



# Small Estate Administration

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Without a Will (Intestate)

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## About this Guide

This guide describes the steps and forms that you will need to get letters of administration for a person who passed away **without a will**, and whose total value of their estate is less than \$35,000.

The steps and forms talked about below are set out in the *Estate Administration Rules of the Judicature Act*. You can find a copy of the *Estate Administration Rules of the Judicature Act* on the Government of Northwest Territories, Department of Justice's website at: <https://www.justice.gov.nt.ca/en/files/legislation/judicature/judicature.r9.pdf>

### Important to note:

1. It is strongly encouraged that you talk to a lawyer before you finish preparing any of these documents.
2. At Appendix A of this document, you can find blank court forms.
3. At Appendix B of this document, you can find an example of an Application for Declaration of Small Estate filled out and ready to be filed with the court.

You can find electronic fillable forms on the Renée Fougère Law website at: [www.reneefougerelaw.ca](http://www.reneefougerelaw.ca).

## 1. Introduction:

When someone makes a will, they usually name an executor in the document. This gives their executor the legal right to manage their financial affairs. When someone dies without a will, which is also known as dying intestate, no one is appointed as a legal representative for the deceased person's financial affairs. The process of Administrating an Estate means that someone is asking the court to give a court order that states who the legal representation will be. This person shall be called the administrator of the estate. The administrator will have the legal right to manage the deceased's affairs.

This guide will assist to fill out the forms needed to administer a small estate. According to the *Estate Administration Rules*, this amount is \$35,000 or under.

If you think that the deceased person's estate totals more than \$35,000, then the process will be different.

Note: If the deceased qualifies for a settlement of a class action lawsuit or other, this process may not suffice if the pay-out is more than \$35,000 with all assets included.

## 2. Administrating a “Small Estate” in the Northwest Territories

An administrator is responsible for managing the deceased’s estate. This task can be very demanding. An Administrator must be able to read and write fluently in order to file the court documents required for an application for declaring a small estate. For further information on the responsibilities of an executor/administrator, please visit [www.reneefougerelaw.ca](http://www.reneefougerelaw.ca) to get a copy of the booklet “Duties and Responsibilities of an Executor/Administrator”.

## 3. Who can administer a “Small Estate” in the Northwest Territories?

According to section 12 of the *Estate Administration Rules of the Northwest Territories*, preference to appoint an administrator for the deceased’s estate

shall be a surviving spouse, a child of the deceased, grandchild, issue, parent, sibling, or a family member, or someone who has interest in the estate. The complete list is available at the following link: <https://www.justice.gov.nt.ca/en/files/legislation/judicature/judicature.r9.pdf>

## 4. Duties of an administrator:

Some of the duties of an administrator may include, but are not limited to:

- i. Making funeral arrangements;
- ii. Locating the will of the deceased;
- iii. Apply for the death benefit through Canada Pension Plan;
- iv. Informing the following governmental agencies, if required:
  - a. Employer
  - b. Canada Revenue Agency
  - c. Passport Program
  - d. Service Canada (social insurance number cancellation, Old Age Security, Canada Pension Plan)

- e. Other organizations that may be involved with the deceased: Veteran's Affairs, Worker's Compensation Board, Employment Insurance Benefits, Income Support, Canada Child Benefit, Canada Workers Benefit, Goods and Services GST credit, etc.
  - f. Financial institutions
  - g. Utilities & services such as hydro, gas, water, telephone, internet, and cable
  - h. Memberships and subscriptions
  - i. Canada Post if the executor requires mail forward
  - j. Crown-Indigenous Relations and Northern Affairs Canada, if the deceased was a Status Indian
- v. Obtain a death certificate through Vital Statistics, Department of Health and Social Services;
  - vi. Take control of the assets: gather and account for all the deceased's possessions, prepare an inventory list, and value the assets. The executor needs to protect them as they are accountable to the beneficiaries (this may include a residence, vehicles, recreational vehicles, as well as the deceased's other belongings). The executor may want to ensure that the property has insurance policies for certain items such as a house, vehicle, recreational vehicles, etc.;
  - vii. If the deceased owned firearms, contact the RCMP or fill out Form 6016 for the transfer of firearms to the estate while it is being settled;
  - viii. Open a bank account in the name of the estate of the deceased;
  - ix. List and find all debts/liabilities and any claims against the estate;
  - x. Locate beneficiaries and inform them of the passing of the deceased, if they are not already aware;

- xi. Notify all creditors, banks, insurance policies providers if there are insurance policies;
- xii. Contact a lawyer for assistance if required. Also, the executor may need legal assistance to file the appropriate court documents to probate the will, if necessary;
- xiii. File and pay taxes with Canada Revenue Agency (and hire an accountant if necessary);
- xiv. Liquidate assets to pay the deceased's debts if necessary;
- xv. Provide the beneficiaries with an accounting of the estate financials.
- xvi. Obtain releases from the beneficiaries;
- xvii. Distribute any residue of the estate among the beneficiaries; and,

xviii. If there are dependants, ensure they are provided for if the estate permits. (The financial support of dependants may have priority over paying out beneficiaries.)

The administrator is accountable to the beneficiaries of the estate. It is important for the administrator to keep detailed records of all transactions. The administrator can also seek the assistance of an accountant or a lawyer. These services can be paid from the estate if funds are available.

For more information on the duties of an administrator or executor, visit [www.reneefougerelaw.ca](http://www.reneefougerelaw.ca) to get a copy of the booklet "Duties and Responsibilities of an Executor/Administrator."

## 5. How to Prepare an Application for a Declaration of Small Estate:

### A) STEP 1: OBTAIN A DEATH CERTIFICATE

Order an original copy of the deceased's death certificate from the province the person died in, as you will need this document to file the court documents required to administer an estate. A death certificate may be ordered by a member of the immediate family or next of kin.

If you already have a death certificate, you can proceed to Step 2.

#### How to Order a Death Certificate in the NWT

You must first complete an application for death certificate form. In the northwest territories, you can get a copy of the form from the department of health and social services at: <https://www.hss.gov.nt.ca/en/services/order-death-certificate>

You must then submit your application to the Health Services Administration Office of the Department of Health

and Social Services in Inuvik, NT. You have the option to submit your application in person, by email, or by fax. For faster service, you should submit your application by email or fax. For further information, you can call tollfree 1-800-661-0830 or email [hsa@gov.nt.ca](mailto:hsa@gov.nt.ca)

#### Submitting Your Application for Death Certificate Form

Please note that there are various limitations for submitting your application under each option. These limitations have been highlighted below.

***In person:*** Drop off your application in person at the health and social services administration office in Inuvik at Health Services Administration Office, Health and Social Services, 107 Mackenzie Road, 2nd floor, Room #205, Inuvik, NT.

***By Mail:*** Mail a copy of your filled out application to the Health Services Administration Office at Vital Statistics, Health Services Administration Office, Health and Social Services, Bag #9, Inuvik, NT, X0E 0T0.

**By Email:** Scan a copy of your application and attach it to an email addressed to has@gov.nt.ca.

**By fax:** Fax a copy of your application to 1-867-777-3197.

Each copy of your certificate costs \$22.00, regardless of size. You can pay by cheque or money order (Payable to government of the NWT), by credit card, or by pre-paid credit card. Once your application is received, the Health Services Administration Office will send you a copy of the death certificate by regular mail with Canada post. Please note that it will take approximately 7-10 business days for your death certificate to arrive by regular mail.

## **B) STEP 2 : FILL OUT THE REQUIRED COURT FORMS**

The forms required for an application for a declaration of a small estate are:

- i. Form 2 – Application for declaration of small estate with a backer
- ii. Order with a backer

- iii. Form 3 – Memorandum and affidavit in support of application for a declaration of small estate with a backer

For copies of forms, please see Appendix A of this guide. For electronic fillable forms visit [www.reneefougerelaw.ca](http://www.reneefougerelaw.ca) under the “Estates” tab.

### **i) Form 2 – Application for declaration of small estate**

The Application for Declaration of Small Estate provides the court (the judge who will make a decision on your matter) with an explanation of what you are asking the court to do. You are asking the court to make a court order that the deceased’s estate has a net value of \$35,000 and that the name listed as the Applicant shall be the deceased’s personal representative or administrator.

If anything in the forms does not apply to you, you can write “Not Applicable” or “N/A”

## Instructions

1. You will need to insert the full name of the deceased and where they were living at the time of their death at the beginning of the document. i.e. if the deceased died in Edmonton, but their residence was Hay River, you will indicate Town of Hay River as their residence on the style of cause on each court form. The style of call is the paragraph at the beginning of the document.
2. Under section 1: you must insert your name or the person who is seeking to be the estate administrator, and then the name of the deceased.
3. Under section 2 (c): you can add more information at section 2 (c) if you are submitting additional information to the court.
4. Under section 3 (b): state “none”. This section could be used for lawyers that are knowledgeable in Estate Law.
5. Under section 4: insert your name or the administrator’s name and contact information.
6. The applicant must sign the Application and print name below the signature. Also, please insert the date the document was signed.

### **ii) Court Order**

This form must be used to get a court order. You must fill this out and file it with the supreme court registry.

### **Instructions for the Court Order**

1. The name of the deceased and their last place of residence needs to be inserted in the style of cause (paragraph at the beginning of the document).
2. The court will fill in the information on the rest of the court order.
3. The backer for the court order shall be filled out exactly the same as the other backers, except, it shall state “ORDER” when identifying the document.

### **iii) Form 3 – Memorandum and Affidavit in Support of Application for Declaration of Small Estate**

This document informs the judge on what you are seeking, the financial information regarding the estate, and an affidavit on the applicant's part which tells the judge that this information is the truth.

### **Instruction for the Memorandum:**

1. You will need to insert the name of the deceased and where they were living at the time of their death at the beginning of the document. This section is called the style of cause. The style of cause remains the same on each court form.
2. In the following paragraph, you will need to indicate the name of the deceased, where they were living at the time of death, and the name of the person who is seeking to be declared the administrator of the estate, as well as where they live.
3. The document then offers bullet points from a) to c) as to how the estate shall be disposed. **WE STRONGLY ENCOURAGE YOU TO SEEK LEGAL ADVICE ON HOW TO FILL OUT THIS SECTION.** You can contact the Outreach Legal Aid Office for legal advice.

### **Instructions for the Affidavit:**

1. You will need to insert the name of the deceased and where they were living at the time of their death at the beginning of the document. This section is called the style of cause.
2. You put your name, your community (e.g. the City of Yellowknife or the Town of Hay River), and the territory or province (e.g. Northwest Territories), and your occupation before "MAKE OATH AND SAY THAT".
3. Under section 1: insert the name of the deceased, the community where he last resided, the date they passed away, and the date of death.
4. Under section 2: insert the deceased's name, their marital status (single, married, divorced, widow, etc.). Then proceed to write down the names, addresses, and ages of the deceased's relatives.

This section will be decided by section 2-11 of the Intestate Succession Act, R.S.N.W.T. 1988, cI-10:

<https://www.justice.gov.nt.ca/en/files/legislation/intestate-succession/intestate-succession.a.pdf>

**WE STRONGLY ENCOURAGE YOU TO SEEK LEGAL ADVICE ON HOW TO FILL OUT THIS SECTION.**

5. Under section 3: list the assets and the information regarding these assets. You may need to attach a separate page to the document as all assets need to be listed.
6. Under section 4: indicate to the court the amount of money that was paid for funeral expenses, who paid the funeral expenses, and if any money is left owing for the funeral.
7. Under section 5: list all of the deceased's debts. You will need to insert the name of the creditor (to whom money is owed), their address, and the amount that is owed.

The information on the backer remains the same for each court form except where the document is identified.

When you swear this affidavit, you promise to the court that you will administer the estate as per paragraph 6 of the document. You also promise to the court that you will file any receipts of payments or proof of

how you administered the estate. The estate administrator needs to always be responsible with this estate they are managing as it is not their own money. If they are irresponsible with the deceased's property and finances, there could be criminal proceedings.

The person authorized to take affidavits will fill in the "SWORN BEFORE ME" section and sign below this block of text. A person authorized to take signatures on an affidavit is a Commissioner for Oaths, a Notary Public or a lawyer. The person notarizing the document will ask you to sign the document in front of them.

The Backer for the Memorandum and Affidavit in support shall be filled out exactly the same as the other backers, except, it shall state "MEMORANDUM AND AFFIDAVIT IN SUPPORT OF DECLARATION FOR SMALL ESTATE" when identifying the document.

**iv) Backers**

Every court document must have a back page called a "Backer". There will be a backer attached to the end of Form 2, the Order, and Form 3 (Memorandum and affidavit).

## **Instructions for Backers**

1. You must insert the deceased's name and the last community they resided in prior to their death.
2. Insert the name of the applicant and their address for service. The address must be a physical (not a post office box) and must be an address in the Northwest Territories.
3. The court asks that the Applicant signs the backer and that they print their name below their signature.

## **C) STEP 3: FILE THE COURT DOCUMENTS**

Once you have completed the documents, make 3 copies. File the original and the 3 copies of the documents with the Supreme Court of the Northwest Territories in Yellowknife. The court clerk will stamp the documents, and will also write in the file number on the "Backer" page of your documents. The court registry will keep the original for their file and return the other of copies to you.

You must bring the documents to the Supreme Court Registry Office in Yellowknife at:

### **Supreme Court Registry Office**

Yellowknife Courthouse

4903 – 49<sup>th</sup> St, 3<sup>rd</sup> floor

Yellowknife, NT

**Tel:** (867) 767-9288

or **Toll Free:** 1-866-822-5864

If you cannot bring the documents yourself, you can ask a trusted friend to do this for you. You can also hire an organization such as MJ's Express Services Ltd. to take these steps for you.

The cost of filing an Application for Declaration of Small Estate varies between \$30 and \$110, depending on the value of the estate. If you have questions regarding the fee, you can call the Supreme Court of the Northwest Territories at 867-767-9288.

## D) STEP 4: POSSIBLE OUTCOMES

### a) Documents are approved

If your documents are approved, the court registry will send a copy of the order in the self-addressed and stamped envelope you gave them.

### b) What happens if the judge rejects your documents or needs more information

If the judge needs more information, you will receive your documents not filed with the court, and a green sheet that will tell you what corrections that need to be made or what further information the court requires. Once you have addressed the court's concerns, you will return your documents to the Supreme Court Registry to re-file them again. If you do not understand what to do next, you can ask a court clerk, contact the Outreach Legal Aid Clinic, or you can talk to a lawyer.

## Resources Available:

### 1) Renée Fougère Law

(for resources and list of upcoming workshops)

P.O. Box 1252

Yellowknife, NT X1A 2N9

Toll Free: 1-877-908-6731

Website: [www.reneefougerelaw.ca](http://www.reneefougerelaw.ca)

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### 2) Crown-Indigenous Relations and Northern Affairs Canada

(to verify if the deceased was a Status Indian or able to register as such, and/or to make an Application of Grant of Probate or Administration through the Minister):

#### Manager, Governance and Band Administration

Tel: 867-669-2500

Email: [nwt.estates-tno.estates@rcaanc-cirnac.gc.ca](mailto:nwt.estates-tno.estates@rcaanc-cirnac.gc.ca)

#### Website:

<https://www.rcaanc-cirnac.gc.ca/eng/1100100022975/1617286856573>

**3) Estate Administration-Public Trustee, Government of Northwest Territories**

**Office of the Public Trustee  
Department of Justice Government of the Northwest Territories**

10<sup>th</sup> Floor, 4920 52nd Street  
P.O. Box 1320  
Yellowknife, NT X1A 2L9

**Tel:** 867-767-9252

**Tollfree:** 1-866-535-0423

**Website:** <https://www.justice.gov.nt.ca/en/estate-administration/>

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**4) Outreach Legal Aid Clinic:**

3<sup>rd</sup> Floor, 4915-48 Street  
Yellowknife, NT X1A 3S4

**Toll Free:** 1-844-497-1319

**Fax:** 867-920-3000

**Website:** <https://www.justice.gov.nt.ca/en/outreach-legal-aid-clinics/>

**5) Law Society of the Northwest Territories** (for a list of lawyers that practise estate law and potential other resources/workshops):

**Law Society of the NWT**

Diamond Plaza Building  
PO Box 1298 Stn Main  
Yellowknife, NT, X1A 1E2

**Tel:** 867-873-3828

**Website:** <https://lawsociety.nt.ca>

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**6) Supreme Court of the Northwest Territories:**

**Supreme Court Registry  
Supreme Court of the Northwest Territories**

4903-49<sup>th</sup> Street, Box 550  
Yellowknife, NT X1A 2N4

**Toll Free:** 1-866-822-5864

**Tel:** 867-767-9288

**Email:** [supremecourt@gov.nt.ca](mailto:supremecourt@gov.nt.ca)

**Website:** <https://www.nwtcourts.ca/en/courts/supreme-court/>

## Definitions:

**Administrator:** A person appointed by the Minister or the courts to administer the estate of someone who has passed. They will distribute your property if you do not have a will. 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, insurance settlements, land and buildings owned.

**Beneficiary:** A person or institution which inherits property from a deceased person either under a will or under the Intestate Succession Act of the Northwest Territories.

**Codicil:** A document changing a will. In order to be valid, a codicil must be signed and witnessed in the same manner as a will.

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

**Executor:** The person or persons responsible for the administration and distribution of the estate of the deceased. 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 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).

**Holograph Will:** A will written entirely in the handwriting of the deceased and signed by him or her. This is considered a valid will in the northwest territories. Wills forms purchased in stationary stores are not holograph wills.

**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 state of a person dying without a valid will. An Intestate's property, after payment of debts, will be distributed among relatives according to the rules set out in the Intestate Succession Act of the northwest territories.

**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 with legal authority to manage the deceased's estate. The personal representative is called an Executor/trix if appointed by will, and an Administrator/Trix if appointed by the court where there is no valid will or the executor/trix of a will have renounced their right to administer the estate.

**Per stripes:** A type of distribution that results in a beneficiary's share being transferred to the beneficiary's children if the beneficiary dies before the maker of the will rather than being divided among the other beneficiaries under the will. If a testator leaves all of his property to his issue per stripes, and has three children, A, B, and C, but C dies before the testator, then C's one-third share would go to C's children and not to A & B. The presence or absence of this technical term in a will has very significant consequences and a lawyer's advice should be sought.

**Probate:** The process of proving a will by filing the will in the Supreme Court of the Northwest Territories or with CIRNAC, together with the necessary documentation to establish that it is the last will of the deceased and meets all legal requirements.

**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.

**Status Indian:** People who are registered under the *Indian Act* or intitled to be registered.

**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.

**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*

# Appendix A - Blank court form

## **Appendix B- Example of Application filled out and ready to be filed.**



**Renée Fougère**  
Family lawyer

Other booklets in this series:

1. Administering the Estate of an Indigenous Person in the Northwest Territories
2. Duties and Responsibilities of an Executor/Administrator
3. Planning Ahead Your Will - A Resource for Indigenous People

Visit [reneefougerelaw.ca](http://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.