and upwards, and was domiciled and that
had at such time property in the of
and that I am the administrator of estate,
duly appointed by letters of administration granted to me by
the Court at , the day of ,
19 .

2. THAT I am applying for the letters of administration (or
the certified copy of letters of administration so granted to me
and) herewith produced and marked as Exhibit "A" to this my
affidavit to be resealed in this Court in respect of the property
of the deceased in the Northwest Territories, which letters are
unrevoked and of full force and effect.

enfants légitimes; donner ici les noms, âges et adresses respec-
tifs du conjoint et des enfants en indiquant, le cas échéant, si
l'un d'eux, âgé de plus de 19 ans, est atteint d'une incapacité
physique ou mentale qui l'empêche de gagner sa vie et le nom
de tout curateur nommé pour gérer son patrimoine).

6. Les témoins au testament ci-annexé,
et , ne sont ni héritiers ni légataires en
vertu dudit testament, ni le conjoint d'un tel héritier ou
légataire.

7. Je m'engage à remettre à la présente cour, à sa demande
ou celle de l'un de ses juges, le décret d'homologation qu'elle
m'aura délivré.

ASSERMENTÉ(E) DEVANT MOI à)
dans les territoires)
du Nord-Ouest, le jour de)
19)

Commissaire aux serments pour les
territoires du Nord-Ouest.

FORMULE 21

AFFIDAVIT VISANT À OBTENIR UNE RÉAPPOSITION DE SCEAU SUR DES LETTRES D'ADMINISTRATION

COUR SUPRÊME DES TERRITOIRES DU NORD-OUEST

IN RE: La succession de feu , de

Je, soussigné, de
après serment, déclare et dis:

1. Le *de cuius* est décédé le 19 , dans le (la)
de dans le (la) de où il
avait vécu pendant plus de ans et y était domicilié;
il avait, à l'époque de son décès, des biens dans le
(la) de ; je suis l'administrateur de la
succession de , dûment nommé dans les lettres
d'administration que m'a octroyées le tribunal de , le
19 .

2. Je demande au tribunal de réapposer son sceau sur les
lettres d'administration (ou une copie conforme de ces lettres)
cotées (cotée) Pièce «A» produite et jointe en annexe au
présent affidavit, pour autoriser l'administration des biens du
de cuius qui se trouvent dans les territoires du Nord-Ouest; les
lettres d'administration originales n'ont pas été révoquées et
sont encore en vigueur.

[47]

3. THAT the fair market value of the whole property of the deceased in the Northwest Territories, which he in any way died possessed of or entitled to and for and in respect to which resealing is to be granted is under \$_____ and that full particulars and a full appraisal of all property are set out (below) (in the Schedule of Assets and Liabilities set forth in Schedule A hereto annexed), so far as it has been possible to ascertain.

4. THAT the beneficiaries entitled to share in the said estate are set forth in Schedule B hereto annexed.

5. THAT the deceased at the time of his/her death was (married, unmarried, widower or divorced) and left him/her surviving (lawful spouse and children, here list the names, ages and addresses respectively of such spouse and children and whether the spouse or any child who is 19 years of age or over, is mentally or physically disabled and by reason thereof is unable to earn a livelihood and the name of any committee appointed for the estate of any disabled spouse or child).

6. THAT I will surrender to this court the grant to be issued to me whenever required by the court or a judge thereof.

SWORN BEFORE ME at)
in the Northwest Territories)
this day of)
19 .)

A Commissioner for Oaths in and
for the Northwest Territories.

FORM 22

BOND FOR ADMINISTRATORS

KNOW ALL MEN BY THESE PRESENTS that we, A.B., of the _____ of _____ in the Northwest Territories, C.D., of the _____ of _____ in the Northwest Territories and E.F., of the _____ of _____ in the Northwest Territories, are jointly and severally bound unto G.H., the clerk of the Supreme Court of the Northwest Territories, in the sum of \$_____, to be paid to the said G.H. or the clerk of the court for the time being, for which payment well and truly to be made we bind ourselves, and each of us for the whole, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals.

DATED the _____ day of _____, 19 _____,

The condition of this obligation is such that if the above named A.B., who has applied to be appointed the administrator of all the property (or as the case may be) of _____ late of the _____ of _____ in the _____ of _____ deceased, who died on or about the _____ day of _____, 19 _____, do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all

3. La juste valeur marchande de tous les biens du *de cuius* se trouvant dans les territoires du Nord-Ouest qu'il possédait ou auxquels il avait droit et à l'égard desquels l'apposition de sceau est demandée est inférieure à \$_____; tous les renseignements concernant les biens, avec une juste évaluation de ceux-ci, sont présentés (ci-dessous) (sous la rubrique «Actif et passif» présentée à l'annexe A des présentes) avec toute l'exactitude possible.

4. Les héritiers ayant droit à une part de la succession figurent à l'annexe B.

5. A l'époque de son décès, le *de cuius* était (marié, célibataire, veuf ou divorcé); lui survivent (son conjoint et ses enfants légitimes; donner ici les noms, âges et adresses respectifs du conjoint et des enfants en indiquant, le cas échéant, si l'un d'eux âgé de plus de 19 ans, est atteint d'une incapacité physique ou mentale qui l'empêche de gagner sa vie et le nom de tout curateur nommé pour gérer son patrimoine).

6. Je m'engage à remettre à la présente cour, à sa demande ou celle de l'un de ses juges, le décret d'homologation qu'elle m'aura délivré.

ASSERMENTÉ(É) DEVANT MOI à)
dans les territoires)
du Nord-Ouest, le)
jour de 19)

Commissaire aux serments pour
les territoires du Nord-Ouest.

FORMULE 22

CAUTIONNEMENT DES ADMINISTRATEURS

Prenez avis que nous, soussignés, A.B., C.D. et E.F. respectivement du (de la) _____ de _____ dans les territoires du Nord-Ouest, nous engageons solidairement à verser à G.H., greffier de la Cour suprême des territoires du Nord-Ouest ou au greffier au moment considéré, la somme de \$_____; nous sommes, chacun d'entre nous, responsables du paiement de la somme entière, ainsi que chacun de nos héritiers, exécuteurs testamentaires et administrateurs. Et nous avons apposé notre sceau.

(localité), ce _____ jour de _____ 19 _____

Cette obligation est assortie de la condition suivante: si A.B., qui a demandé d'être nommé administrateur de la totalité (ou d'une partie, selon le cas) des biens de feu _____, de _____, dans le (la) _____ de _____, décédé le ou vers le _____ 19 _____ fait, lorsqu'il lui est légalement demandé de le faire, un inventaire fidèle de tous les biens du *de cuius* qui sont ou seront en la possession de A.B. ou dont il a ou aura

YUKON

Land Titles Act, R.S.Y. 2002, c. 130

Vesting of Land

108(1) Whenever the owner of any land, for which a certificate of title has been granted, dies, the land, subject to the provisions of this Act, vests in the personal representative of the deceased owner.

- (2) The personal representative shall, before dealing with the land, make application in writing in Form 26 to the registrar to be registered as owner of the land in a representative capacity and the application shall be verified by affidavit of the applicant or someone on their behalf in Form 4.
- (3) The applicant shall produce to the registrar, at the time of making their application, the duplicate certificate, the probate of the will of the deceased owner, or letters of administration, or the order of the court authorizing them to administer the estate of the deceased owner, or a copy certified by the court, of the probate, letters of administration, or order, as the case may be, and thereupon the registrar shall enter a memorandum of the application on the certificate of title.
- (4) For the purposes of this Act, the probate of a will granted by the proper court of any province of Canada or of the United Kingdom, or an exemplification thereof, is sufficient. S.Y. 1991, c.11, s.108.