



Administering the Estate

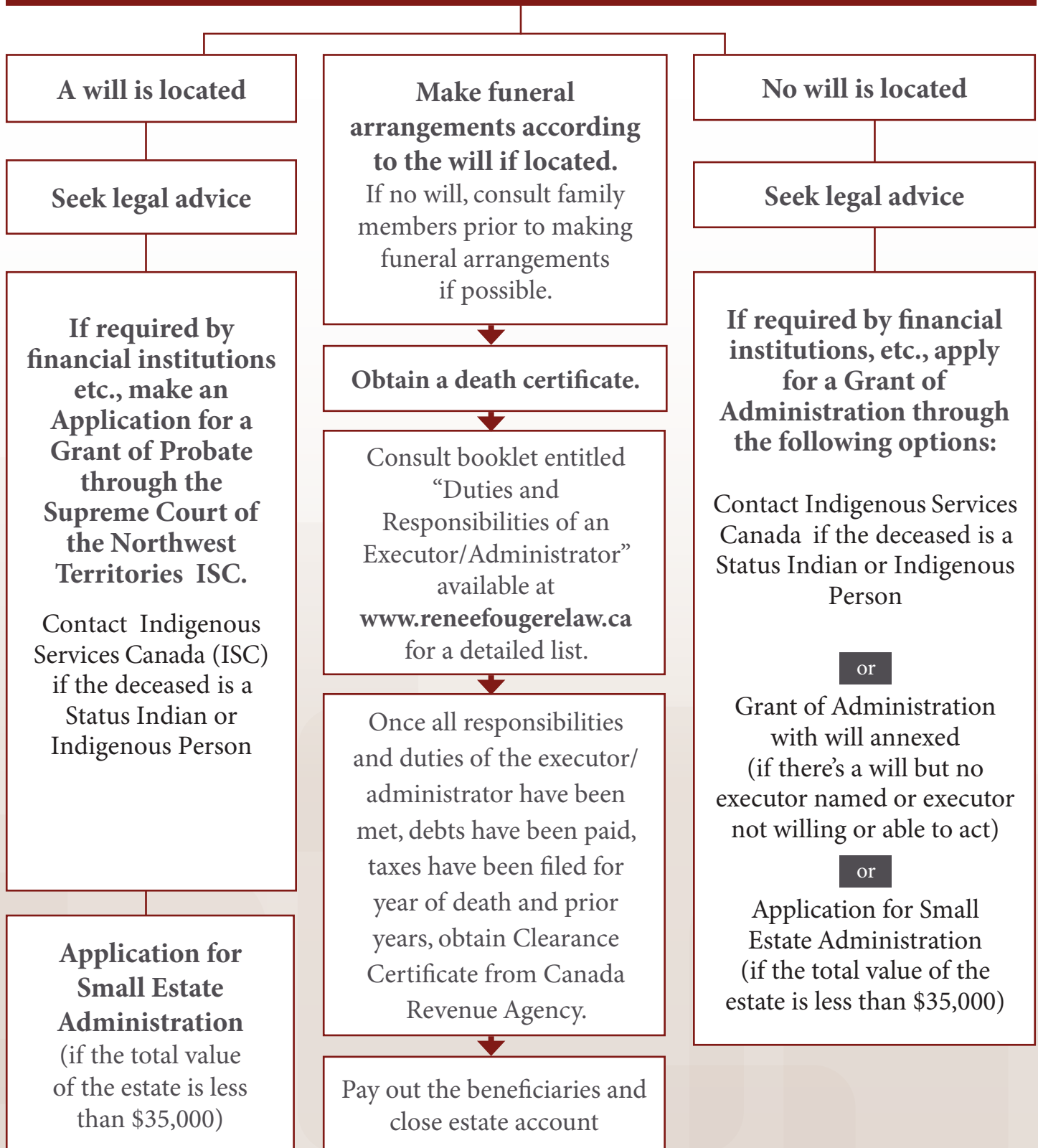
of an Indigenous Person
in the Northwest Territories

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Overview of Estate Administration

Conduct a thorough search of the deceased's belongings to locate a will, including safety deposit boxes and safes if any are found. Locating the deceased's birth certificate and other ID as well.



Administering the Estate of an Indigenous Person in the Northwest Territories

When administering an estate, the first step is to identify if the deceased left a will. This is very important; if the deceased had a will and they named an executor, the legal process will be different than if someone died intestate (without a will).

When someone dies, there is usually a legal process either confirming the validity of the will, or appointing an administrator that will administer the estate. Many financial organizations as well as other organizations will require a court order to prove that the executor named in the will has authority to manage the estate. If someone died without a will and there was no one appointed as a legal representative for the deceased's financial affairs, the court will appoint a legal representative called an administrator.

An executor is the term used if someone dies with a will and named a legal representative to administer their estate. If they died without a will, the term used by the court for the legal representative to administer the estate is administrator.

Not everyone who dies, even with a will, will require court involvement. If the deceased did not have significant assets, financial institutions may not require a court order called a Grant of Probate (died with a will), Letters of Administration with Will Annexed (no executor named in the Will), or Letters of Administration (died without a will).

In most cases the person seeking to be named as the administrator of the estate will need to make an application with the Court. Most financial institutions will require a document called Letters of Administration, which names a person as the administrator of the estate. An administrator holds the same role as an executor, except that they are named by the court, not named as the executor in a will.

What is the difference between Grant of Probate, Letters of Probate, Grant of Administration and Letters of Administration?

The terms Letters of Probate and Grant of Probate mean the same thing. Letters of Administration and Grant of Administration also mean the same thing. The Minister or the court can issue either of these Grants:

Grant of Probate/ Letters of Probate	Grant of Administration/ Letters of Administration
A valid will exists	No valid will exists
Court document to confirms the authority of the named executor.	The Minister can appoint an administrator to manage the estate.
This process validates the will and authorizes the executor to act.	This process provides the person named as administrator the authority to act when there's no will.

Note: The Court or the Minister can also provide a Grant of Administration with a Will Annexed when no one is named as executor in the will or is the named executor is unable or unwilling to act.

What if the deceased was an Indigenous person?

The estates of Status Indians are dealt with differently than other residents of the Northwest Territories. If you are the executor for a deceased Status Indian who lived on reserve or lands that are set aside for treaty use, contact Indigenous Services Canada at 1-867-445-2929. If the deceased's estate falls under the *Indian Act*, you may be able to obtain a Grant of Probate or Administration, which will give you the same authority as a Grant of Probate or Administration through the Supreme Court. It is encouraged to contact ISC if the deceased was First Nations to ensure the proper process is being followed. If the Minister issues a Grant of Administration, the responsibilities of the administrator are the same as the responsibilities of an executor.

What if the deceased died with a will naming an executor?

If the deceased had a will naming an executor, the courts or Minister will usually respect the deceased's wishes. If any organizations or financial institutions are requiring a Grant of Probate, the executor will need to file an Application for Grant of Probate with the Supreme Court of the Northwest Territories or Minister. A Grant of Probate is an order that confirms the validity of the will and gives authority to the executor to administer the estate.

An executor should seek legal advice and potential legal services to assist them in this process. There are several forms that need to be submitted to the Court or Minister to receive a Grant of Probate. If the will did not name an executor, then the application is called a Grant of Administration with Will Annexed.

The *Estate Administration Act* and the *Indian Act and Regulations* list the preferences given for application for Probate.

What if the deceased died without a will?

If the deceased did not have a will, the legal process to name someone as a legal representative to administer the estate is called an Application for Grant of Letters of Administration (also called a Grant of Administration). The legal representative is called an administrator instead of an executor; however, their duties to administer the estates would be very similar.

If a person dies without a will, they are referred to having died intestate. Because the deceased had not given written instructions as to who the beneficiaries of the estate were, the beneficiaries are decided by legislation. The *Indian Act and Regulations* and the *Intestate Succession Act* provides instructions on how an estate will be distributed and who will inherit from the estate.

Is the legal process of obtaining Letters of Administration or Grant of Probate required in every estate?

If the deceased did not have any assets, there may not be a need to engage the legal process of seeking a Grant of Probate if there is a will, or Letters of Administration if the deceased died without a will. These legal processes are usually required by financial institutions to release the assets to the executor or the administrator. If the financial institutions do not require Letters of Administration or a Grant of Probate, then neither of the legal processes are required; however, most financial institutions will require a Grant of Administration to even provide the legal representative with any information regarding the deceased's accounts.

If the deceased owned land, a legal document called a Grant of Probate or a Grant of Administration is required.

What happens if the net value of the estate is worth less than \$35,000?

If the deceased's net value of their estate is less than \$35,000, the legal representative can make an application for a Declaration of Small Estate, with or without a will. The court process is simplified for this application. See Section 10 of the *Estate Administration Rules*.

What happens if the deceased had dependents such as a spouse and/or children?

If the deceased had dependents, such as a spouse and /or children, it is important to seek legal advice. If the deceased had dependants, their assets may be used to support them instead of being part of their estate that gets distributed as per their will or according to the *Intestate Act*.

Who can make an application for a Grant of Administration in the Northwest Territories?

A Grant of Administration names a person that will be responsible to manage the deceased's financial affairs, and they are called administrators. If the person is female, the term used is administratrix.

According to section 12(2) of the *Estate Administration Rules of the Northwest Territories*, preference to appoint an administrator for the deceased's estate shall be a surviving spouse, child, grandchild, issue, parent, brother or sister of the deceased, or someone who has an interest in the estate. Please see the above-noted section for a complete list.

What are the responsibilities of an executor or administrator?

The executor/administrator will be responsible for:

i. Making funeral arrangements.

- ii. Finding and taking control of the assets of the deceased.
- iii. Making a list of assets, valuing the assets, and keeping detailed records.
- iv. Identify and locate potential beneficiaries.
- v. Probate the will, or obtain a Grant from the Courts or Minister if necessary.
- vi. Identify debts of the deceased and potential claims against the estate.
- vii. Pay any taxes owing by the deceased and the estate.
- viii. Account to beneficiaries and get releases from them.
- ix. Distribute to beneficiaries.

These are just some of the responsibilities of the executor. For a more detailed list of the responsibilities and duties of an executor or administrator, please refer to the brochure entitled *Executors*.

What happens if there is no one to administer the estate?

Usually, if there is no one appointed as executor, a next of kin can make an application to be named as Administrator of the estate. If there is no next of kin, the Public Trustee can be appointed to manage the estate of the deceased. The Public Trustee will generally only accept administration of estates where:

- the only beneficiaries are children (under the age of 19);
- the beneficiary is a spouse and a senior citizen (over the age of 65);
- the beneficiary is mentally incapable; or
- there are significant assets and no next of kin can be found.

What happens if the next of kin cannot afford legal assistance to administer a small estate?

For assistance with making an application for the administration of a small estate, you can the listed resources below.

What happens if the deceased is a Status Indian?

If the deceased was a Status Indian according to the *Indian Act*, the next of kin must make an application to the Minister of Indigenous Services Canada (ISC) to be named as administrator. If the deceased is a Status Indian, ISC can grant Letters of Probate or Administration to a next of kin to administer the estate. See their contact information below.

What if you require legal assistance and you cannot afford to hire a lawyer?

If the estate is a small estate (under \$35,000), you can contact the Legal Aid Outreach Clinic to ask for assistance.

Additional Resources:

Renée Fougère Law

www.reneefougerelaw.ca

867-688-9589

Toll Free Number: 1-877-908-6731

P.O. Box 1252

Yellowknife, NT X1A 2N9

Outreach Legal Aid Clinic

3rd Floor, 4915-48 Street

Yellowknife, NT X1A 3S4

Toll Free number: 1-844-497-1319

Fax: 867-920-3000

Supreme Court Registry

Supreme Court of the Northwest Territories

4903-49th Street, Box 550

Yellowknife, NT X1A 2N4

Email: supremecourt@gov.nt.ca

Toll Free: 1-866-822-5864

Tel: 867-767-9288

Office of the Public Trustee

Department of Justice

Government of the Northwest Territories

10th Floor, 4920 52nd Street

P.O. Box 1320

Yellowknife, NT X1A 2L9

Tel: 867-767-9252

Toll Free: 1-866-535-0423

Indigenous Services Canada

Northwest Territories Region

P.O. Box 1500

4923-52nd Street

Yellowknife, NT X1A 2R3

Tel: 867-669-2500

Definitions:

Administrator: A person appointed by the Minister or the courts to administer the estate of someone who has passed. They will manage the deceased person's estate. If this person is female, the term used is administratrix. For ease of reference, the term administrator is used; however, the writer reminds the reader that the female version is administratrix.

Assets: Property owned by the deceased. This may include cash, bank accounts, personal effects (art, jewelry), earnings, pensions, tax and disability benefits, bonds and investments, vehicles, settlements, land and buildings owned.

Beneficiary: A person who inherits from the estate of the deceased.

Estate: All the property, real and personal, owned by a person at the time of their death.

Executor: The person or persons named in the will responsible for the administration and distribution of the estate of the deceased in accordance with the will. If this person is female, the term used is executrix. For ease of reference, the term executor is used; however, the writer reminds the reader that the female version is executrix.

Guardian(s): A person or persons named in the testator/testatrix's will to be responsible for their children if they pass away while the children are minors. It may not be legally binding, depending on if the other parent is alive and able to care for the children. The Court will, however, take into consideration the wishes of the parent.

Grant of Administration: This legal document that can either be granted by the Minister or the court. It appoints a personal representative to manage the estate of the deceased if the deceased did not have a will, or if the executor named in the will is unable or unwilling to be the executor.

Grant of Probate: This legal document confirms the validity of the will of the deceased and gives the personal representative the legal authority to manage the estate of the deceased.

Heir: A person who may inherit from the estate of the person who died intestate (without a will).

Indian: As defined by the *Indian Act* means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian.

Intestate: The estate of a person dying without a valid will.

Issue: The term used to describe the testator/testatrix's children and their direct descendants, such as grandchildren or great-grandchildren.

Letters of Administration: This term is interchangeable with a Grant of Administration.

Letters of Probate: This term is interchangeable with a Grant of Probate

Personal representative: The person seeking to be named as administrator of an estate.

Property: Property includes all those things and rights, which are the object of ownership and property consists of land, or anything attached to or part of the land, such as a house. All other property, such as stocks, insurance and jewellery, is called personal property.

Spouse: the meaning of spouse is defined by the *Family Law Act* for the purposes of this publication: "spouse" means a person who (a) is married to another person, (b) has together with another person entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Act, or (c) has lived together in a conjugal relationship outside marriage with another person, if (i) they have so lived for a period of at least two years, or (ii) the relationship is one of some permanence and they are together the natural or adoptive parents of a child.

Status Indian: People who are registered under the *Indian Act*.

Testament: Another word for a will. These words are synonymous.

Testator: The person making a will is called a testator, or testatrix if female.

Trustee: A person that holds property for someone else (i.e. the deceased). A trustee may hold property for a minor until the child reaches the age of majority or the conditions stated in a will.

Applicable Legislation:

Family Law Act, SNWT 1997, c.18

Intestate Act, R.S.N.W.T. 1988, c.8 (Supp.)

Indian Act of Canada (R.C.S., 1985 cl-5)

Indian Act of Canada Regulations (C.R.C., C.954)

Judicature Act, Estate Administration Rules, R-123-2016

Trustee Act, RSNWT 1988, c.T-8

Wills Act, R.S.N.W.T. 1988, c. W-5



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Lawyer

Other booklets in this series:

1. Duties and Responsibilities of an Executor/ Administrator
2. Small Estate Administration - Without a Will (Intestate)
3. Planning Ahead Your Will - A Resource for Indigenous People

Visit reneefougerelaw.ca for copies.



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This publication is intended to provide you with legal information. It is strongly recommended that you seek legal advice from a qualified lawyer to assist you in your legal matters.