


ESTATES

NOTICE OF PROPOSED APPLICATION
IN RELATION TO ESTATE

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See the Forms chapter for:

Form P1 – *Notice of Proposed Application in Relation to Estate*

Form P9 – *Affidavit of Delivery*

EXPLANATION

This chapter covers *Notices of Proposed Application in Relation to Estate* (the “Notice”) required to be given under Sections 121 of WESA or Section 138(2)(a) in the case of resealing a foreign grant or an ancillary grant, and Part 25 of the *Supreme Court Civil Rules* (the “Probate Rules”)⁽¹⁾.

Sections 121 and 138(2)(a) of WESA require that a person who intends to apply for a grant⁽²⁾ (the “applicant”) must give notice of the proposed application to the persons referred to in the Probate Rules.

Rule 25-2 [Notice Must be Provided] of the Probate Rules governs the documents to be delivered with the Notice, as well as the form of Notice, timing, parties to whom Notice must be delivered, and the general procedure regarding the Notice.

Because of the requirement to deliver the Notice at least 21 days before filing an application (see **Time Requirement**), it is important that you attend to the delivery of Notice as soon as practically possible after receiving instructions.



When organizing an estate file, place all the correspondence and documents relating to Notices in one section and place the *Checklist for Delivery of Notices* on top so that in the future, you can prove not only delivery of Notice within 21 days of filing, but also produce acknowledgements of deliveries (when required).

Form of Notice

Form P1 – Notice of Proposed Application in Relation to Estate is the prescribed form of Notice. The Notice informs the recipient of the recipient’s possible right or entitlement to:

- oppose the application by filing a *Notice of Dispute*; and/or
- claim relief against the estate under:
 - the *Family Law Act*; or
 - the wills variation provisions of Division 6 of Part 4 of WESA.

For detailed instructions with respect to this form, refer to the **Forms** chapter.

The Notice must include (along with other information) the address for service of the intended applicant. If there are several applicants, they must share the same address for service.

This form may be signed by either the intended applicant or, if there are several applicants, one of them; alternatively, it may be signed by the applicant’s lawyer.

⁽¹⁾ Probate Rules in this chapter refer to Part 25 of the *Supreme Court Civil Rules*.

⁽²⁾ In this chapter, we always refer to “grant” whether probate, administration with will annexed or administration without will annexed, and whether ancillary or resealing of a foreign grant.

Documents to Accompany Notice

The following documents must be delivered to the parties entitled to Notice (see page 6):

- **Form P1 – Notice of Proposed Application in Relation to Estate**; and
- a copy of the Will in relation to which the application is to be made if there is a Will⁽¹⁾;
or
- a copy of the foreign grant in an application for an ancillary grant of probate or for the resealing of a foreign grant; and
- a copy of any Will if it is not already attached to the foreign grant.

Time Requirement

Pursuant to Rule 25-2(1) of the *BC Supreme Court Civil Rules*, the person who intends to apply for a grant must deliver to the recipients described below the Notice, in the form prescribed by the Probate Rules, at least **21** days before filing an application.⁽²⁾

In order to avoid that an application is filed prematurely – that is before 21 days required by Rule 25-2(2.1), you have to consider section 25(4) of the *Interpretation Act* that states: “*In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded.*” In other words, add 2 days to the 21 calculation.

Note: Rule 25-2(5)(a) waives the requirement to add 7 days pursuant to Rule 4-3-(2) of the *Supreme Court Civil Rules*, if a document is sent by **ordinary mail**. Notice is deemed to be delivered on the day it was mailed or transmitted.

In addition, section 10 of WESA prescribes a default **survivorship** period of five days. Many Wills contain a clause similar to the following:

“... to transfer the residue of my estate to my spouse if she survives me for 30 days. If my spouse does not survive me for 30 days, to transfer the residue of my estate equally to my 14 grandchildren...”

In this case, until 30 days have elapsed, you will not know for certain whether to send Notice to the spouse **or** to the 14 grandchildren. Accordingly, unless you have specific instructions to deliver Notices on an expedited time frame, we would suggest that you wait to deliver the Notices until after the expiry of the five-day survivorship period prescribed by Section 10 of WESA or until after the expiry of any 30-day (or longer) period of delayed vesting specified in the Will. This will ensure that you are giving Notice to all the people, and only to the people, who are entitled to it. If you do receive instructions to deliver the notices on an expedited basis, you or the supervising lawyer may consider discussing with your client possible risks in that course of action.

If no one is entitled to Notice, choose the second option of paragraph 2 of Part 3 of **Form P2 – Submission for Estate Grant** accordingly (see the **Forms** chapter). In this case, you do not need

⁽¹⁾ The term “Will” includes any other testamentary documents, for example, a Codicil (see the **Wills and Will-Makers** chapter – **Definition of Wills**).

⁽²⁾ An application to dispense with Notice (or shorten the 21 days requirement), may be made under Rule 25-14 (see Court May Alter or Dispense with Notice – page 13). If you have filed the application documents too early, you can remedy the situation by obtaining a court order (see page 13).

to wait 21 days to submit the application documents and there is no requirement to file a **Form P9 – Affidavit of Delivery**.

Method of Delivery

Pursuant to Rule 4-2(2) of the *Supreme Court Civil Rules*, the Notice may be delivered by ordinary service, which means:

- **delivery** to the person’s latest known address;
- **ordinary mail** to the person’s latest known address;
- **fax**, if a fax number is provided – a fax cover sheet must accompany the Notice; or
- **email**, if an e-mail address is provided.

If the applicant does decide to deliver Notice via fax or email, you or the applicant must obtain an acknowledgement from the recipient. See “**Acknowledgement of Delivery**” below.

Address for Delivery

In order to effect delivery, ensure that you have the latest known contact information for parties entitled to the delivery of the Notice, including the:

- residential address;
- postal address;
- e-mail address; and/or
- fax number;

whether inside or outside British Columbia, unless the person provides you with another address for delivery.

The applicant must make reasonable efforts to ascertain the identity and whereabouts of the persons entitled to Notice. By failing to make reasonable efforts, the applicant could be liable for any loss or damage resulting from the failure to give Notice, such as claims to recover property or enforce an order or for claims under Part 4, Division 6 of WESA [Variation of Wills].

Acknowledgement of Delivery

If the Notice is delivered by fax, email or other electronic means, that delivery is not effective unless it is acknowledged in writing (Rule 25-2(6)).

Such acknowledgement is only required for documents pursuant to Rule 25-2(1) [Notice of intended application for estate grant or resealing]. For any other notices during the course of the application, once a person has received Notice and provided a fax number or e-mail address for service, a written acknowledgment of electronic service is no longer required, although it is still good practice to request it by returning a copy of the letter enclosing same, which you can provide to the recipient for this purpose. Insert a space in the copy of the transmittal letter for the recipient to date and sign it. The 21-day waiting period is calculated from the time of delivery, not from the time of the receipt of the acknowledgement.

If the acknowledgement of delivery is not received, the Notice must then be delivered by mail, which will result in a waiting an additional period of 21 days from the time the Notice is mailed.

In addition, the applicant must retain a copy of the acknowledgement and be able to produce it until the time when the personal representative is discharged.

Parties Entitled to Notice (R. 25-2(2))

<p><u>If there is a Will</u></p> <p>Applications for: a Grant of Probate; or Grant of Administration with Will Annexed; or Ancillary Grant of Probate or Administration with Will Annexed; or the Resealing of a Foreign Grant of Probate or Administration with Will Annexed.</p> <p><u>Notice must be delivered to:</u></p>
<ul style="list-style-type: none"> • each person named as executor or alternate executor in the Will (with prior or equal right to the applicant) who is still alive and who has not renounced and does not join in the application; • surviving spouse (if any)⁽¹⁾; • children of the Deceased (if any) (see Note below re: preferential share of the spouse); • every beneficiary under the Will (see below “Beneficiaries under the Will”); • all persons who would have been intestate successors if the Deceased had not left a Will if the estate exceeded the preferential share of the spouse, or will be intestate successors if any gift in the Will lapses; • the personal representative of any deceased person entitled to Notice; • the Public Guardian and Trustee for minors or mentally incapable persons entitled to Notice, if the Will contains no trust provisions (see s. 25(2)(9)(c)); • any other person the court has ordered to receive notice; and • each citor ⁽²⁾.

Notes: If the estate is less than the preferential share of the spouse (section 21(2) to (5) of WESA), Notice must also be delivered to the children and to any intestate successors.

If the name of a person entitled to Notice is different from the name shown in the Will (for instance, in the case of marriage), insert in the Notice the person’s current name, and make a notation to this effect in the *Submission for Estate Grant* and the *Affidavit of Delivery* (e.g. Jane Smith, named in the Will as “Jane Brown”).

If the Public Guardian and Trustee is the applicant, and if there is a Will, the Public Guardian and Trustee is only required to deliver the Notice to the spouse and children (if any) of the Deceased, and **not** to any of the other persons entitled to Notice listed above.

⁽¹⁾ For the definition of a spouse, see **Glossary – Helpful Information**. Note: a surviving spouse separated from the deceased for more than one year prior to death (definition under the former *Estate Administration Act*) (see definition of “spouse” under WESA) is no longer entitled to notice.

⁽²⁾ Citor – see *Form P32 – Citation – Forms* chapter.

If there is no Will

**Applications for a Grant of Administration without Will Annexed; or
Ancillary Grant of Probate without Will Annexed; or
the Resealing of a Foreign Grant of Administration without Will Annexed.**

Notice must be delivered to:

- surviving spouse (if any);
- children of the Deceased (if any) (see Note below re: preferential share of the spouse);
- other intestate successors (if any) and there is no such person, the Attorney General ⁽¹⁾;
- the personal representative of any deceased person entitled to Notice;
- Public Guardian and Trustee if there are minors or mentally incapable persons;
- a creditor of the Deceased whose claim exceeds \$10,000.00;
- any other person the court has ordered to receive notice; and
- each citor. ⁽²⁾

Note: If the estate is less than the preferential share of the spouse (section 21(2) to (5) of WESA), Notice must also be delivered to the children and to any intestate successors.

In the Case of all Applications:

- If the applicant is one of the persons listed above, Notice need not be delivered to him or her (Rule 25-2(2)(a)). In other words, the applicant need not send a Notice to him/herself.
- The names of the persons to whom Notice is delivered must match the list of persons in the appropriate Schedule attached to *Form P2 – Submission for Estate Grant* and *Form P9 – Affidavit of Delivery*.
- Different people may attend to the delivery, for example:
 - the lawyer may mail all the letters (with the requisite documents attached) on the law firm's letterhead; and
 - one of the applicants may personally deliver the documents to a close family member.

Nisga'a Citizens and Treaty First Nation Members

If the Deceased was:

- a Nisga'a citizen; or
- a treaty first nation member;

section 15 of WESA requires that, in addition to giving Notice to all parties entitled to it, Notice must be delivered to the Nisga'a Lisims Government and to the treaty first nation respectively and if the Public Guardian is the applicant, to the Public Guardian and Trustee.

⁽¹⁾ For address: see link: "[Serving legal documents on the Attorney General of British Columbia](#)"

⁽²⁾ Citor – see the **Glossary** and *Form P32 – Citation – Forms* chapter.

Division 3 of Part 1 of WESA deals with Wills of treaty First Nations members, and there are special considerations with respect to the devolution of First Nations property. These matters are beyond the scope of the *Guide*. If you encounter a Will made by a treaty First Nations member or dealing with treaty First Nations property, consult the supervising lawyer.

In order to determine who is entitled to Notice, consider very carefully each class of persons:

- **a spouse and children (if any) of the Deceased**

If the Deceased left a spouse (see definition of spouse in **Glossary – Helpful Information**) and children, Notice must be delivered to them whether or not they are beneficiaries whether or not the estate is less than the preferential share of the spouse (section 21(2) to (5) of WESA).

If in doubt as to whether or not a person is a spouse, out of abundance of caution, Notice should be given to the person who may or may not be a spouse.

- **beneficiaries under the Will**

The Will must be read carefully, as all beneficiaries entitled to Notice **under** the Will must be included (Rule (25-2 (2)(a)(ii)). The beneficiaries under the Will include those listed by name in the Will as well as contingent (or potential) beneficiaries. A contingent beneficiary is a person who may acquire an interest in the Deceased’s estate depending on a future event, which may or may not happen. For example:

- suppose the Will states:

“... to hold the amount of \$100,000 in trust for my spouse {name} and to pay the income from such amount to my spouse until she remarries or until she dies ... and upon the death or remarriage of my spouse, to pay the remainder of such amount to the ABC Charity if in existence at the time of her death or remarriage. If ABC Charity Society is not in existence at the time of her death or remarriage, to pay the remainder of such amount to EFG Charity Society if in existence at the time of her death or remarriage.”

As the spouse will eventually die, there is a possibility that, in due course, ABC Charity shall receive the remainder of the \$100,000 gift and there is another possibility that EFG Charity will receive the gift if ABC Charity is dissolved prior to the death or remarriage of the spouse. Therefore, ABC Charity is a beneficiary vested in interest and EFG Charity is a contingent beneficiary, and both ABC Charity and EFG Charity are entitled to Notice.

If there are several levels of contingent beneficiaries, for example, if after each level, the wording in the Will continues: “if {name} does not survive me for 30 days, to pay or transfer the residue of my estate then remaining to {name}...” or if a trust is created with a vesting date many years from the death of the Will-Maker, every contingent beneficiary in every level.

The concept of a “per stirpes” distribution means that there may be unborn beneficiaries at the time of the Will-Maker’s death whose interest vests at the time that the “per stirpes” distribution takes effect. You must take great care when

interpreting a “per stirpes” distribution because appearances can be deceiving, even to an experienced practitioner. See *Hamel v. Hamel Estate* for the possibility of a new interpretation of otherwise familiar language.

If any contingent beneficiaries are not yet born, and if the probate registry has any doubt with respect to notice to unborn contingent beneficiaries, the probate registry may refer the application to court for directions. On the other hand, the Public Guardian and Trustee's current position is that they do not require notice of the contingent interests of unborn beneficiaries. For example, if an interest is created for possible future grandchildren contingent on their parent not surviving them, notice is not required, even if no trustee is appointed on behalf of the potential minor beneficiaries.

- On the other hand, suppose the Will states:

“...to transfer the amount of \$100,000 to my spouse, should she survive me for a period of 30 days. Should my spouse not survive me, to pay or transfer such amount to ABC Charity...”

If the spouse is alive 30 days after the Deceased's demise, the bequest will be paid to the spouse, and the charity is not, therefore, a potential beneficiary, and is not entitled to Notice.

- **beneficiaries of adeemed or invalid gifts** ⁽¹⁾

If a gift listed in the Will no longer exists, either because it has already been transferred to the beneficiary inter-vivos (during the life of the Will-Maker) or has been disposed of prior to the Will-Maker's death, or simply because it cannot be located or does not exist anymore (e.g. a piece of jewellery which was lost by the Will-Maker or a fur coat that has been eaten by moths), the gift is “adeemed”. However, the usual notice of must be given to the legatee or beneficiary whose gift no longer exists. You should explain in the letter the circumstances.

If, on the other hand, a beneficiary lost his or her entitlement to a gift under the Will (for example, because the beneficiary was a witness to the Will-Maker's signature), an explanation may have to be provided in the *Submission for Grant* as to why such a gift is void.

If a gift was made to:

- an employee of an extended care facility or a private hospital, or to the employee's spouse, relative or friend (Section 4.1 of the *Hospital Act*);
- an officer, director, agent, designate or employee of a community care and assisted living facility or to their spouse, relative or friend (Section 18 of the *Community Care and Assisted Living Act*);

⁽¹⁾ See the Overview chapter: **Lapsed or Adeemed Gifts -- When Gifts Cannot Take Effect and Relief from Disposition of Property - Wills and Will-Makers.**

while the Will-Maker was a patient or in the care of an extended care facility, a private hospital, or a community care and assisted facility, the Public Guardian and Trustee must consent in writing. This condition does not apply if a gift is included in a Will or Codicil made before the Will-Maker became a patient or in the care of a community care and assisted living facility.

For a more complete explanation of this concept read:

- **Overview – Wills and Will-Makers – Legal Effect of a Will;** and
 - **Wills Clauses – Bequests – Revocation by Statute.**
- **beneficiary or intestate successor is dead**

If a person entitled to Notice is dead (that is the person survived the Deceased, but died before the application is filed), the intended applicant must, pursuant to Rule 25-2(12), either:

- deliver the Notice and requisite documents to the personal representative of the deceased person entitled to Notice, if known; or
- if the intended applicant does not know of a personal representative of the deceased person entitled to Notice, apply to the court for directions (under Rule 8-4)⁽¹⁾ and, unless the court dispenses with Notice, deliver those documents in accordance with the order obtained on that application. The supervising lawyer will discuss the necessity and cost of such an application with the client and take instructions accordingly.⁽²⁾

For example, on an intestacy, if a sibling who is entitled to Notice survived the Deceased, and died thereafter (before the Notice is delivered and the application is filed), Notice must be delivered to the deceased sibling's personal representative if known (see above). If the sibling died before the Deceased, then Notice must be delivered to the deceased sibling's children (the Deceased's nephews and nieces). The key to determining to whom Notice is to be delivered is the time of death, whether before or after the Deceased or the Will Maker.

When a beneficiary under a Will does not survive the Will-Maker, and there is a named alternate beneficiary in whom the gift vests, Notice must be delivered to the alternate beneficiary.

Depending on the wording in the Will and the time of death, the supervising lawyer should evaluate whether or not Notice should be delivered. When in doubt, deliver the Notice.

⁽¹⁾ The procedure for an application for directions is, at present, beyond the scope of this Guide

⁽²⁾ If the deceased beneficiary was a sibling or a descendant of the Will-Maker, see the Overview chapter: **Lapsed of Adeemed Gifts -- When gifts cannot take effect – Wills and Will-Makers** and section 46 of WESA, which contains provisions regarding the distribution of lapsed gifts if there is no alternate beneficiary named in the Will.

- **persons entitled on an intestacy or partial intestacy**

Even if there is a Will, the applicant must deliver the Notice to all those persons who would be entitled to share in the estate if there was no Will.

Only the class of intestate successors in one level of intestacy is entitled to Notice. For example: In his Will, the Deceased (who was not married and had no children) left the estate to his nephews. The Deceased's parents predeceased him, but his brother and sister are still alive. Accordingly, in addition to sending the Notice to the nephews (who are the beneficiaries), Notice must also be sent to the brother and sister, as they would have inherited if the Deceased died intestate.

- **the Attorney General, if the government is entitled, under section 3 of the Escheat Act, to all or part of the estate of the deceased;**

Notice must be given to the Attorney General when there is an intestacy or a partial intestacy, and the result is that there is no one legally entitled to the entire estate or the intestacy portion of the estate (i.e. no relatives within 4 degrees of relationship).

- **minors**

Pursuant to Rule 25-2(8), if a person entitled to Notice is a **minor**, a copy of the Notice, together with a copy of the Will, if any (and any Codicil, if any, or any other documents described in Rule 25-2(1)), must be delivered to:

- to the **parent** or **guardian** (if there is one) of the minor, unless the parent or guardian is the applicant; and
- the **Public Guardian and Trustee** of British Columbia with some exceptions (see page 12).

Notes: If the minor resides with both parents, the Notice must be delivered to the parents.

If the minor does not reside with both parents but the applicant knows that a parent or guardian is responsible for financial decisions relating to the minor, Notice must be delivered to that parent or guardian.

If the minor does not reside with both parents, and the applicant does not know of a person who is responsible for the financial decisions relating to the minor, but knows of one or more addresses where the minor resides, Notice must be delivered to each of those addresses.

When listing the name of the minor in the Form P2 Submission, indicate the relationship of the minor. For example: MARY JANE DOE, a minor, daughter of PETER JOHN DOE, one of the applicants.

- **mentally incapable persons**

Pursuant to subrules 25-2(10) and (11), if a person entitled to Notice is or may be **mentally incapable**, or if the person has a **committee** appointed under the *Patients Property Act* (or the equivalent of a committee appointed by a court outside British Columbia), the Notice must be delivered to:

- the **committee** (or equivalent) (if there is one); and
- the **Public Guardian and Trustee** of British Columbia (see page 12); or
- both the Public Guardian and Trustee and the person believed to be mentally incompetent, if the applicant believes the person is mentally incompetent and there is no committee or equivalent.

When the Public Guardian and Trustee receives Notice with respect to a mentally incapable person, they may request additional information about that person and they may email a standard list of questions, for example: about that person's condition/diagnosis, assets, income, monthly liabilities, future living expenses and cost care. It is prudent to provide the personal representative in advance with a list for them to be prepared to collect the information and be ready to answer the questions. ⁽¹⁾

Public Guardian and Trustee

If minors and mentally incompetent persons are involved (see above), Notice must be delivered to the Grant Application Review Services (GARS) of the office of the Public Guardian and Trustee (see exceptions below), and the transmittal letter must include the following information (Rule 25-2(13)):

- the name and date of birth of every minor and mentally incompetent person;
- as appropriate, the name and the residential or postal address and, if known by the applicant, the email address and fax number, inside or outside British Columbia, of the parent, guardian, committee (or equivalent) of such persons;

If a minor beneficiary resides outside British Columbia, Notice must be given to the Public Guardian and Trustee in British Columbia.

When there is a Will (and the applicant is the executor), there is **no** requirement to deliver the Notice to the Public Guardian and Trustee (s. 25-2(9) if:

- the intended applicant is an executor (or alternate executor) of the Deceased's Will;
- the minor is not a spouse or a child of the Deceased (the minor is a nephew); and
- the Deceased's Will created a trust for the minor's interest and appointed a trustee of such trust.

Because of the 21-day Notice requirement, in practice, there are two mailings to the Public Guardian and Trustee:

⁽¹⁾ An example of the list of Public Guardian and Trustee's questions can be found on the precedent CD or flash drive provided with the updates.

- the first letter (as soon as possible) giving the Public Guardian and Trustee notice (***Letter 1 to Public Guardian and Trustee (with Notice)***). At this point, it will only be necessary to send to the Public Guardian and Trustee:
 - ***Form 1 - Notice of Proposed Application in Relation to Estate***; and
 - the documents referred to in Rule 25-2(1); that is, any testamentary documents (if there are any); and
- the second letter (***Letter 2 to Public Guardian and Trustee with Application Documents***), together with copies of either signed or filed application documents at least 21 days after delivery of the Notice.

After receiving the second letter and examining the application documents, the Public Guardian and Trustee will issue its comments and either consent to the application (by letter, the original of which will, in due course, be forwarded to the Probate Registry), or make a recommendation or impose some conditions on the personal representative (such as a requirement that the personal representative be bonded or otherwise post a security).

Rule 25-3(11) requires that promptly after filing the requisite documents to apply for a grant, the applicant deliver to the Public Guardian and Trustee copies of the filed documents. However, if notarized copies of signed but unfiled documents have previously been delivered to the Public Guardian and Trustee, this requirement may be waived, in other words, there may be no need to send to the Public Guardian and Trustee copies of filed documents. In addition, there is no need to deliver to the Public Guardian and Trustee copies of the exhibits to the affidavits of delivery or a copy of an affidavit of delivery that only confirms delivery of the ***Notice of the Proposed Application*** to the Public Guardian and Trustee.

And finally, pursuant to section 124(2) of WESA, when the grant is received, a copy must be sent to the Public Guardian and Trustee within 45 days of the issuance of the grant (see **Post-Application Procedure** and **Post-Application Letters**).

When in doubt about the entitlement of a person or the Public Guardian and Trustee to receive Notice, out of an abundance of caution, it is prudent to provide a person (and the Public Guardian and Trustee) with Notice. The Public Guardian and Trustee will return the application materials with a letter indicating that they have no authority in the matter if notice is not required.

Affidavit of Delivery – Form P9

Once the Notices have been delivered, the person or persons who arranged for their delivery (one of the applicants or the lawyer) must swear ***Form P9 – Affidavit of Delivery***, which lists the names of the persons to whom Notice has been delivered.

If there are several people arranging for the delivery of the Notice, several affidavits of delivery may be prepared, as long as they collectively confirm that the documents were properly delivered to all persons entitled to them.

This affidavit must be filed with all other application documents (Rule 25-3(2)(f)).

Court May Alter or Dispense with Notice

Sometimes, it may be necessary to apply to the court to vary the requirements for Notice set out in subrule 25-2(14). If no prejudice would result to the personal representative or to anyone else, a court may:

- vary the classes of persons to whom the applicant must deliver Notice; or
- dispense with the requirement to deliver Notice to one or more people who are entitled to Notice, save and except the Public Guardian and Trustee (for example, if a person entitled to Notice cannot be located).

This may be required when an asset must be sold immediately, and the applicant cannot wait 21 days to obtain the grant.

The applicant will have to disclose in an Affidavit his or her efforts to locate the missing person in support of the application for such an Order.

The procedure to dispense with Notice is set out in the online **Web Supplement – Dispensing with Notice** (see the Precedents CD for the link. If you do not have the Precedents CD, email contact@evinross.ca).

In addition, if you have filed the application documents before the requisite 21 days, you will have to obtain a court order to remedy the situation (see **Web Supplement – Filing Application Documents too early**).

PROCEDURE/CHECKLIST

1. Ensure that you have the names and addresses of:
 - (a) every one of the persons named in the Will as executor (if there is a Will) who is still alive and has a prior or equal right to apply to the applicant
 - (b) the Deceased' surviving spouse (if any)
 - (c) the Deceased's children (if any)
 - (d) if a child does not survive the Deceased, the names and addresses of his or her children (the Deceased's grandchildren)
 - (e) the beneficiaries and contingent beneficiaries under the Will (if there is a Will)
 - (f) intestate successors (other than the spouse and the children)
 - (g) if a beneficiary or intestate successor is dead, the name and address of his or her personal representative
 - (h) each citor (if any) and
 - (i) if there is no Will, each creditor whose claim exceeds \$10,000

This information should be located in the *Estate Checklist (Helpful Information)*, which should have been completed when taking instructions with respect to the estate.

2. Check that you have covered all classes of persons to whom Notice must be sent (see above **Parties Entitled to Notice**).
3. Determine the manner in which Notice will be delivered to each party; whether by:
 - delivery (courier or personal delivery)
 - mail (by Canada Post)
 - fax or
 - e-mail

Delivery may be effected by different people. For example, the applicant may deliver the Notice and requisite documents to close relatives but the law firm may mail the Notice to intestate successors and the Public Guardian and Trustee. Prepare separate *Affidavits of Delivery* (Form P9) (see step 14) as long as they collectively confirm that the Notice and requisite documents have been sent to all persons entitled to them. If the legal assistant mailed the Notice, the legal assistant must swear the *Affidavit of Delivery* (not the supervising lawyer).

4. Check the Will (if any) and ascertain that all survivorship periods have expired (see **Time Requirement**).
5. Complete the names in the *Checklist for Delivery of Notices* (page 186)
6. Prepare *Form P1 – Notice of Proposed Application in Relation to Estate (Forms)* and have it signed by either:
 - one of the applicants or

- the lawyer
7. Prepare the **Letter Forwarding Notice** (page 20). Attach to the letter copies of:
 - (a) the Notice;
 - (b) the Will (if there is one); and
 - (c) any other testamentary documents, such as Codicils
 (see Documents to Accompany Notice – page 4)

Note: In an intestacy, if the estate includes a spousal home that is not held in joint tenancy, prepare **Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)** in the **Spousal Home** chapter).
 8. If there are minors to whom Probate Rule 25-2(9) does not apply (see page 12), prepare **Letter 1 to the Public Guardian and Trustee (with Notice)**

Note: If at this time, all the application documents are prepared and signed, you can attach them to this letter and combine this letter with **Letter 2 to the Public Guardian and Trustee**.

The Public Guardian and Trustee will not issue the consent (when there is no Will) until their office receives all documents listed in **Letter 2**.
 9. If any letter is **faxed**; prepare a fax cover letter and attach to it the **Letter forwarding Notice**, together with a copy of the Notice and a copy of the Will (if there is one)
 10. Arrange to have the letters with the Notice:
 - (a) delivered
 - (b) mailed
 - (c) faxed – stamp the fax cover letter with the date it is sent or
 - (d) e-mailed – print the sent e-mail
 11. Complete the date of delivery in the **Checklist for Delivery of Notice** (page 16)
 12. Diarize the file for 21 days
 13. Check that written acknowledgements have been received for any letters that have been faxed or e-mailed. If you have not received the acknowledgments for those letters, follow up and resend the letters by regular mail (or arrange to have them delivered) and extend the period by 21 days from the date of that second mailing or delivery

Note: Keep copies of the acknowledgements, as you may have to produce them at a later date
 14. Prepare the requisite **Form P9 – Affidavit(s) of Delivery** for the person(s) who actually effected the delivery (whether by mail, in person, by fax or e-mail)

When preparing the **Affidavit(s) of Delivery**, ensure that:

-
- (a) if several people attended to the delivery, the affidavits collectively confirm that the requisite documents were delivered to all those who were entitled to Notice and listed in the *Schedule to the Submission for Estate Grant*
 - (b) all acknowledgements confirming receipts have been received from those to whom the Notice was sent by fax or email
15. If you have not delivered the documents listed in this letter with *Letter 1*, prepare *Letter 2 to the Public Guardian and Trustee (with Application Documents)*. You must attach copies of the signed documents.

CHECKLIST FOR DELIVERY OF NOTICES

General Notes

It is very important to keep track of the persons to whom the Notice and all requisite documents were delivered, the date and the manner in which it was done, and in the case of delivery by fax, e-mail or other electronic means, the receipt of written acknowledgements.

Preparation

Delete the rows that are not applicable. If insufficient space, insert rows (above or below).

- ❶ Insert the name of the person to whom the Notice and the requisite documents have been delivered.
- ❷ Mark whether the person is a minor or mentally incompetent. If a person is a minor, the Notice must be sent to the person's parent or guardian (page 11).
If the person is mentally incompetent, the Notice must be sent to the person's committee (or equivalent). If the mentally incompetent person does not have a committee, the Notice must be sent to the mentally incompetent person. In either case, the notice must also be sent to the Public Guardian and Trustee.
If the person to whom Notice must be sent is dead, the Notice must be sent to the deceased's person's personal representative (see note on page 10).
- ❸ Insert the date of the delivery/ mailing/ faxing/ emailing of the Notice and documents.
- ❹ Check the appropriate column showing the manner of delivery.
- ❺ Check this column when the acknowledgement of a fax or e-mail has been received and complete the date of receipt.
- ❻ Follow up with the recipient of the notice and if you are unable to obtain an acknowledgement of the fax or e-mail, resend the letter and the requisite documents by regular mail and insert the date of such mailing in this column.
Note: The 21 day waiting period pursuant to Rule 25-2(1) runs from the second mailing and not from the first time it was faxed or e-mailed.
- ❼ Delete this row if there is no requirement to mail the Notice and documents to the Public Guardian and Trustee.
- ❽ Delete this row if there are no minors or if the applicant is the parent and/or guardian.
- ❾ Delete this row if there is no committee.

Processing

When the checklist is completed, put it on top of the section in your file where all correspondence with respect to the Notice is kept. Once the requirements with respect to the Notice are completed, mark the checklist as "Done".

Copies of written acknowledgements must be kept on file.

LETTER FORWARDING NOTICE

General Notes

This letter is written to the parties entitled to Notice (see **Explanation – Parties Entitled to Notice** for the list of parties depending on whether or not there is a Will).

Note: In an intestacy, if the estate includes a spousal home that is not held in joint tenancy, prepare *Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)* in the **Spousal Home** chapter).

Do not mail this letter should until the survival clauses in the Will have expired (see **Time Requirement**).

Preparation

- ❶ If the law firm is arranging for the delivery of the Notice, prepare the letter on the firm's letterhead, and insert paragraph ❶ with the appropriate changes.

Note: The Affidavit of Delivery will be sworn by the person who is actually arranging for the delivery of the Notice. It is usually not the senior partner but the paralegal!

- ❷ If the applicant is arranging for the delivery of the Notice, prepare the letter on blank paper with the name of the applicant and his or her address for service and insert paragraph ❷ with the appropriate changes.

Note: If there are several applicants, they must share the same address for service.

- ❸ If the application is for an ancillary grant or for resealing a foreign grant, change the section number to "138(2)(a)".

- ❹ If there is a Codicil, add the words "and Codicil dated _____, 20__". If there are any other testamentary documents, describe them and attach them to the letter (see **Documents to Accompany Notice** – page 4).

If the application is for an ancillary grant or for resealing a foreign grant, insert the following:

“2. *copy of the grant issued by {name of foreign court} at {city, province, country}*”, together with a copy of the Will of *{Name of the Deceased}* dated *{date}*.”

If a copy of the Will is not attached to the foreign grant, omit the words “together with a copy of the Will...” and attach a copy of the Will as a separate document.

Continued...

1 {LAW FIRM'S LETTERHEAD}
2 {Applicant's name and address for service}

1 File No. _____

Date: **3** _____

{Name and address of person entitled to Notice}

(Or, if minor:)

{Name and address of parent or guardian}

(Or, if mentally incompetent person:)

{Name and address of committee, if any}

(or: if the mentally incompetent person does not have a committee)

{name and address of mentally incompetent person}

Dear: _____

Re: Estate of {name of the Deceased}, Deceased

Date of Death: 20

1 We are the solicitors for *{name of the Applicant}*, the applicant for the estate grant in relation to the estate of the Deceased. Please accept our condolences on the passing of *{your wife/mother/sister/brother/friend}*.

or:

2 I am the applicant for estate grant in relation to the estate of the Deceased.

1 We **2** I enclose:

1. Notice of Proposed Application in Relation to Estate (Form P1) pursuant to Section **3** 121 of the *Wills, Estates and Succession Act* and Rule 25-2(2) of the *Supreme Court Civil Rules*; and
2. **4** Copy of the Will dated *{date}* of *{Name of the Deceased}*; **4**

Continued...

LETTER FORWARDING NOTICE**Preparation (Continued)**

- ❶ If the Notice is being sent to persons who are **only** entitled to Notice pursuant to Rule 25-2(2), but who are not entitled to share in the estate, insert this paragraph and select the class of person entitled to Notice. This paragraph is optional and is inserted to explain to the recipients that they are only entitled to Notice and not to a share of the estate.

Omit this paragraph if it is not your law firm's policy to explain the reason for the delivery of the Notice.

If the application is for an ancillary grant or for resealing a foreign grant, change section number "121" to "138(2)(a)".

- ❷ If a party is entitled to a share of the estate, insert this paragraph (again, optional).
- ❸ Insert this paragraph if the letter is faxed to the recipient.
- ❹ Insert this paragraph if the letter is emailed to the recipient.

Note: If there is a minor or a mentally incompetent person or a person that has a committee, a letter must also be mailed to the Public Guardian and Trustee of British Columbia (*Letter 1 to Public Guardian and Trustee of British Columbia (with Notice)*).

Processing

Attach to the letter:

If there is a Will: copy of Notice and copies of the Will and any Codicils and Memoranda (see **Documents to Accompany Notice** – page 4).

If there is no Will: copy of Notice only.

If there is a foreign grant: copy of the foreign grant and, if the Will is not attached to it, a copy of the Will in relation to which the foreign grant was issued.

Ensure that the date of the letter is the date it is mailed, delivered, faxed or emailed. Do not wait a week to actually put it in the mailbox or deliver it.

If the letter is faxed, prepare a cover letter and attach to it the letter and all enclosures.

If the letter is e-mailed, scan the letter and the enclosures and email them to the party. Ensure that the e-mail shows the sender's return contact address and telephone number.

Send a copy of the letter, fax, or e-mail to the client.

*Letter Forwarding Notice**Page 2*

❶ Section 121 of the *Wills, Estates and Succession Act* and Rule 25-2(2) of the *Supreme Court Civil Rules* require that before filing an application for a grant, Notice of the application must be delivered to all those who have, or may have, a beneficial interest in an estate. Accordingly, these documents are forwarded to you as ❶

- ...a personal representative who has a prior right to apply and does not join in the application
- ...a spouse/child of the Deceased
- ...a beneficiary under the Will
- ...a person entitled on an intestacy or partial intestacy
- ...an intestate successor of the Deceased;
- ...a creditor of the Deceased whose claim exceeds \$10,000.00.

...and/or if there is a minor,

... the parent or guardian of *{name[s] of minor[s]}*

...and/or if there is a mentally incompetent person or a persona that has a committee,

...the committee of *{name of mentally incompetent person}*.

Please review items (1) to (9) of the attached Notice and more specifically item (5), which suggests that you may consult with your own lawyer concerning your interest in, or rights against, the Estate.

❷ We have now received all the necessary information regarding the assets and liabilities of the estate, and will be applying to the Supreme Court of British Columbia for an estate grant and shall report to you further in due course.

❸ Please acknowledge receipt of this letter, the Notice and the Will, by faxing your acknowledgement to the fax number above.

❹ Please acknowledge receipt of this letter and enclosures by replying to this email.

Yours truly,

cc: client

LETTER 1 TO THE PUBLIC GUARDIAN AND TRUSTEE (with Notice)

General Notes

Where a person entitled to Notice is either:

- a minor and Rule 25-2(9) does not apply (page 12); or
- a mentally incompetent person with or without a committee (or equivalent)

the Notice must also be delivered to the Public Guardian and Trustee of British Columbia ('PGT') (see opposite) within the same time as the other Notices.

At a later date, when the documents are filed, you have to send another letter to the PGT (*Letter 2 to the Public Guardian and Trustee*) enclosing the signed (or filed) application documents.

Note: The PGT will not issue their comments (when there is no Will) until their office receives all documents listed in Letter 2.

Preparation

- ① Insert this paragraph if you are applying for a grant of probate or administration with will annexed – that is, if there is a Will. In this case, you are not seeking the PGT's comments with respect to the application.
- ② Insert this paragraph if you are applying for a grant of administration (without will annexed) and are seeking the PGT's comments with respect to the application.
- ③ If the person is mentally incompetent or has a committee, change "minor" to "mentally incompetent person" or "person who has a committee".
- ④ Insert the names and dates of birth of all minors (or mentally incompetent persons or persons with committees).

If the situation is unclear, add an explanation. For example:

"{names of minors} are the natural/adopted children of {name} and are in the care and custody of their mother and are supported by her."

Rule 25-2(13) of the Probate Rules requires that the Notice to the PGT must list the residential and postal address, as well as email and fax number (if available) of each person to whom notice must be delivered when there are minors and mentally incompetent persons.

- ⑤ If the application is for an ancillary grant or for resealing a foreign grant, change the section number to "138(2)(a)".
- ⑥ List any other testamentary documents. If there are none and if there is no Will, delete this paragraph.
- ⑦ Check the PGT fee schedule for the fee:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/312_2000

Note: The cheque should be payable to the "Public Guardian and Trustee".

Processing

Attach all enclosures.

If it is the law firm's policy, make a copy of the letter, and mail it to the client.

File No. _____

Date: _____

GARS
Public Guardian and Trustee
of British Columbia
700 – 808 West Hastings Street
Vancouver, BC
V6C 3L3

Dear Sirs:

Re: Estate of {name of the Deceased}, Deceased
Date of Death: 20

❶ We are the solicitors for {name of Applicant}, the applicant for a grant of probate in relation to the Will of the Deceased.

❷ We are the solicitors for {name of Applicant}, the applicant for a grant of administration in relation to the estate of the Deceased, and request your comments with respect to the application.

The following beneficiaries of the above estate are ❸ minors/mentally incompetent person:

Name of ❹ Minor/ mentally incompetent person	Date of Birth ❹	Name and address of Guardian/Committee
❹	{date of birth} ❹	{Name of Guardian/ Committee} {address of Guardian/Committee –including email and fax if available}

We enclose

1. Notice of proposed Application in Relation to Estate (Form P1) pursuant to Section ❺ 121 of the *Wills, Estates and Succession Act* and Rule 25-2(2) of the *Supreme Court Civil Rules*;
2. ❻ Will of the Deceased dated {date};
3. Our cheque in your favour in the amount of \$❿, being the statutory fee for reviewing this estate.

If you have any questions regarding the enclosed, please do not hesitate to contact the writer.

Yours truly,

cc: client

LETTER 2 TO PUBLIC GUARDIAN AND TRUSTEE (with Application Documents)

General Notes

Rule 25-3(11) requires that promptly after filing the application documents, the applicant deliver to the Public Guardian and Trustee (PGT) copies of filed documents. However, if signed but unfiled documents have previously been delivered to the PGT, there is no need to send to the PGT filed copies. There is also no need to deliver to the PGT copies of the exhibits to the affidavits of delivery or a copy of an affidavit of delivery that only confirms delivery of the Notice of the Proposed Application to the PGT.



If while a patient in an extended care facility or private hospital, the Will-Maker made a gift to the facility's employee, or the employee's spouse, relative, or friend, the PGT must consent in writing to the gift. Similarly, if while in the care of a community care and assisted living facility, the Will-Maker made a gift to an officer, director, agent, or designate of such facility, or to the spouse, relative or friend of such a person, the PGT must give written consent to the gift. In both cases, the required fee is \$100.00 (plus applicable taxes). Explain the circumstances in the letter.

Preparation

- ① Select the appropriate enclosures. The ones listed in the precedent opposite are the most likely documents and are all listed here to facilitate the user's task. List only documents that have actually been filed.
- ② When attaching an *Affidavit of Delivery*, do not attach any exhibits. If one of the *Affidavits of Delivery* relates solely to delivery of the Notice of Proposed Application to the PGT, there is no requirement to send it to the PGT.

Continued...

File No. _____

Date: _____

GARS

Public Guardian and Trustee

of British Columbia

700 – 808 West Hastings Street

Vancouver, BC

V6C 3L3

Dear Sirs:

Re: Estate of *{name of the Deceased}*, Deceased
Date of Death: 20

Further to our letter dated *{date}*, we enclose: ❶

1. Form P2 – Submission for Estate Grant / Form P21 – Submission for Resealing;
2. Form P3 – Affidavit of Applicant for Grant of Probate or Grant of Administration with Will Annexed / P4 – Affidavit of Applicant for Grant of Probate or Grant of Administration with Will Annexed made on *{date}* by *{Name of Applicant}*;
3. Form P5 – Affidavit of Applicant for Grant of Administration without Will Annexed made on *{date}* by *{Name of Applicant}*;
4. Form P6 – Affidavit of Applicant for Ancillary Grant of Probate or Ancillary Grant of Administration with Will Annexed made on *{date}* by *{Name of Applicant}*;
5. Form P7 – Affidavit of Applicant for Ancillary Grant of Administration without Will Annexed made on *{date}* by *{Name of Applicant}*;
6. Form P8 – Affidavit in Support of Application for Estate Grant made on *{date}* by *{Name of Applicant}*;
7. Form P9 – Affidavits of Delivery ❷ of:
 - (a) *{Name}* made on *{date}*;
 - (b) *{Name}* made on *{date}*;
8. Form P10 – Affidavit of Assets and Liabilities for Domiciled Estate Grant / Form P11 – Affidavit of Assets and Liabilities for Non-Domiciled Estate Grant made on *{date}* by *{Name of Applicant}*;

Continued...

LETTER 2 TO PUBLIC GUARDIAN AND TRUSTEE
(with Application Documents)

Preparation (Continued)

- ❶ If requested by the PGT, prepare and include a *Distribution Statement*. Use the *Distribution Statement* in Appendix D – page D11

Processing

Attach copies of all filed documents, and adjust the list.

If it is the law firm's policy, make a copy of the letter, and mail it to the client.

Diarize the file for one month, and follow up if you have not received a reply.

Reminder: Pursuant to section 124(2) of WESA, the applicant must, with respect to an application for grant of probate or administration, provide a copy of the grant of probate or administration to the PGT 45 days after the grant is issued (*Letter to Public Guardian and Trustee with Copy of Grant – Post-Application Letters*).



This letter cannot be mailed to the Public Guardian and Trustee until 21 days have elapsed from the date of delivery of the Notice (see page 4).

*Letter 2 to the Public Guardian and Trustee*Page 2

9. Form P22 – Affidavit of Applicant for Resealing of Grant of Probate or Grant of Administration with Will Annexed / Form P23 – Affidavit of Applicant for Resealing of Grant of Administration without Will Annexed made on *{date}* by *{Name of Applicant}*;
10. Form P24 – Affidavit in Support of Application for Resealing made on *{date}* by *{Name of Applicant}*;
11. Form P25 – Affidavit of Assets and Liabilities for Resealing;
12. copy of Results of Search for Wills Notice;
13. ❶ Distribution Statement.

We look forward to receiving your comments with respect to this application.

If you have any questions or require additional documents, please contact the writer. Thank you for your co-operation.

Yours truly,

cc: client

