



ESTATE ADMINISTRATION ON-RESERVE

A Guide for Executors and Administrators in British Columbia

This document contains references to forms and sample letters. These can be found in the **Estate Administration On-Reserve: Templates Package** available on request from the Estates Unit and online at the Legal Services Society of BC's Aboriginal website at <http://aboriginal.legalaid.bc.ca/> (click on "On Reserve" then select "Wills and Estates" from the drop down menu). To request the **Templates Package** from Indigenous Services Canada, contact the BC Region Estates Unit in Vancouver at (604) 775-5100 or 1-888-917-9977 (toll free in BC), or email us at BCestates@canada.ca.

Estates Unit – BC Region
v. 8 February 2018



IMPORTANT NOTICE TO READERS OF THIS BOOKLET:

This booklet contains general information only, and is intended for reference and education only. It has been developed to provide an overview of the routine tasks of administering a simple estate under the *Indian Act*. If you are the administrator or executor of an estate and are not sure if the estate is a simple one or not, seek legal advice before proceeding with the administration. The contents of this booklet should not be used as a substitute for legal advice, and nothing in this booklet is intended to provide legal advice or to be relied upon in any dispute, claim or proceeding.

Despite our best efforts, there may be errors or omissions in the information provided in this booklet, and we therefore do not guarantee that the information provided is correct, complete, or up-to-date. The relevant statutes and regulations should be consulted for all purposes of interpreting and applying the law.

This booklet was prepared by the program staff of the BC Region Estates Unit in March 2008 and has since been revised as follows:

October 2009: Added information on the Department's policy concerning section 50 of the *Indian Act*.

August 2010: Added information on dealing with real property (fee simple or strata-titled land) located off-reserve in British Columbia.

January 2011: Added information about the Templates Package published in Jan 2011.

October 2011: Revised to reflect the passing of the CEP application deadline and the change of the Department's name to Aboriginal Affairs and Northern Development Canada ("AANDC").

October 2012: Added information on funding sources for funeral costs, revised to reflect passing of deadlines to apply for Indian Residential Schools compensation, and updated website links.

April 2016: Revised to reflect the change of the Department's name to Indigenous and Northern Affairs Canada ("INAC").

February 2018: Revised to add MRP information and to change the Department's name to Indigenous Services Canada.

***We recommend that you seek legal advice
before acting as the executor or administrator of an estate.***

Links to third-party websites are provided in this booklet for your convenience. We are not responsible for the information available on these websites, and we do not warrant that the information available on these websites is correct, complete, or up-to-date.

Estates Unit, BC Region
February 2018

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Introduction

This guide is for people who have been appointed by the **Indigenous Services Canada** (“ISC”) office in Vancouver as the executor or administrator of the estate of a family member or friend who has passed away. It supplements the information in the publication *Writing Your Own Will: A Guide for First Nations People Living On-Reserve in British Columbia*, which is available (free) from the Aboriginal Financial Officers’ Association of BC (www.afoabc.org - click on “Resources” and then select “Publications”), or on request from the Estates Unit at ISC in Vancouver.

This guide is not for people who are looking after the estate of a First Nations person who lived off-reserve or on treaty settlement lands.

The contact information for government offices and other agencies provided in this booklet applies only in British Columbia.

There are references to forms and sample letters (in bold light-blue font) throughout this Guide. These forms and letters are in a **Templates Package** that is available on request from the Estates Unit. Links to websites (underlined, in blue font) are available by clicking on them.

1. When a Family Member Dies

Obtaining a Death Certificate

Someone in the family must obtain the deceased’s *Death Certificate*. This document is needed to report the death to ISC.

A *Death Certificate* can be obtained directly from the funeral home for a short period after a person passes away. Later, a *Death Certificate* may be obtained from the BC Vital Statistics Agency (see section 3 of this Guide (**Wills Search**) for further information).

2. Funeral Arrangements

The person who enters into a contract with the funeral home (usually, a family member of the deceased) is responsible for paying for the funeral. **Reasonable** funeral costs may then be claimed as a debt against the deceased’s estate. Some First Nations may also provide financial assistance with funeral costs.

The Canada Pension Plan (CPP) Death Benefit provides a one-time payment to, or on behalf of, the estate of a deceased contributor. The maximum available benefit is \$2,500, but the amount that is actually paid in any given case depends on the amount of CPP contributions made by the deceased person during his or her lifetime. (See section 10.F. of this Guide (**Government Agencies to Contact**), for information on applying for this benefit).

In addition to the CPP Death Benefit, a supplement may be provided to pay necessary funeral services costs of any person who dies in BC if the family unit or the estate of the deceased person has no immediate resources to meet these costs. There is no requirement that the deceased person, or the person’s family, must be social assistance recipients to qualify for this supplement. In the case of a First Nations person who lived on-reserve in BC, payment of this funeral costs supplement would be handled by the social assistance office on-reserve. In the case of a First Nations person who lived off-reserve in BC, payment of this funeral costs supplement would be handled by the BC Ministry of Social Development through its social assistance offices off-reserve.

For general information on funeral services in BC see the website of the Funeral Services Association of BC: www.bcfunerals.com or

See the title page of this Guide for information on obtaining a copy of the Templates Package.

3. Look for a Will

The family should check the deceased's home and anywhere else that he or she might have stored important documents, to see if there was a Will. Once ISC in Vancouver is notified of the death, the staff there will also search their Wills Vault. Please note that ISC no longer accepts Wills for storage.

The deceased may have registered his or her Will with the BC Vital Statistics Agency, so a request to search for a Wills Notice (which identifies that a Will has been registered, describes the person who has made the Will, where the Will is located and the date of the Will) should be submitted to the BC Vital Statistics Agency. There is a fee for this search.

For more information on a Wills Search (or to obtain a Birth or Death Certificate), and to see the current fees, see the website of the BC Vital Statistics Agency: <http://www.vs.gov.bc.ca/> or call (250) 952-2681.

4. Notify Indigenous Services Canada

ISC must be notified of the death. The Department will require basic information such as the deceased's Indian Registry Number, the name of the deceased's First Nation, whether there is a Will, and the date of death. If there is a Will, the Department must be provided with the **original** for probate purposes; it will be returned once probate (which is called "approval" in the *Indian Act*) has been granted.

ISC requires proof of death and will request that a copy of the *Death Certificate* be forwarded to the Department.

To reach the Estates Unit of ISC in Vancouver, please call (604) 775-5100 or toll free in BC 1-888-917-9977, or email us at BCestates@aandc-aadnc.gc.ca.

5. ISC Determines if it has Jurisdiction over the Estate

After ISC has been notified of the death, the Department will take steps to determine if the deceased was registered (or entitled to be registered) under the *Indian Act* and was "**ordinarily resident**" on reserve or Crown land at the time of his or her death. ISC will confirm the residency of the deceased with his or her First Nation.

It is possible in some cases for a person to be considered "ordinarily resident" on-reserve even if the person was not living on-reserve at the time of his or her death. Some examples include:

- A person who lived on-reserve all their life but had to leave in order to move into a long-term care facility or receive hospital care during the last years of their life;
- A student temporarily living away from the reserve to attend college or university;
- A fisher, hunter or seasonal farm worker temporarily living away from the reserve for their work.

6. If Your Family Member Did Not Live On-Reserve

If the deceased was not "ordinarily resident" on-reserve, then ISC will not be involved in the administration of the deceased's estate and **the information in this Guide does not apply**. The administration of the estate of a deceased First Nations person who lived off-reserve is under the jurisdiction of the province in which they lived, not the *Indian Act*.

Under the law of British Columbia, for example, the executor (if there is a Will) or the administrator (if there is no Will) is appointed by the Supreme Court of BC. If the person named as the executor in the Will, or a family member is not willing or able to administer the estate, and the estate is of sufficient value, the Public Guardian and Trustee of British Columbia **may** administer the estate for a fee.

For more information on how estates are administered under BC law, go to <http://www2.gov.bc.ca/gov/content/life-events/death-and-bereavement/wills-estates>

For information and forms to use in administering an estate yourself under BC law, you may wish to purchase a copy of the Self-Counsel Press publication entitled *British Columbia Probate Kit*, available at many drugstores, stationers and bookstores, or online at www.self-counsel.com. It costs about \$40.00.

For more information on the services of the Public Guardian and Trustee of British Columbia see the website: www.trustee.bc.ca and click on "Estate Administration", or contact the Public Trustee in Vancouver at (604) 660-4444 or through Service BC (toll free in BC) at 1-800-663-7867.

It is prudent to see a lawyer for some initial advice, even if you believe the estate is simple and you plan on administering the estate yourself. See section 9 of this Guide (***Do I need a lawyer?***) for information on how to find a lawyer.

7. ISC Makes an Initial Determination of the Heirs and/or Beneficiaries

In many cases, family members do not leave a Will and ISC must refer to section 48 of the *Indian Act* (see **Appendix C** of this Guide for the full text of section 48) and the deceased's Indian Registry records to determine the next-of-kin who are entitled to inherit (called **heirs**). The *Indian Act* sets out the legal rules for who inherits the deceased's assets when the deceased did not

leave a Will.

If there is a Will, the people entitled to inherit (called **beneficiaries**) are named in the Will.

8. The Minister Appoints a Personal Representative

A personal representative is a person who looks after and distributes the estate of a deceased person. If there is a Will, the name for this person is the **executor**; if there is no Will or the person named as executor in the Will is unable or unwilling to act, the name for this person is the **administrator**.

A. If There is No Will

If there is no Will, ISC writes to the heirs (as determined by section 48 of the *Indian Act*) and asks if they would like to administer the estate or nominate someone to administer the estate. ISC then appoints an administrator from among the applicants.

If none of the heirs apply to administer the estate or nominate someone else who is willing to do so, an Estates Officer at ISC will administer the estate as administrator of last resort.

B. If There is a Will

If there is a Will and the Will names an executor, ISC will ask the named executor to apply to administer the estate.

If the executor is willing and able to act, then ISC will approve (probate) the Will and appoint the named executor as personal representative.

Please note that a Will is of no legal force and effect until it has been approved (probated) by the Minister of Indian Affairs.

In “approving” a Will, the Minister is checking to confirm that the Will document meets the technical requirements to be a valid Will, i.e., that it is a genuine document (not a forgery) that is in writing, signed by the deceased, disposes of property (such as personal belongings or land), and is intended to take effect upon death. In “approving” a Will, the Minister is not reviewing or otherwise evaluating any of the gifts made by the deceased in the Will.

If there is a Will but the Will does not name an executor or the named executor is unable or unwilling to act as executor, ISC writes to the beneficiaries named in the Will and asks if they would like to administer the estate or nominate someone else to administer the estate.

If none of the beneficiaries apply to administer the estate or nominate someone else to do so, an Estates Officer at ISC will administer the estate as administrator of last resort.

C. Lands Search

The Department will do a search of the Indian Land Registry to determine if there is an interest in reserve land registered in the name of the deceased and will advise the appointed executor or administrator of the results. Please note this search is limited to registered on-reserve interests (interests that are registered in the Indian Lands Registry under the *Indian Act*, or in the First Nation’s own land registry system under the *First Nations Land Management Act*, for First Nations that manage their own lands).

9. Do I Need a Lawyer?

It is prudent to see a lawyer for some initial advice, even if you believe the estate is simple and you plan on administering the estate yourself. If the estate includes a business or off-reserve land, or may otherwise be complicated, you should seek legal assistance. The costs of

legal assistance needed to settle the estate may be paid from the estate’s assets.

For assistance in finding a lawyer please contact:

- **Canadian Bar Association’s Lawyer Referral Service**
This service provides a half-hour consultation with a lawyer for about \$30.00.
Telephone: (604) 687-3221 or 1-800-663-1919
Website: www.cbabc.org/for-the-public/lawyer-referral-service
- **The Law Centre**
An in-person service provided by University of Victoria law students in downtown Victoria.
1221 Broad Street, Victoria, BC V8W 2A4
Telephone: (250) 385-1221
Website: www.thelawcentre.ca
- **UBC First Nations Legal Clinic**
An in-person service provided by UBC law students in downtown Vancouver.
101-148 Alexander Street
Vancouver, BC V6A 1B5
Telephone: (604) 684-7334
- **UBC Law Students’ Legal Advice Program**
An in-person service provided by UBC law students at clinics located throughout the GVRD. Also has a Legal Advice Manual viewable on their website.
Telephone: (604) 822-5791
Website: www.lslap.bc.ca
- **Yellow Pages**
Look in the yellow pages under “Lawyers” to find a lawyer who specializes in wills and estates law or Aboriginal law.

10. When you are the Personal Representative

Generally speaking, the duties of the personal representative are to gather and protect the assets of the estate, pay the debts of the estate

from the assets, determine who the heirs or beneficiaries are, and distribute the assets. The following is a list of some of the duties of a personal representative. **Because each estate is unique, the list is not exhaustive.**

A. Notify Others

You will need to notify government agencies and companies with whom the deceased dealt that s/he has passed away and that you have been appointed as the deceased's personal representative. Banks, credit unions, credit card companies, utility companies (for example, FortisBC and Telus), insurance companies, and Canada Pension Plan are examples of some government agencies and companies that **may** need to be advised of the deceased's death.

If the deceased left a Will, you must provide a copy of the Will to every person named in it, **and** to every person not named in it who would have inherited from the deceased if the deceased had not made a Will. See section 10.N. of this Guide (*Determining the Heirs when there is no Will*) for additional information on determining who you must provide a copy of the Will to.

B. Determine and Protect the Assets of the Estate

As personal representative, you must determine what property the deceased owned, e.g. land, money, pension and personal belongings. You need to make a list of all of the estate's assets, including the value of each asset.

You may wish to collect estate valuables such as jewelry, paintings and cultural artifacts, and store them for safekeeping.

You may also wish to have the deceased's mail redirected to you. To do this, go to any Post Office – bring your Appointment document and the *Death Certificate* for the deceased with you.

If you believe there was an interest in reserve land registered in the name of the deceased, please contact an Individual Lands Holding Specialist for the deceased's First Nation at ISC in Vancouver at (604) 775-5100.

If you believe that the deceased was receiving lease, permit or other income for his or her reserve land, contact a Land Management & Leasing Officer at ISC in Vancouver at (604) 775-5100.

You are also required to protect the assets of the estate. If the deceased owned a house or other buildings, make sure that the house and buildings are insured by the estate until you have legally transferred these assets to those entitled to inherit them. You may also need to take out insurance on other property of the estate as required. These insurance costs may be paid from the assets of the estate.

If the deceased owned a vehicle, contact the Insurance Corporation of British Columbia (ICBC) at (604) 661-2800 or see ICBC's website: www.icbc.com (Use the search term "MV1432" in the search box at the top of the screen to see a Checklist for doing Estate transfers). Note that the deceased's car should normally not be used until it has been transferred to the person entitled to inherit it and that person has arranged for insurance.

Letters should be sent to banks and credit unions in the area where the deceased lived, to inquire if the deceased held any accounts and to direct the release of funds to the personal representative.

C14: Enquiry Letter to Bank or Credit Union

C15: Enquiry Letter to the “Big 5” Banks

All estate funds should be placed in an account at a bank, credit union or trust company. In order to open a separate account in the name of the estate, most banks and credit unions will require you to provide a certified copy of your Appointment document and the *Death Certificate* – contact the bank or credit union for any additional requirements.

If the deceased owned a fishing boat or other registered vessel, contact the Registrar of Ships at Transport Canada. For further information about vessel registration, and to locate the Ships’ Registry in your area, see Transport Canada’s website: <http://www.tc.gc.ca/eng/menu.htm> and click on “Marine”.

For information on dealing with a fishing licence in the name of the deceased, please see Fisheries and Oceans Canada’s website: www.dfo-mpo.gc.ca or contact the Vancouver regional office at (604) 666-0384.

For information on trap lines, contact the BC Ministry of Environment at 1-800-663-7867, or see the website: <http://www.env.gov.bc.ca/pasb/applications/process/trapper.html>

The deceased’s employer should be contacted to inquire if any outstanding wages are owed to the deceased. If the deceased had a pension plan, contact the employer for information on what will happen to it.

If the deceased had life insurance (either through work, or purchased privately), contact the insurer. In cases where the deceased named a specific beneficiary of his or her life insurance policy, the insurance proceeds are not considered an asset of the estate. However, where no beneficiary is named, insurance proceeds are considered an asset of the estate and the personal representative should arrange to collect these funds.

C. If the Deceased owned land off-reserve

If you believe the deceased owned land off-reserve in British Columbia, see the BC Land Title and Survey website at <http://www.ltsa.ca> for an overview of the land transfer process.

A search of BC Land Title records will tell you what interests in off-reserve land the deceased held and whether there were any charges or mortgages. A lawyer or notary can do this search for you for a small fee.

“Real property”, which means land and improvements to it such as houses, must be transferred in accordance with the laws of the place where the land is located. This means that fee simple or strata-titled property located off-reserve in British Columbia cannot be transferred using estate administration documents issued under the *Indian Act*.

If the assets of the estate of a First Nation person who was ordinarily resident on-reserve include land located off-reserve in British Columbia, the executor will need to request an Order from ISC referring the transfer of the fee simple land to the BC Supreme Court (Probate Registry), and the executor will then need to obtain a grant of probate (if there was a Will) or administration (if there was no Will) from the Probate Registry in order to be able to register the transfer of the fee simple land from the estate to an heir or beneficiary in the BC Land Title Office.

See section 6 of this Guide (*If Your Family Member Did Not Live On-Reserve*) for information on proceeding under BC law.

If the deceased held land off-reserve, you may wish to seek legal advice on behalf of the estate, See section 9 of this Guide (*Do I need a lawyer?*) for information on how to find a lawyer.

D. If the Deceased had Joint Ownership of Certain Assets

The deceased may have owned property (e.g., a bank account or land) jointly with another person. The deceased's share of an asset that was owned jointly with another person as **tenants-in-common** is part of the estate and must be dealt with by the personal representative.

However, an asset of the deceased that was held in **joint tenancy with a right of survivorship** (whether a bank account, or land) does not form part of the deceased's estate and is therefore not normally dealt with by the personal representative. Usually, the surviving joint tenant simply needs to provide (e.g.) the bank with proof of the joint account-holder's death, and the bank will then transfer the account into the sole name of the surviving joint account-holder.

E. Government Agencies to Contact

Various federal and provincial government agencies will likely need to be contacted in order to be advised of the deceased's death and to inquire if any outstanding benefits are owed to, or owed by, the estate. You will need to know the deceased's Social Insurance Number before submitting enquiries.

C5: Letter requesting SIN Information

The government agencies you will likely need to contact may include:

- **Employment and Social Development Canada (ESDC):** Contact ESDC to inquire about possible Canada Pension Plan (CPP)

Death Benefit and/or Survivor Benefits that may be payable, as well as to terminate the deceased's CPP benefits, Old Age Security (OAS) and Guaranteed Income Supplement (GIS), and/or Employment Insurance (EI).

C7: Enquiry Letter - CPP

C8: Enquiry Letter - CPP Death Benefit inquiry

C9: Enquiry Letter - OAS and GIS

C11: Enquiry Letter - EI

C13: Letter enclosing CPP Death Benefit application

To download an Application form for the Canada Pension Plan Death Benefit, go to:

<http://www.servicecanada.gc.ca/fin/index.jsp?app=prfl&frm=isp1200&lang=eng>

For more information, see the ESDC website at <http://www.esdc.gc.ca/en/cpp/index.page>. If you receive a government cheque payable to the deceased and dated after the month of his or her death, contact the government agency; you may need to return the cheque. Note: Never destroy a government cheque! If the deceased is not entitled to the payment, the cheque must be returned to the government agency.

C12: Letter enclosing cheque(s) for return

- **BC Ministry of Social Development:** Contact this agency regarding the deceased's Senior's Supplement: <http://www.gov.bc.ca/hsd/>

C6: Enquiry Letter - BC Senior's Supplement

- **Canada Revenue Agency (CRA):** The personal representative must ensure that the deceased's tax returns are filed, and that any income taxes and/or GST owing are paid (to the extent that the estate has the funds to pay these debts).

C16: Enquiry Letter - Request Tax Info

C17: Enquiry Letter - Request GST Info

For more information, see the following CRA

publications available for download from the CRA website at www.cra-arc.gc.ca : *What to Do Following a Death* (RC4111); *Preparing Returns for Deceased Persons Guide* (T4011).

- **Worksafe BC:** Contact this agency if the deceased was receiving a WCB pension or benefits: www.worksafebc.com

C10: Enquiry Letter to Worksafe BC

F. Determine the Debts of the Estate

As personal representative, you must notify creditors, heirs and other claimants about the death. You should contact any creditors of the deceased you know of, advise them you are the personal representative and ask the creditor to send you a written notice of the outstanding debt owed by the deceased.

The debts of the estate may include:

- Funeral expenses;
- Income tax debt. As stated above, Canada Revenue Agency will need to be contacted in order to determine if the estate owes a debt;
- Mortgages or any other form of secured loan;
- The personal representative's costs of administering the estate (e.g. necessary long-distance calls, postage and photocopying; necessary legal, accounting and other professional advice);
- Outstanding utility bills;
- Car loans/lease payments. You may have to contact the leasing company to obtain the leasing contract between the deceased and financial institution;
- Personal loans or lines of credit;
- Credit card debt.

C19 and C20: Enquiry Letters re Debts/Loans C21: Letter Acknowledging a Debt

G. Notice to Creditors

When you are appointed the personal representative you will receive blank copies of a *Notice to Creditors, Heirs and Other Claimants*

from ISC. Post the Notices in the Band office, Post Office and other public places, and send a copy to the Housing Resources Officer at ISC in Vancouver:

- C1: Notice to Creditors Form**
- C2: Cover Letter to Band Office**
- C3: Cover Letter to Canada Post**
- C4: Cover Letter to ISC**

The *Notice* gives creditors and potential heirs eight weeks to advise you of a debt against the estate or of a claim to be an heir. If a claim is made after the eight week period, the estate may not be legally required to pay the debt. If you receive a late claim, you may wish to consult a lawyer for advice on whether the debt should be paid. See section 9 of this Guide (*Do I need a lawyer?*) for information on how to find a lawyer.

H. Payment of Debts

As the personal representative, you are responsible for ensuring that the deceased's debts are paid from the estate's assets.

It is important to remember that debts to the funeral home and to Canada Revenue Agency (CRA) must be paid before other debts. A Clearance Certificate must be obtained from CRA to ensure that you are not personally liable for tax debt.

As the personal representative, you are **not** required to use your own money to pay the deceased's debts, *provided that* you administer the estate in accordance with applicable laws.

I. What if the Estate doesn't have enough money to pay all of the Debts?

If you are the personal representative for an estate that does not have enough money to pay all debts, obtain legal advice to ensure that you do not incur any personal liability for the deceased's debts. There is an order of priority for payment of debts (i.e., certain types of debt must be paid before others). See section 9 of this Guide

(*Do I need a lawyer?*) for information on how to find a lawyer.

J. Transfer Land and Other Assets

As personal representative, you may be required to transfer the deceased's registered interest in reserve land to an heir or beneficiary. If the deceased had traditional land holdings (not registered in the Indian Land Registry), you will need to consult with the deceased's First Nation. Traditional land holdings are normally governed by the First Nation's own Housing policies, which may or may not give an individual the right to determine who will occupy their house after they pass away.

The Minister of Indian Affairs (or the First Nation, in the case of First Nations that manage their own lands under the *First Nations Land Management Act* "FNLMA") must approve any transfers of registered interests in reserve land to heirs or beneficiaries. In particular, as personal representative, you are required to complete and submit to ISC (if the land is registered in the ILRS) a **Transfer of Land by Personal Representative** form. (If the First Nation manages its own lands under FNLMA, consult the band office for the required transfer form).

For assistance with the completion of a *Transfer of Land by Personal Representative* form or if you have any questions regarding on-reserve land transfers, please contact an Individual Land Holding Specialist at ISC in Vancouver at (604) 775-5100.

K. Family Homes on Reserves and Matrimonial Interests or Rights Act

A Survivor's Entitlement

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* (Act) provides new rights for survivors. A survivor, in relation to a deceased individual, means their surviving spouse or common-law partner. This Act provides entitlement to survivors in a manner that is

consistent with most provincial family and succession laws related to matrimonial real property.

The survivor of the estate has 2 options:

- 1) The survivor may choose to apply to court for an amount equal to half the value of the deceased's interest in or right to the family home and other matrimonial interests or rights under the provisional federal rules in the Act, or;
- 2) The survivor may choose to inherit from the deceased's will or under the estates provisions of the *Indian Act* in respect of the family home and other matrimonial interests.

In both cases, the option is specific to the matrimonial home or other matrimonial interests or rights. It does not preclude the survivor from inheriting other assets from the deceased, such as personal items.

Option 1

To claim survivor rights and interests under the provisional federal rules, a survivor has to make an application to the court within 10 months of the death of their spouse or common-law partner. Survivors may be entitled to an amount equal to half the value of the deceased's interests in or right to the family home.

The applicant for survivor entitlement must send copies of their application to certain individuals who could be directly affected if the court grants the order. In the case where the applicant is the survivor, the applicant must, without delay, send a copy of the application to the Minister and to the executor of the will or the administrator of the estate, if known. In the case where the applicant is the executor of a will or an administrator of an estate, the applicant must, without delay, send a copy of the application to the Minister and to the survivor.

Further, the executor of the will or administrator of the estate who receives notice of such an

application must notify the beneficiaries of the will or heirs to the estate. If neither an executor nor an administrator has been appointed, the Minister must make the notification.

Notes:

Once the family home and matrimonial rights or interests have been distributed, the remainder of the estate will be distributed to the remaining heirs or beneficiaries as per the will or section 48 of the *Indian Act*.

The *Indian Act* estate provisions will apply if the survivor's application is not made to the court within the 10 month period.

Option 2

The survivor can inherit pursuant to the deceased's will or estate without making an application to the court under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. The *Indian Act* estate process must withhold distribution of assets until the 10 month period expires. Alternatively, distribution can occur within the 10 month period where the survivor indicates in writing that he or she chooses to inherit under the will and not under the Act.

Note:

If the family home (or other property) is held by the spouses or common-law partners in "joint tenancy" there is a right of survivorship which allows the deceased's interest in the home to transfer directly to the survivor upon death. Such property does not flow through the estate (i.e., will, intestacy, or the provisional federal rules of the Act).

L. Land Transfers to Non-Band Members are Prohibited

If the deceased had an interest in reserve land (for example, a Certificate of Possession) and has left that interest to heirs or beneficiaries who are not members of the deceased's First Nation, section 50 of the *Indian Act* prohibits the non-

band members from inheriting the deceased's interest in the reserve land, and requires the Superintendent of Indian Affairs to sell the non-band members' interest in the land to the highest bidder in a sale process open to all members of the deceased's First Nation. The executor or administrator of the estate may not sell or transfer the land privately.

Note that the relevant time for determining if any of the deceased's heirs or beneficiaries are not members of the same First Nation as the deceased is the date of death. After that date, an heir or beneficiary cannot gain the right to inherit the deceased's land by transferring their band membership to the deceased's First Nation.

Please refer to **Appendix D** of this Guide for the full text of section 50.

ISC national policy concerning section 50 provides alternatives, in certain cases, to having the Superintendent of Indian Affairs sell the non-band member's interest in land. In particular, if a non-member heir or beneficiary is willing to give up their share of the deceased's land, they can sign an *Absolute Disclaimer* form. Or, if the deceased's estate includes (significant) cash assets as well as the reserve land, it may be possible for the personal representative to divide up the estate in such a way that non-members shares of the estate are made up of cash only, and only band members inherit the land.

For more information on section 50 and the potential alternatives to a sale of the non-member's share of land by the Superintendent, contact the Estates Unit of ISC in Vancouver at (604) 775-5100 or toll free in BC 1-888-917-9977, or email us at BCestates@canada.ca.

M. Obtain Clearance Certificate from CRA

As personal representative you must obtain a Clearance Certificate from the Canada Revenue Agency before you distribute the assets of the estate or you may be held personally liable to CRA for any outstanding taxes owed by the estate.

In order to obtain a Clearance Certificate from CRA you must ensure the deceased's taxes are filed for the year of his or her death and for previous years. Once all outstanding taxes, if any, have been paid, you may apply for a clearance certificate.

Application form for a Clearance Certificate C18: Letter enclosing Clearance Certificate Application

For more information, see the following CRA publication, available for download from the CRA website at www.cra-arc.gc.ca: *Information Circular IC82-6R8, Clearance Certificate*.

N. Determining the Heirs When there is No Will

Unless the estate is simple, i.e. there are no disputes and only one heir, legal advice may need to be sought when determining the heirs.

Except for the "survivor" (married spouse or common law partner), only people who are related to the deceased by blood are considered heirs.

A person, however, may be considered an heir of the deceased if they were legally adopted or adopted according to the custom of the First Nation (custom adoption). Unless **all** the heirs to the estate agree, in writing, that a person who is not otherwise entitled to inherit should be treated as a (custom-adopted) heir of the deceased, the person who is claiming custom adoption must prove their claim to the satisfaction of the Indian Registrar before a personal representative will be obliged to treat that person as an heir of the estate.

For information on custom adoptions contact:

Indigenous and Northern Affairs Canada,
Adoption Unit
10 Wellington St.
Gatineau, PQ K1A 0H4
Telephone: 1-819-953-0960 (Registration

Information Line) Fax: (819) 997-6296

If the deceased has left both a common-law partner and a (separated, but not divorced) legal spouse (i.e. if there are potentially two "survivors"), it is important that you obtain legal advice. See section 9 of this Guide (***Do I need a lawyer?***) for information on how to find a lawyer.

When there is no Will, the rules for the distribution of assets are set out in section 48 of the *Indian Act*. If the net value of the estate (all of the assets, minus all of the debts) is:

- less than \$75,000, the survivor receives the entire estate;
- more than \$75,000, the survivor receives the first \$75,000 and the rest is divided between the survivor and the children (if any).

If there is no survivor, the estate is divided equally among any children (surviving grandchildren or great-grand children **may** also inherit, depending on the circumstances).

If the deceased had no survivor, children, grandchildren, great-grandchildren and so on at the time of death, the next heirs in line are (in descending order):

- parents;
- sisters and brothers; and
- nieces and nephews.*

*There is a restriction in section 48(8) on who can inherit reserve land when there is no Will and the heir or heirs are more distantly related than siblings of the deceased. **If there is no Will, and the closest surviving heir(s) of the deceased are niece(s)/nephew(s), the deceased's reserve land must be transferred back to the deceased's First Nation by the Minister.** However, if the deceased's closest surviving relatives included at least one brother or sister, as well as one or more niece(s)/nephew(s), the land may be transferred to the niece(s)/nephew(s), as well as to the brother(s)/sister(s), in shares as determined by section 48(6) of the *Indian Act*.

NOTE: The above description of section 48 is an overview only. Please refer to the full text of section 48 in **Appendix C** of this Guide.

O. Proposal for Distribution

The assets of the estate should not be distributed until the *Notice to Creditors* has expired, the debts of the estate are paid, and a Clearance Certificate has been obtained from the Canada Revenue Agency.

Once you have done those things, it's a good idea to write to the heirs or beneficiaries, including an itemized list of the estate's assets and debts and setting out how you propose to distribute what is left after the debts have been paid from the assets.

C22: Sample Proposal for Distribution

P. Distribute Assets to Heirs and/or Beneficiaries

As personal representative, you should attempt to complete your administration of the estate and distribute the estate assets within a year of the date of death of the deceased. This is known as the "executor's year".

Q. Final Accounting

Once all of the debts have been paid and the assets have been distributed to the heirs and/or beneficiaries, you must give a detailed written accounting of the estate's administration to the heirs and/or beneficiaries. The accounting should include an itemized list of the estate's assets (including value) at the time of death, the estate's debts and details of how the assets were distributed.

C23: Sample Accounting to Heirs/Beneficiaries

You may also consider periodically advising the heirs and beneficiaries of your progress while you are administering the estate.

11. Role of ISC and Complaints

Once the Minister of Indigenous Services Canada has appointed either an executor or an administrator, the Department cannot be directly involved in the administration of the estate.

Departmental staff can provide general Estates information on request, but cannot provide advice on a specific problem with a particular estate; the advice of a lawyer should be sought in those circumstances.

The Department's role after an executor or administrator has been appointed is limited to a quasi-judicial role. For example, the Minister will act as the adjudicator of challenges to a Will's validity and will consider applications for the removal of an administrator, or may refer a matter to the BC Supreme Court.

12. Resources

Legal Services Society of BC

The Legal Services Society has a section of its website specifically for Aboriginal people, at <http://aboriginal.legalaid.bc.ca/>. Click on "We Can Help" and then click on "Free Publications" to see a list of publications. (You can also download the **Templates Package**, containing the forms and sample letters referred to in this Guide, from this website).

Dial-A-Law

Free recorded information on a variety of legal topics. Please note that the wills and estates information is based on BC's laws, not the *Indian Act*. Telephone: 1-800-565-5297, Website: www.dialalaw.org

Clicklaw

Legal information and education for British Columbians. Please note that the wills and estates information is based on BC's laws, not the *Indian Act*. Website: <http://www.clicklaw.bc.ca/>

BC Bereavement Helpline

Provides useful resources for persons dealing with the loss of a loved one. Call 604.738.9950 (in the Lower Mainland) or 1.877.779.2223 (toll-free

in B.C.) or visit their website at:
www.bcbereavementhelpline.com

Access Pro Bono Society of BC

Offers pro bono (free) legal services. For more information go to www.accessprobono.ca or call 604.878.7400 (in the Lower Mainland) or 1.877.762.6664 (toll-free in B.C.).

VictimLinkBC

Offers information and support for victims of crime. If you are dealing with a sudden death and require assistance or support, or if you just want to talk to someone, you may wish to call VictimLink BC at 1-800-563-0808 or visit their website at www.victimlinkbc.ca.

13. Questions?

If you have a question about the information in this booklet, please contact ISC in Vancouver and ask to speak to the Estates Officer for the deceased's First Nation.

To reach the Estates Unit of ISC in Vancouver

please call (604) 775-5100 or toll free in BC 1-888-917-9977, or email us at BCestates@canada.ca.

Please keep in mind that while Estates Officers can provide you with information, they cannot provide legal advice.

Appendices

A. Templates Package

Posting the Notice to Creditors

- C1 Notice to Creditors
- C2 Cover letter to Band Office
- C3 Cover letter to Canada Post
- C4 Cover letter to ISC

NOTE: The Templates Package for use with this Guide is published as a separate document in fillable PDF format. You can download it online from the Legal Services Society of BC's website at <http://aboriginal.legalaid.bc.ca/> (click on "Legal Aid Can Help" and then click on "Free Publications), or contact the Estates Unit of ISC in Vancouver at 1.888.917.9977, or by email to BCestates@aandc-aadnc.gc.ca.

Finding out the deceased's Social Insurance Number (use this only if you don't have the SIN already)

- C5 Letter requesting SIN

Enquiring about government benefits & cancelling government pensions

- C6 Letter re. BC Seniors' Supplement benefits
- C7 Letter re. Canada Pension Plan benefits
- C8 Letter re Canada Pension Plan Death Benefit
- C9 Letter re Old Age Supplement (OAS) and Guaranteed Income Supplement (GIS)
- C10 Letter re Workers' Compensation benefits
- C11 Letter re Employment Insurance benefits
- C12 Letter enclosing pension/benefits overpayment (cheque to be returned)

Applying for government death benefits

- C13 Letter enclosing application for Canada Pension Plan Death Benefit

Enquiring about bank accounts

- C14 Letter to a bank or credit union
- C15 Letter to the 'Big 5' banks

Preparing the Final Income Tax Return

- C16 Letter to Canada Revenue Agency requesting income tax information
- C17 Letter to Canada Revenue Agency requesting GST/HST information
- C18 Letter requesting Clearance Certificate
- Application form for a Clearance Certificate

Communicating with creditors

- C19 Letter of enquiry to a credit card company or other creditor
- C20 Letter to creditor asking if loan was life-insured, requesting forms to have the loan written off
- C21 Letter to a credit card company or other creditor acknowledging a debt

Keeping the Heirs/Beneficiaries informed of your progress

- C22 Proposal for distribution of the estate
- C23 Final accounting

Transferring the deceased's registered interest in reserve land

Transfer of Land by Personal Representative form, with instructions

B. Links

Indigenous Services Canada	www.aandc-aadnc.gc.ca
Canada Revenue Agency	www.cra-arc.gc.ca
Fisheries & Oceans Canada	www.dfo-mpo.gc.ca
Employment and Social Development Canada	http://www.esdc.gc.ca/eng/home.shtml
Government of Canada Staff – Phone Directory	http://geds20-sage20.ssc-spc.gc.ca/en/GEDS20/?rd=1&FN=index.htm
Service Canada	www.servicecanada.gc.ca
Transport Canada	http://www.tc.gc.ca/
Government of British Columbia	
BC Land Title & Survey Office	https://ltsa.ca/
BC Ministry of Social Development	http://www.gov.bc.ca/hsd/
BC Ministry of the Attorney General (Court Services)	http://www.ag.gov.bc.ca/courts/index.htm
BC Supreme Court Self-Help Information Centre	www.supremecourtselfhelp.bc.ca
BC Vital Statistics Agency	http://www.vs.gov.bc.ca/
Public Guardian and Trustee of British Columbia	www.trustee.bc.ca
Worksafe BC	www.worksafebc.com
Other Links	
Clicklaw	http://www.clicklaw.bc.ca/
Dial-A-Law (CBA-BC)	www.dialalaw.org
Funeral Services Association of BC	www.bcfunerals.com
<i>Indian Act</i>	http://laws-lois.justice.gc.ca/eng/acts/l-5/page-1.html
<i>Indian Estates Regulations</i>	http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._954/index.html
Insurance Corporation of BC	www.icbc.com
Law Centre (University of Victoria)	www.thelawcentre.ca
Lawyer Referral Service (CBA-BC)	http://www.cba.org/BC/Public_Media/main/lawyer_referral.aspx
Legal Services Society of BC	www.lss.bc.ca
Self-Counsel Press	www.self-counsel.com
UBC Law Students' Legal Advice Program	www.lslap.bc.ca

C. Section 48 of the *Indian Act*

DISTRIBUTION OF PROPERTY ON INTESTACY

Surviving spouse's share

48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed seventy-five thousand dollars or such other amount as may be fixed by order of the Governor in Council, the estate shall go to the survivor.

Idem

(2) Where the net value of the estate of an intestate, in the opinion of the Minister, exceeds seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, shall go to the survivor, and

(a) if the intestate left no issue, the remainder shall go to the survivor,

(b) if the intestate left one child, one-half of the remainder shall go to the survivor, and

(c) if the intestate left more than one child, one-third of the remainder shall go to the survivor,

and where a child has died leaving issue and that issue is alive at the date of the intestate's death, the survivor shall take the same share of the estate as if the child had been living at that date.

Where children not provided for

(3) Notwithstanding subsections (1) and (2),

(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the survivor shall go to the children; and

(b) the Minister may direct that the survivor shall have the right to occupy any lands in a reserve that were occupied by the deceased at the time of death.

Distribution to issue

(4) Where an intestate dies leaving issue, his estate shall be distributed, subject to the rights of the survivor, if any, per stirpes among such issue.

Distribution to parents

(5) Where an intestate dies leaving no survivor or issue, the estate shall go to the parents of the deceased in equal shares if both are living, but if either of them is dead the estate shall go to the surviving parent.

Distribution to brothers, sisters and their issue

(6) Where an intestate dies leaving no survivor or issue or father or mother, his estate shall be distributed among his brothers and sisters in equal shares, and where any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take per capita.

Next-of-kin

(7) Where an intestate dies leaving no survivor, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin.

Distribution among next-of-kin

(8) Where an estate goes to the next-of-kin, it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.

Degrees of kindred

(9) For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants and relatives born after intestate's death

(10) Descendants and relatives of an intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.

Estate not disposed of by will

(11) All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

No community of property

(12) There is no community of real or personal property situated in a reserve.

(13) and (14) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 9]

Equal application to men and women

(15) This section applies in respect of an intestate woman as it applies in respect of an intestate man.

D. Section 50 of the *Indian Act*

Non-resident of reserve

50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

Sale by superintendent

(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

Unsold lands revert to band

(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation of land is offered for sale under subsection (2), the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Approval required

(4) The purchaser of a right to possession or occupation of land under subsection (2) shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister.

R.S., c. I-6, s. 50.