

❧ **ESTATES** ❧

SPOUSAL HOME

INDEX

	Page
Explanation.....	2
Procedure/Checklist	12
Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home).....	16
Letter Forwarding Copy of Representation Grant to the Surviving Spouse	20
Notice by Surviving Spouse Exercising Right to Acquire Spousal Home	23
Letter with Notice by Surviving Spouse Exercising Right to Acquire Spousal Home.....	26
Consent of Descendants to the Value of Spousal Home.....	28
Form P42 – Notice of Application (Spousal Home or Deficiencies in Will)	30
Form P43 – Requisition	34

<p>For general instructions regarding the preparation of letters see: Chapter II B Wills - Introduction to Letters</p>

EXPLANATION

Section 26 of WESA gives the surviving spouse the right to acquire the spousal home from the personal representative in satisfaction, in whole or in part, of the surviving spouse's interest in the estate if the following criteria apply:

- the Deceased died intestate after WESA came into force (March 31, 2014);
- the intestate estate includes a spousal home (that is not the subject of a gift or otherwise disposed of by a will or there is a partial intestacy that includes a spousal home); and
- the spousal home is not held in joint tenancy.

On an intestacy, the interest of the surviving spouse in the estate is governed by section 21 of WESA (see **Spousal Share when there are Descendants – Intestacy – Overview** chapter). The amount of the Deceased's interest in the spousal home may be offset against the surviving spouse's interest in the Deceased's estate.

If the Deceased died before March 31st, 2014, the *Estate Administration Act* ("EAA") gives the surviving spouse a statutory life estate in the spousal home (see **Distribution under Part 10 of the Estate Administration Act – Intestacy – Overview** chapter).

In this chapter:

- any reference to the share of the intestate estate includes that part of the estate that is to be treated as an intestate estate. In other words, there is partial intestacy if the Deceased has made a Will, but the Will does not dispose of the entirety of the estate;
- "spousal home" refers to the Deceased's interest in the spousal home, as the Deceased may not own a full interest in the spousal home. For example, if the Deceased and surviving spouse own the spousal home as tenants-in-common (each as to an undivided one-half interest), then the Deceased's interest is one-half of the spousal home's value. The surviving spouse may seek to acquire the Deceased's one-half only, as the spouse already owns the other half; and
- we refer to "estate grants" and "representation grants" interchangeably. The definition of "representation grant" in WESA includes all grants. On the other hand, the *Supreme Court Civil Rules* (Probate Rules) refer to "estate grants," which means all grants except the resealing of a foreign grant. When communicating with clients, the preference is to use "estate grants" which easier for lay persons to understand.

When dealing with the spousal home, the following must be determined:

- **who qualifies as the spouse?**
Spouse is defined in section 2 of WESA as two persons who were both alive immediately before the date of death of one of the persons; and
 - were married to each other; or
 - had lived with each other in a marriage-like relationship, including a marriage-like relationship between persons of the same gender, for at least two years.

The definition of “**spouse**” is the same as under the EAA. However, bear in mind that, WESA, expands the definition to when two persons **cease** being spouses:

- in the case of a marriage:
 - they live separate and apart for at least two years (**increased from one year under the EAA**) with one or both of them having the intention, formed before or during that time, to live separate and apart permanently; or
 - an event occurs that leads to a division of assets under the *Family Law Act*. This event is the date of separation of the spouses.
- in the case of a marriage-like relationship, one or both persons terminate the relationship.

If two or more persons are entitled to a spousal share of an intestate estate, they share the spousal share in the portions to which they agree, or if they cannot agree, as determined by the court (s. 22 of WESA).

- **what constitutes the spousal home?**

Section 1 of WESA defines the spousal home as:

- a parcel of land that:
 - is shown as a separate taxable parcel on a taxation roll for the current year, prepared under the *Taxation (Rural Area) Act* or on an assessment roll used for the levying of taxes in a municipality; and
 - has situated on it, a building assessed and taxed in the current year as an improvement, in which the Deceased and the surviving spouse were ordinarily resident, owned or jointly owned by the Deceased, and not leased to another person.

Put simply, it describes a lot with a house or a strata lot registered in **fee simple**.

- a share owned (or jointly owned) by the Deceased in a company whose articles provide that a building owned or operated by the company must be owned and operated exclusively for the benefit of those of its shareholders who are occupants of the building, if the value of the share is equivalent to the capital value of a suite owned by the corporation, in which suite the Deceased and the surviving spouse were ordinarily resident and which was not leased to any other person – in short, an **apartment corporation**; or
- a **manufactured home**, as defined in the *Manufactured Home Act*, situated on land not owned by the owner of the manufactured home and in which the Deceased and the surviving spouse were ordinarily residents;
- if the spousal home is registered in the name of the Deceased and the spouse (or any other person for that matter), as **joint tenants**, the Deceased’s interest will be transferred into the name(s) of the surviving joint tenant(s) by operation of law and will not form part of the assets of the estate, and thus will not be transferred to the personal representative of the Deceased (see **Real Property – Real Estate – Post-Application Procedure** chapter);
- if the spousal home is registered in the name of the Deceased and the spouse, as **tenants-in-common**, then it is only the Deceased’s interest that the spouse may

acquire, as the spouse already owns the remainder of the spousal home (for example, the spouses were registered as tenants-in-common, the Deceased having an undivided 2/3^{rds} interest in the spousal home, and the surviving spouse an undivided 1/3rd interest – the surviving spouse has the right to acquire the Deceased's 2/3^{rds} interest in the spousal home);

- if the spousal home is registered in the name of the Deceased only, then the spouse has the right to acquire the Deceased's entire interest in the spousal home (subject to the provisions below).

Property registered in the sole name of the Deceased or in joint names may be affected by the *Family Law Act* and may or may not constitute an asset of the estate. If property becomes the subject of a successful *Family Law Act* claim, consult the supervising lawyer.

Occupancy Costs of Spousal Home

A surviving spouse who occupies the spousal home pending his or her purchase of the spousal home under Part 3, Division 2 of WESA must pay, from the date of death of the Deceased to the date of the purchase of the spousal home (s. 32), all costs and expenses relating to the spousal home, including:

- insurance against damage, destruction and public liability;
- all applicable taxes assessed against it;
- all reasonable expenses required to maintain and repair the spousal home;
- all utilities, including electricity, gas, fuel, oil, and water consumed; and
- all payments due under any mortgage and any bonus or payment of a penalty resulting from any prepayment by the surviving spouse.

The notification of these obligations is included in the *Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)*.

Notice to Surviving Spouse by Personal Representative

On an intestacy, in order to ensure that the surviving spouse has a fair opportunity to exercise the right to the spousal home, section 27 of WESA requires that when someone applies to be a personal representative for the Deceased (and at that time becomes an applicant for a representation grant), that person must notify the surviving spouse of his or her right to acquire the Deceased's interest in the spousal home (*Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)* page 16).



Spousal homes located on Nisga'a Lands or treaty lands are not covered in this Guide.

Required Time to Exercise the Right to Acquire Spousal Home

When the representation grant is issued to the personal representative, a surviving spouse must exercise the right to acquire the spousal home by notice (see *Notice by Surviving Spouse Exercising Right to Acquire Spousal Home* (page 23) within:

- 180 days from the date the representation grant is issued to the personal representative; or
- a longer period of time extended by court order which may be extended before or after the expiration of the period referred to above.

If the court grants an extension of the 180-day period, a personal representative who sells or disposes of the spousal home is not liable if the disposal is made in the interval:

- after 180 days from the date the representation grant is issued; and
- before the above notice is delivered to the personal representative (s. 29(1) of WESA) or before the court extends the time by which that right may be exercised (s. 27(2) of WESA).

Prohibitions on Disposing of the Spousal Home

In order to allow the surviving spouse an opportunity to decide what to do with the spousal home, section 28 of WESA prohibits the personal representative from selling or disposing of the spousal home until:

- 180 days have passed from the date the representation grant was issued to the personal representative; or
- a longer period of time, extended by court order, has passed. This court-ordered extension may be granted before or after the expiration of the 180-day period referred to above;

unless:

- the personal representative obtains a written consent from the surviving spouse; or
- the sale of the spousal home is necessary to pay debts and liabilities of the estate because the other estate assets are not sufficient to cover such debts, and a mortgage or charge on the spousal home would not raise sufficient money to pay them.

Exercise of the Right to Acquire Spousal Home by the Surviving Spouse

If the surviving spouse wishes to acquire the spousal home, notice of the decision in writing (s. 29 of WESA) must be given to:

- the personal representative of the Deceased, unless the surviving spouse is the personal representative; and
- the Deceased's descendants entitled to share in the intestate estate; and

- the Public Guardian and Trustee, if one or more of the descendants of the Deceased entitled to share in the intestate estate is a minor or a mentally incapable person without a nominee.

The Notice must contain the intended value placed by the surviving spouse on the spousal home (or the Deceased's interest in it) as at the date of the death of the Deceased (see: *Notice by Surviving Spouse Exercising Right to Acquire Spousal Home* – page 23). It must be delivered within the required time (see **Required Time to Exercise the Right to Acquire Spousal Home** above).

Dispute over Value of Deceased's Interest

Ideally, all parties will try to reach an agreement about the valuation of the Deceased's interest in the spousal home and affirm this value through written consents. However, if the parties (the surviving spouse and the personal representative) cannot agree on the value of the Deceased's interest in the spousal home as at the date of death, section 30 of WESA provides a mechanism to resolve the conflict.

In response to the spousal home's valuation set out in *Notice by Surviving Spouse Exercising Right to Acquire Spousal Home* (page 23), if there is disagreement between the parties, the personal representative will have to obtain a valuation of the Deceased's interest in the spousal home and deliver to the surviving spouse a written response stating the value that the personal representative places on the Deceased's interest in the spousal home.

Note: The personal representative is acting in the interest of the estate and is liable to descendants who have an interest in the estate.

The valuation of the spousal home may be obtained from:

- BC Assessment Authority (by obtaining a copy of the Notice of Assessment as at the date of death); or
- a real estate agent (by obtaining a letter or a comparative market analysis); or
- a real estate appraiser (by obtaining a formal appraisal);

and the value of the Deceased's equity is arrived at by deducting from the valuation any liability registered against the Deceased's interest in the spousal home.

There are two different scenarios that depend on whether the surviving spouse and the personal representative are two different individuals or are the same person:

- **Scenario A: the surviving spouse and the personal representative are different persons:**
 - Step 1: if the personal representative disputes the value of the Deceased's interest in the spousal home set out in the *Notice by Surviving Spouse Exercising Right to Acquire Spousal Home*, the personal representative must deliver to the surviving spouse, within a reasonable time, a written response to the notice stating the value the personal representative places on the Deceased's interest.

- Step 2: if, after the receipt of the response by the surviving spouse, the personal representative and the surviving spouse still do not agree on the value of the Deceased's interest in the spousal home set out in the personal representative's response, the surviving spouse or the personal representative **may** apply to the court for an order determining the value of the Deceased's interest.



The negotiations between the parties, the precedents for the personal representative's response, and the procedure with respect to the dispute are not covered here because the *Guide* does not deal with litigation pertaining to wills and estates. We are simply describing the steps in sequential order.

- **Scenario B: the surviving spouse is the sole personal representative of the Deceased:**

In this case:

- if the surviving spouse and the descendants **can reach an agreement** with respect to the valuation of the Deceased's interest in the spousal home, the surviving spouse must obtain a written consent from:
 - the descendants entitled to share in the intestate estate in which they agree to the value that the surviving spouse places on the Deceased's interest (*Consent of Descendants to the Value of Spousal Home* – page 28); and
 - the Public Guardian and Trustee if any of the Deceased's descendants entitled to share in the estate is a minor or a mentally incapable person without a nominee; or
- if the parties **cannot** reach an agreement, the surviving spouse must apply to the court for an order determining such value.

However, if a surviving spouse who is also the sole personal representative does not apply to the court for an order to determine the value of the Deceased's interest in the spousal home within 180 days of the date of the notice (*Notice by Surviving Spouse Exercising Right to Acquire Spousal Home*), then the following may apply to the court for an order determining the value of the Deceased's interest in the spousal home:

- any descendant entitled to share in the estate; or
- the Public Guardian and Trustee.

Note: Section 130 of WESA [Priority among applicants – intestate estate] applies to provide the Deceased's spouse priority over other applicants. Therefore, situations in which the surviving spouse is the sole personal representative of the Deceased are the most common ones.

The application in case of disputes (s. 30 of WESA) is done either by:

- ***Form P42 (Rule 25-14(2)) – Notice of Application (Spousal Home or Deficiencies in Will)*** (page 30) if there is already an existing proceeding within which it is appropriate to seek the order under the *Supreme Court Civil Rules*; or

- **Form P43 (Rule 25-14(1)) – Requisition** (page 34) if there is no existing proceeding.

Purchase of Spousal Home by Surviving Spouse

Once the value of the Deceased's interest in the spousal home has been determined and agreed upon, the surviving spouse may purchase such interest, whether or not the surviving spouse is also the Deceased's personal representative and despite any rule of law concerning the purchase of trust property by a trustee⁽¹⁾.

The procedure is different depending on whether the Deceased's interest in the spousal home exceeds the value of, or is less than, the surviving spouse's interest in the estate.

- If the **fair market value** of the Deceased's interest in the spousal home **exceeds the value of the surviving spouse's interest in the estate** (s. 21 of WESA and the **Overview** chapter – **Intestacy**), the surviving spouse may purchase the remainder of the Deceased's interest in the spousal home from the personal representative in accordance with the valuation of the Deceased's interest in the spousal home, and may offset the value of the spousal home against the value of spouse's share in the intestate estate and pay the additional price to the personal representative.

For example: if the spouse elects to purchase the Deceased's interest in the spousal home, the situation would be as follows:

Spousal Home

The spousal home (valued at \$1,300,000) is registered in the name of the Deceased and the surviving spouse as tenants-in-common, as to an undivided one-half interest. Accordingly, the value of the Deceased's interest in the spousal home is ½ of \$1,300,000:

-\$650,000

The surviving share of the residue of the Deceased's estate:

The value of the remainder of the Deceased's estate is \$800,000

The surviving spouse's preferential share of the estate as the parent of all of the Deceased's children **+\$300,000**

Residue of the intestate estate after satisfaction of the spouse's preferential share is
\$800,000 – \$300,000 = \$500,000

The surviving spouse's share of the residue is ½ of \$500,000: **+\$250,000**

Spouse's share of the estate **+\$550,000**

Shortfall

The surviving spouse will pay or owe to personal representative/estate **\$100,000**

⁽¹⁾ Ordinarily, a trustee may not purchase trust property, and the personal representative holds the assets of the estate as a trustee. This section provides a statutory exception to the general rule when the spouse is also the personal representative and therefore holds as trustee the share that he or she is entitled to acquire. The purpose of the rules setting out how the value of the share is to be determined act as a safeguard to ensure proper valuation when there are other persons with an interest in the estate.

- If the **fair market value** of the Deceased's interest in the spousal home **is less than the surviving spouse's interest in the estate**, the surviving spouse may request that the personal representative transfer such interest to the surviving spouse and that the value of such interest be deducted from that share of the estate.

The application to purchase the spousal home is made in the same form as in the case of disputes (s. 33 of WESA), by either:

- **Form P42 (Rule 25-14(2)) – Notice of Application (Spousal Home or Deficiencies in Will)** (page 30) if there is already an existing proceeding within which it is appropriate to seek the order under the **Supreme Court Civil Rules**; or
- **Form P43 (Rule 25-14(1)) – Requisition** (page 34) if there is no existing proceeding.

Before a surviving spouse may make an application to retain the spousal home, the surviving spouse must provide financial information as set out in the *Supreme Court Civil Rules*⁽¹⁾ to the:

- personal representative of the Deceased; and
- descendants of the Deceased entitled to share in the intestate estate.

Retention of the Spousal Home

In some situations (and in some areas of BC), the value of the spousal home is so great that:

- the surviving spouse's share of the assets of the estate is not sufficient for the surviving spouse to purchase the Deceased's interest in the spousal home from the estate; and
- it would be an unreasonable financial hardship for the surviving spouse to:
 - purchase the spousal home because, without disposing of it, the spouse cannot satisfy the interests of all descendants entitled to share in the estate; or
 - leave the spousal home.

In such cases, the courts have the power to order that the spouse be allowed to remain in the spousal home in partial satisfaction of his or her entitlement, and a charge is registered against the spousal home in favour of the descendants, who become, in turn, mortgagees of the spousal home. Apart from interest earned under the charge, the descendants must wait until the charge becomes payable (page 10). This provision is sometimes referred to as the "saving provision".

The surviving spouse must satisfy the court that it is reasonable for the spouse to remain in the spousal home. The surviving spouse may be successful if the following criteria set out in section 33(1) of WESA are met:

- the surviving spouse is ordinarily resident in the spousal home at the time of the Deceased's death;
- assets in the estate are not sufficient to satisfy the interests of all descendants entitled to share in the intestate estate without disposing of the spousal home – in other words, the value of the spousal home exceeds the surviving spouse's interest in the Deceased's estate (see example on page 8);

⁽¹⁾ We are currently clarifying this reference to how, as set out in the Supreme Court Civil Rules, the financial information is to be provided.

- the court is satisfied that purchasing the spousal home would impose a significant financial hardship on the surviving spouse – for example, the spouse does not have other assets to satisfy the shortfall or, say, in the case of RRSP's, it would be unfair for the spouse to realize certain assets to purchase the spousal home;
- the court is satisfied that, in all the circumstances, having to leave the spousal home would impose a greater prejudice on the surviving spouse than for the descendants having to wait an indeterminate period to receive all or part of their share of the intestate estate; and
- either the surviving spouse has:
 - resided in the spousal home for a sufficient period of time to have established a connection to the spousal home; or
 - a sufficient connection with the community or members of the community in the vicinity of the spousal home to warrant an order for the surviving spouse to retain the spousal home.

The court may make an order, subject to any terms or conditions the court considers appropriate, to:

- transfer the Deceased's interest in the spousal home to the surviving spouse;
- specify the amount of money the surviving spouse must pay to the descendants towards satisfaction of their interest in the estate (see example on page 8);
- convert the remaining unpaid interest of the descendants in the intestate estate into a registrable charge against the title to the surviving spouse's interest in the spousal home (in the case of the example on page 8, the descendants would have a charge against the title in the amount of \$100,000). In other words, the surviving spouse will be indebted to the descendants in the amount of the shortfall (plus any interest) and the descendants will become the lenders or mortgagees of the surviving spouse;
- determine an interest rate, as that term is defined in section 7 [interest rate] of the *Court Order Interest Act*, or at any other rate the court considers appropriate, for the amount the descendants are entitled to with respect to the registrable charge;
- determine the value of the registrable charge referred to above to include the:
 - principal amount owing to the descendants entitled to share in the intestate estate; and
 - expected value of the future interest that will be earned with respect to the charge.

Charge has the same meaning as in the *Land Title Act* (s. 35 of WESA), and is an estate or interest in land that is less than the fee simple, including a judgment, mortgage or lien, among other things.

When a Registrable Charge Becomes Payable

Sections 34 and 35 of WESA set out the circumstances in which the balance owing under the registrable charge becomes due and payable if the circumstances with regard to prevailing residential lending practices in Canada are not specified by the court, then:

- twelve months after the date of death of the surviving spouse; or
- twelve months after the date the surviving spouse ceases to reside in the spousal home; or
- the completion date of the sale of the spousal home.

In addition to the above circumstances, a registrable charge also becomes due and payable when there is concern that an action (or lack thereof) by the surviving spouse may prejudice the interest of the owner of the charge (the descendants) and, if the court on application by or on behalf of the owner of the charge, orders that the registrable charge should become due and payable for the following reasons:

- the surviving spouse is in default of any payments owing pursuant to a prior charge registered against the title of the spousal home;
- a tax or other charge is levied against the title of the spousal home and has not been paid, unless payment has been lawfully deferred;
- an action or failure to take action jeopardizes the value of the spousal home to such an extent that it no longer provides sufficient security for the total amount secured by the registrable charge (for example, the surviving spouse fails to repair a leaky roof);
- the provisions of the registrable charge have not been complied with or an event has occurred pursuant to those provisions by which the amount secured by the registrable charge becomes due and payable.

If the proceeds of the sale of the spousal home are not sufficient to pay the full amount owing under the registrable charge, section 35(7) protects the surviving spouse (and that spouse's estate) from the descendants' claim for the shortfall in such a sale, and the court may order the release of the registrable charge.

Section 34 of WESA provides the mechanism for the registration of the registrable charge and of the release.

Section 35 of WESA allows the surviving spouse to pay the entire balance of principal and interest owing under the charge in exchange for a release of registrable charge (similar to a discharge of mortgage).

If a registrable charge becomes payable by order of the court for the reasons above, the surviving spouse has 180 days to sell the interest in the spousal home in order to pay, in full, the amount secured by the registrable charge.

After 180 days, if the surviving spouse has not sold the interest in the spousal home or the owner of the registrable charge has not been paid, the owner of the registrable charge may take any action regarding the registrable charge that a mortgagee of land may take under the prescribed standard mortgage terms of the *Land Title Act*.

The owner of a registrable charge may:

- postpone the priority of the registrable charge to other charges, both before or after it is registered in a land title office; and
- sell, transfer, assign, or otherwise dispose of the registrable charge to a third party without waiting, for instance, until the surviving spouse dies.

PROCEDURE/CHECKLIST

The procedure for the acquisition of the spousal home is set out in sections 26 to 35 of WESA.

Steps to be taken by the personal representative	Steps to be taken by a spouse who is <u>not</u> the sole personal representative	Steps to be taken by a spouse who <u>is</u> the sole personal representative
Prepare and mail the <i>Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)</i> (Step 1)	Upon receipt of <i>Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)</i> (Step 1), if applicable, extend time to exercise his or her right to acquire spousal home (Step 3)	<u>If there is agreement between the surviving spouse and the descendants</u> : obtain <i>Consent of Descendants to the Value of Spousal Home</i> (Step 5(b)(i)) <u>If there is no Agreement</u> :
When the representation grant is received, send <i>Letter Forwarding Copy of Representation Grant to Surviving Spouse</i> within 180 days of the grant (Step 2)	Within 180 days or a longer period extended by court (Step 4) prepare and mail: <ul style="list-style-type: none"> • <i>Notice by Surviving Spouse Exercising Right to Acquire Spousal Home and</i> • <i>Letter with Notice by Surviving Spouse Exercising Right to Acquire Spousal Home</i> 	<ul style="list-style-type: none"> • the surviving spouse must apply to the court for an order to determine the value (Step 5(b)(ii)); or; • if the spouse fails to apply, the descendants (or Public Guardian and Trustee) may apply to the court (Step 5(b)(iii))

1. Notice to surviving spouse by personal representative

- (a) when preparing the other application documents for a representation grant, prepare:
 - (i) *Form P1 – Notice of Proposed Application in Relation to Estate* (see the **Notice of Proposed Application in Relation to Estate** chapter) and
 - (ii) *Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)* (page 16)
- (b) arrange to have the *Form P1 – Notice* signed by the personal representative(s) or lawyer
- (c) attach the *Form P1 – Notice* to the *Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)* and mail the letter to the surviving spouse

2. **When the representation grant is issued:**

- (a) prepare *Letter Forwarding Copy of the Representation Grant to the Surviving Spouse* (page 20)
- (b) diarize the date that is 180 days after the date on which the representation grant is issued (or a later date if the 180-day period is extended by the court)

Note: Section 25(4) of the *Interpretation Act* 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.”

3. **Extension of time to exercise the spouse’s right to acquire spousal home**



At present, the precedents and procedure to extend the time are not covered in the *Guide*.

4. **Before the expiration of 180 days (or a longer period extended by the court):**

- (a) prepare *Notice by Surviving Spouse Exercising Right to Acquire Spousal Home* (page 23)
- (b) arrange to have the *Notice* signed by the spouse
- (c) prepare *Letter with Notice by Surviving Spouse Exercising Right to Acquire Spousal Home* (page 26), which must be sent to the:
 - (i) personal representative of the Deceased, unless the surviving spouse is the sole personal representative; and
 - (ii) descendants of the Deceased entitled to share in the intestate estate; and
 - (iii) Public Guardian and Trustee, if one or more of the descendants of the Deceased entitled to share in the intestate estate is a minor or a mentally incapable person without a nominee

5. **Dispute over value of Deceased’s interest**

- (a) **Scenario A** (see explanation on page 6):
The spouse and the personal representative are different persons:
 - (i) if the personal representative disputes the value of the Deceased’s interest in the spousal home set out in the *Notice by Surviving Spouse Exercising Right to Acquire Spousal Home*, the personal representative must deliver to the surviving spouse, within a reasonable time, a written response to the *Notice* stating the value that the personal representative places on the Deceased’s interest
 - (ii) if, upon receiving the response from the personal representative, the surviving spouse, does not agree with the value of the Deceased’s interest in the spousal home, either the surviving spouse **or** the personal representative may apply to the court for an order to determine it

At present, neither the procedure nor the negotiations between the personal representative and the surviving spouse are covered in this *Guide*

- (b) **Scenario B** (see explanation on page 7)
The surviving spouse who exercises the right to acquire the spousal home is the sole personal representative of the Deceased:

The surviving spouse must either:

- (i) if the surviving spouse and the descendants are in agreement:
- (A) prepare *Consent of Descendants to the Value of Spousal Home* (page 28) and arrange to have the Consent signed; and
 - (B) obtain the consent from the Public Guardian and Trustee if any of the Deceased's descendants entitled to share in the estate are minors or mentally incapable persons without a nominee
- (ii) if the surviving spouse and the descendants are not in agreement with respect to the value of the Deceased's interest in the spousal home (and the above *Consents* cannot be obtained):
- (A) the surviving spouse must apply to the court for an order under section 30(3) determining the value of such interest, or
 - (B) if the surviving spouse, being the sole personal representative, does not apply to the court for an order under subsection 30(3) of WESA within 180 days of the date of the notice referred to in section 29, the following people may apply to the court for an order determining the value of the Deceased's interest in the spousal home:
 - (I) any descendant entitled to share in the estate or
 - (II) if applicable, the Public Guardian and Trustee.



At present, these applications are not covered in the *Guide*.

6. Purchase of spousal home by surviving spouse

- (a) **Scenario 1** (see explanation on page 8):

The value of the surviving spouse's interest in the estate is **less than** the fair **market value** of the Deceased's interest in the spousal home or the spouse has sufficient assets to pay the shortfall. Treat this step as a conveyancing transaction and:

- (i) obtain a cheque from the surviving spouse for the shortfall or
- (ii) prepare a mortgage for the shortfall from the surviving spouse to the descendants
- (iii) deduct the difference between the fair market value of the Deceased's interest in the spousal home and the cheque (or mortgage) from the remainder of the estate; then

- (iv) arrange for the transfer of the Deceased's interest in the spousal home from the personal representative to the surviving spouse (see **Post-Application Procedure – Real Estate – and Post-Application Documents – Form A**).
- (b) **Scenario 2** (see explanation on page 8):

The value of the surviving spouse's interest in the estate is **more than** the fair market value of the Deceased's interest in the spousal home:

 - (i) arrange for the transfer of the Deceased's interest in the spousal home from the personal representative to the surviving spouse (see **Post-Application Procedure – Real Estate and Post-Application Documents – Form A**); then
 - (ii) deduct the value of the Deceased's interest in the spousal home from the remainder of the estate.

7. Retention of spousal home

This subject will be covered in a future update of the *Guide*.

**LETTER WITH NOTICE TO SURVIVING SPOUSE BY
PERSONAL REPRESENTATIVE
(SPOUSAL HOME)**

General Notes

If section 26 of WESA applies (see page 2), at the time an application for a representation grant is made, the applicant for the representation grant of a Deceased must notify the surviving spouse of his or her right to acquire the spousal home in accordance with Part 3 Division 2 [Spousal Home] of WESA.

This letter replaces the *Letter Forwarding Notice* in the **Notice of Proposed Application in Relation to Estate** chapter.

Note: Do not mail this letter until the survival clauses in the Will have expired.



If the surviving spouse is applying to become the sole personal representative of the Deceased, do not prepare this letter.

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

Continued...

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

① File No. _____

Date: _____

{Name and address of surviving spouse }

Dear: _____

**Re: Estate of {name of the Deceased}, Deceased and
Residence at {address} ("Spousal Home")**

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/husband}*.

or:

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

① We ② I enclose Notice of Proposed Application in Relation to Estate (Form P1) pursuant to Section 121 of the *Wills, Estates and Succession Act* and Rule 25-2(2) of the *Supreme Court Civil Rules*.

① 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.

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.

In addition, please note that you have the right to acquire the Deceased's interest in the Spousal Home in accordance with Part 3 Division 2 [Spousal Home] of the *Wills, Estates and Succession Act* in satisfaction of part or all of your share of the Deceased's estate.

You must exercise the right to acquire the Spousal Home during the period ending no later than 180 days after the date on which the estate grant is issued to the personal representative unless the court, before or after the expiration of that period, extends the time by which the right may be exercised.

If the court grants an extension of the period referred to above, a personal representative who disposes of the Spousal Home is not liable if the disposal is made:

- (a) after 180 days from the date the estate grant is issued; and
- (b) before the notice of the right to acquire the Spousal Home is delivered to the personal representative under section 29(1) of *Wills, Estates and Succession Act* or before the court extends the time by which that right may be exercised (see above).

Continued...

**LETTER WITH NOTICE TO SURVIVING SPOUSE BY
PERSONAL REPRESENTATIVE
(SPOUSAL HOME)**

Preparation (Continued)

- ❶ Insert this paragraph if the letter is faxed to the recipient.
- ❷ 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)* in the **Notice of Proposed Application in Relation to Estate** chapter).

Processing

Attach to the letter a signed copy of Form *PI – Notice of Proposed Application in Relation to Estate*. Refer to the **Notice of Proposed Application in Relation to Estate** chapter for instructions with respect to the mailing and delivery of this form.

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

In addition, you, as the surviving spouse that occupies the Spousal Home pending your purchase of the Spousal Home under Part 3 Division 2 [Spousal Home] of the *Wills, Estates and Succession Act*, must pay, from the date of the *{Deceased's name}*'s date of death to the date of the purchase of the Spousal Home:

1. the cost of insuring the Spousal Home against damage, destruction and public liability;
2. all applicable taxes assessed against the Spousal Home;
3. all reasonable and necessary expenses to maintain and repair the Spousal Home;
4. all utilities, including electricity, gas, fuel, oil, and water consumed; and
5. all payments due under any mortgage and any bonus or payment of a penalty resulting from any prepayment by you.

In due course, we shall provide you with a copy of the estate grant.

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

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

Yours truly,

cc: client

LETTER FORWARDING COPY OF REPRESENTATION GRANT TO THE SURVIVING SPOUSE

General Notes

When the representation grant has been received by the personal representative, it should be sent as soon as possible to the surviving spouse since the surviving spouse must exercise the right to acquire the spousal home within:

- 180 days after the date on which the representation grant is issued to the personal representative; or
- a longer period of time extended by court order (which may be extended before or after the expiration of the 180-day period referred to above).

Preparation

- ❶ Date the letter as soon as the representation grant is received by the personal representative.
- ❷ Insert the date of the *Letter with Notice to Surviving Spouse by Personal Representative (Spousal Home)* (page 16).
- ❸ Insert the date of the representation grant.
- ❹ Insert the date that is 180 days after the date of the representation grant.

Note: In calculating the number of days, refer to section 25(4) of the *Interpretation Act* which 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.”

Processing

Attach a copy of the representation grant to the letter and mail it as soon as possible to the surviving spouse.

Diarize the date in ❸ less two weeks.

File No. _____

Date: ❶ _____

{Name and address of surviving spouse}

Dear: _____

**Re: Estate of *{name of the Deceased}*, Deceased
and *{address of spousal home}* (“Spousal Home”)**

Further to our letter dated ❷, we enclose a copy of the estate grant issued on ❸ to *{Name of the Personal Representative}*.

Pursuant to section 27 of the *Wills, Estates and Succession Act*, you must exercise the right to acquire the Spousal Home during the period ending no later than ❹ (being 180 days from *{date of the grant}*) unless, before or after the expiration of that period, the court extends the time by which the right may be exercised.

Further note that a personal representative must not, without your written consent, dispose of the Spousal Home during the 180 days after the date on which the estate grant is issued or for any period of time extended under section 27 (2) of the *Wills, Estates and Succession Act* unless assets other than the Spousal Home are not sufficient to pay the debts and liabilities of the estate and a mortgage or charge on the Spousal Home would not raise sufficient money to pay those debts and liabilities

Please refer to the above letter and to the Notice attached thereto as well as our recommendation to obtain independent legal advice.

Yours truly,

**NOTICE BY SURVIVING SPOUSE EXERCISING
RIGHT TO ACQUIRE SPOUSAL HOME**

General Notes

When the representation grant is issued to the personal representative, a surviving spouse must exercise the right to acquire the spousal home (s. 29(1)) within:

- 180 days after the date on which the representation grant is issued to the personal representative; or
- a longer period extended by the court (the 180-day period may be extended by the court before or after the expiration of that period).

by delivering a written notice to the:

- personal representative of the Deceased, unless the surviving spouse is the personal representative;
- descendants of the Deceased entitled to share in the intestate estate; and
- Public Guardian and Trustee, if one or more of the descendants of the Deceased entitled to share in the intestate estate is a minor or a mentally incapable person without a nominee.

Pursuant to section 29(2) of WESA, the Notice must contain a statement:

- showing the value placed by the surviving spouse on the Deceased's interest in the spousal home, as of the Deceased's date of death; and
- indicating that the surviving spouse requires the personal representative to transfer the interest in the spousal home to the surviving spouse.



If no lawyer acts on behalf of the surviving spouse, this notice may be prepared by the surviving spouse and delivered to the personal representative. However, it is preferable to have the lawyer for the estate and the lawyer for the surviving spouse negotiate the settlement.

No notice is required if the surviving spouse is also the sole personal representative of the estate.

At this time, the *Guide* does not cover the following issues:

- an application to the court by the surviving spouse for an extension of time pursuant to section 27(3);
- negotiations between the parties;
- shortfalls if the market value of the Deceased's interest in the spousal home exceeds aggregate of the spouse's share in the estate and the preferential share.

Continued...

NOTICE BY SURVIVING SPOUSE EXERCISING RIGHT TO ACQUIRE SPOUSAL HOME

Preparation

- ① Insert a date that is less than 180 days from the date of the representation grant, unless this period has been extended by court order, in which case insert the later date.
- ② Insert the names of all the Deceased's descendants (children, grandchildren, great-grandchildren, etc.).
If no descendant is a minor or mentally incapable person without a nominee, delete the reference to the Public Guardian and Trustee.
- ③ Insert the value of the spousal home as at the date of death and show how the valuation was obtained (and attach a copy of the appropriate valuation). For example, the valuations may be obtained from:
 - the BC Assessment Authority (Assessment Notice as at the date of death); or
 - a real estate agent (a letter); or
 - a real estate appraiser (by ordering a formal appraisal).
- ④ Insert the balance owing as at the date of death (if applicable) with respect to a mortgage registered against the spousal home. If none exists, delete this paragraph.
- ⑤ Insert the name of the mortgagee (e.g. bank) and the registration number of the mortgage. Delete this paragraph if there is no mortgage.
- ⑥ Calculate the value of the Deceased's interest in the Spousal Home. For example, if the total market value was \$1,000,000 and the Deceased had an undivided one-half interest, show half of the market value, \$500,000.
- ⑦ Check with the spouse as to the name the spouse prefers to use.
- ⑧ Insert the value of the surviving spouse's share of the residue of the Deceased's estate – see example on page 8.
- ⑨ The amount of the preferential share of the surviving spouse depends on whether or not all the descendants are descendants of the Deceased and of the surviving spouse:
 - section 21(3) of WESA: \$300,000 if all the descendants are common to both the Deceased and the surviving spouse; and
 - section 21(4) of WESA: \$150,000 if the descendants are not common to the Deceased and the surviving spouse.

In both cases, a greater amount may be prescribed at a later date.
- ⑩ Adapt this paragraph to the situation. The lawyer should dictate the particulars of the settlement. For example: if the assets of the estate are insufficient to purchase the Deceased's interest in the spousal home, the surviving spouse may either pay the shortfall from other assets that the surviving spouse owns or apply to retain the spousal home (see page 9).

Processing

Once the Notice is completed and signed, arrange to have it delivered to the personal representative within 180 days from the date of the representation grant (or by a later date if the court has extended that period of time).

NOTICE

Date: ❶

To: *{NAME(S) OF THE PERSONAL REPRESENTATIVE(S)}*

❷*{names of the descendants of the Deceased}*

❷*Public Guardian and Trustee*

Re: **Estate of *{name of the Deceased}*, Deceased and Spousal home at *{address}* (the “Spousal Home”)**

The Spousal Home has been valued at \$❸ pursuant to the ❸ attached hereto. The Deceased’s interest was one-half/quarter of the total value.

As at the date of death, the amount of \$❹ was owing pursuant to a mortgage in favour of ❺ registered against the Spousal Home under No. ❺ (the “Mortgage”).

Accordingly, I submit that the value of the Deceased’s interest is as follows:

- (a) ❻ Value of the Deceased’s interest of the Spousal Home
 (½, ¼ of \$❸) \$❻
 - (b) ❼ Less: (½, ¼) of the balance owing under Mortgage -\$❼
- Net value of the Deceased’s interest in the spousal home: \$◆

Pursuant to section 29(2) of the *Wills, Estates and Succession Act*, if you agree to the above valuation, I hereby request that you transfer the late *{Name of Deceased}*’s interest in the Spousal Home into my name as follows:

❼{FULL LEGAL NAME OF SURVIVING SPOUSE}, {Occupation}
{address of the spousal home}

As my share of the residue of the Deceased’s estate (being \$❸ after satisfaction of the my preferential shares of \$❹ pursuant to section 21 ❹(3)/❹(4) of the *Wills, Estates and Succession Act*) is (not) sufficient to purchase the Deceased’s interest in the spousal home, please ❿.

{NAME OF SURVIVING SPOUSE}

LETTER WITH NOTICE BY SURVIVING SPOUSE EXERCISING RIGHT TO ACQUIRE SPOUSAL HOME

General Notes

This letter may be sent by the lawyer acting on behalf of the surviving spouse or by the spouse personally.

It must be sent within:

- 180 days from the date on which the representation grant is issued to the personal representative; or
- a longer period extended by the court (the 180-day period may be extended by the court before or after the expiration of that period).

Preparation

- ① Date the letter within:
 - the 180-day period following the issue of the representation grant to the personal representative; or
 - a longer period extended by the court (the 180-day period may be extended by the court before or after the expiration of that period).
- ② The letter must be addressed and sent/delivered to the:
 - the Deceased's personal representative, unless the surviving spouse is the personal representative; and
 - Deceased's descendants entitled to share in the intestate estate; and
 - Public Guardian and Trustee, if one or more of the descendants of the Deceased entitled to share in the intestate estate is a minor or a mentally incapable person without a nominee.
- ③ Adapt the wording depending on whether the letter is written by the supervising lawyer or the surviving spouse.
- ④ Describe how the valuation is obtained (see ③ on page 24).
- ⑤ Omit this paragraph in the letter addressed to the personal representative.
- ⑥ Describe the arrangements for example, how the shortfall will be paid. This should be dictated by the supervising lawyer.

Processing

Attach a copy of the signed *Notice by Surviving Spouse Exercising Right to Acquire Spousal Home*.

File No. _____

Date: ❶ _____

❷

Dear: _____

**Re: Estate of *{name of the Deceased}*, Deceased and
Spousal home at *{address}* (the “Spousal Home”)**

Pursuant to section 29 of the *Wills, Estates and Succession Act*, I/we enclose:

1. Notice exercising ❸ my ❸ *{name of surviving spouse}*'s right to acquire the Deceased's interest in the Spousal Home;
2. copy of ❹

I hereby confirm that ❸ I ❸ *{name of surviving spouse}* wish(es) to purchase the Deceased's interest in the Spousal Home for the amount set out in the attached Notice.

❺ You may consult with your own lawyer concerning your interest in, or rights against, the estate.

❻

Yours truly,

CONSENT OF DESCENDANTS TO THE VALUE OF SPOUSAL HOME

General Notes

When the surviving spouse and the descendants are in agreement regarding the valuation of the Deceased's interest in the spousal home, a surviving spouse who wishes to exercise his or her right to acquire the Deceased's interest in the spousal home should obtain a **Consent** indicating the agreed upon value. This **Consent** should be obtained from the:

- descendants entitled to share in the intestate estate; and
- Public Guardian and Trustee, if one or more of the descendants of the Deceased entitled to share in the intestate estate is a minor or a mentally incapable person without a nominee.

Preparation

Note: If the signatories of this Consent are not in one location, or if signing one document would be time consuming or impractical, prepare a separate **Consent** for each signatory and adjust the wording accordingly.

- ❶ Insert the actual interest the Deceased had in the spousal home: for example: "an undivided one-half interest". This information is found on the Land Title Office search.
- ❷ Copy the valuation from the Notice received from the surviving spouse.
- ❸ List the names of all the descendants and describe their relationship to the Deceased.
- ❹ If you are preparing individual Consents, delete the counterpart paragraph and "AS TO ALL SIGNATURES".
- ❺ Insert space for the signature of the Public Guardian and Trustee.

Processing

Mail the **Consent** to the beneficiaries with a covering letter to be dictated by the supervising lawyer. The lawyer may recommend that the beneficiaries obtain independent legal advice.

Diarize the file and follow up if the executed **Consents** are not returned.

CONSENT

WHEREAS:

- A. *{NAME OF THE DECEASED, WITH ALL ALIASES}* (the “Deceased”) late of the *{City}* of *{location}*, died on *{date}*, at the *{City}* of *{location}*, in the Province of British Columbia, intestate.
- B. The Deceased’s estate includes a spousal home located at *{address of spousal home}* (the “Spousal Home”) that is not the subject of a gift or otherwise disposed of by a will and the Deceased’s interest in the Spousal Home is ❶.
- C. A Grant of Administration without Will Annexed was issued on *{date}* by the Supreme Court of British Columbia, *{location}* Registry, appointing *{NAME OF PERSONAL REPRESENTATIVE}* (the “Personal Representative”) as Administrator of the estate of the Deceased.
- D. The Deceased was survived by his/her spouse *{NAME OF THE SURVIVING SPOUSE}* who has, pursuant to section 29 of the *Wills, Estates and Succession Act*, delivered to me/us a Notice dated *{date}* (the “Notice”):
 - (b) setting out the value that she(he) places on the Deceased’s interest in the Spousal Home at \$ ❷; and
 - (a) requesting that the personal representative transfer the Deceased’s interest in the Spousal Home to *{NAME OF THE SURVIVING SPOUSE}*.
- E. The following are the descendants of the Deceased:

<u>Name</u>	<u>Relationship to Deceased</u>
❸	❸
❸	❸

WE HEREBY AGREE to the valuation of the Deceased’s contained in the Notice and consent to the Personal Representative transferring the Deceased’s interest in the Spousal Home to the surviving spouse, *{NAME OF THE SURVIVING SPOUSE}*.

❹ This Consent may be signed in two or more counterparts which together shall be deemed to constitute one Consent in writing.

Dated at *{location}*, this ____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED by)
each of the Beneficiaries this ____ day of)
_____ 20__ in the presence of:)

_____)
Signature)
Name: _____)
Address _____)
Occupation: _____)

{NAME OF DESCENDANT}

{NAME OF DESCENDANT}

❺ **AS TO ALL SIGNATURES**

❺

FORM P42
(Rule 25-14(2))
NOTICE OF APPLICATION
(SPOUSAL HOME OR DEFICIENCIES IN WILL)

General Notes

Use this form if there is already an existing proceeding within which it is appropriate to apply for an order:

- under section 30 of WESA determining the value of a Deceased's interest in a spousal home; or
- under section 33 of WESA relating to a spousal home;

If there is no existing proceeding within which it is appropriate to seek such an order, the new proceeding must be commenced by *Form P43 – Requisition* (page 34).

Preparation

- ① Insert the existing proceeding number.
- ② Insert the name of the party bringing the application: the surviving spouse, the personal representative, the Deceased descendant(s), or the Public Guardian and Trustee.
- ③ Insert the name of the party to whom the application is addressed.
- ④ Insert the hearing date as instructed by the lawyer. Check with the probate registry.
- ⑤ Insert the time of hearing at the registry in question. Check the time with the probate registry.

INCLUDE ONLY THE PARAGRAPH THAT IS APPLICABLE AND DELETE THE OTHERS

- ⑥ Check this box if you are applying under section 30 of WESA [Dispute over Value of Deceased Person's Interest] to determine the value of a Deceased's interest in a spousal home within the meaning of WESA and describe the order sought.
- ⑦ Check this box if you are applying under section 33 of WESA [Retention of Spousal Home] relating to a spousal home within the meaning of WESA and describe the order sought.
- ⑧ Using numbered paragraphs, set out a brief summary of the facts supporting the application. If any person sues or is sued in a representative capacity, identify the person and describe the representative capacity (for example, if the guardian applies on behalf of a minor).
- ⑨ Using numbered paragraphs, specify any rule or other enactment relied on and provide a brief summary of any other legal arguments on which the applicant(s) intend(s) to rely in support of the orders sought. If appropriate, include citation of applicable cases.
- ⑩ Using numbered paragraphs, list the affidavits served with the notice of application and any other affidavits or documents already in the court file on which the applicant(s) will rely. Each affidavit included on the list must be identified – see example as follows:

*“Affidavit No. __ of {NAME OF PERSON SWEARING THE AFFIDAVIT},
sworn {date}”.*

Continued...

FORM P42 (RULE 25-14(2))

No. **1** _____
{Location} Registry

In the Supreme Court of British Columbia

In the Matter of the Estate of
{LEGAL NAME OF DECEASED}, Deceased

NOTICE OF APPLICATION
(SPOUSAL HOME OR DEFICIENCIES IN WILL)

Name(s) of applicant(s): **2** *{NAME(S) OF APPLICANT(S)}*.

To: **3** *{NAME(S)}*

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at *{address of registry in which the proceeding is being conducted}* on **4** at **5** for the order(s) set out in Part 1 below.

PART 1: ORDER(S) SOUGHT

- 6** The applicant(s) seek(s) the following order(s) under section 30 of the *Wills, Estates and Succession Act*:
- 7** The applicant(s) seek(s) the following order(s) under section 33 of the *Wills, Estates and Succession Act*:
 - (1) **7**;
 - (2) **7**;

PART 2: FACTUAL BASIS

- 1. **8**
- 2. **8**

PART 3: LEGAL BASIS

- 1. **9**
- 2. **9**

PART 4: MATERIAL TO BE RELIED ON

- 1. **10** Affidavit No. ___ of *{NAME}*, sworn *{dd/mmm/yyyy}*
- 2. **10**

FORM P42
(Rule 25-14(2))
NOTICE OF APPLICATION
(SPOUSAL HOME OR DEFICIENCIES IN WILL)

Preparation (Continued)

- ❶ Check the appropriate box (see the **Notice of Proposed Application in Relation to Estate** chapter) with respect to **minors or mentally incompetent persons**.
- ❷ Insert the lawyer's estimate of the total time required to hear the application, including the time required by the other side.
- ❸ Check the appropriate box.
- ❹ Insert the date on which the *Notice of Application* is signed.
- ❺ The *Notice of Application* may be signed by the person who is filing this Form or by the applicant's lawyer.
- ❻ Leave the box blank – it will be completed by the court.

Procedure

Prepare and attach to *Form P42*:

- an affidavit (or affidavits) in support of the order sought.
- a draft of the order using *Form 34 – Consent Order*.

File with *Form P41 – Requisition*.

Form P42

- ❶ I am not obliged under section 29(1)(c) of the *Wills, Estates and Succession Act* to deliver a filed copy of this notice of application to the Public Guardian and Trustee.
- ❶ I am obliged under section 29(1)(c) of the *Wills, Estates and Succession Act* to deliver a filed copy of this notice of application to the Public Guardian and Trustee.

The applicant(s) estimate(s) that the application will take ❷.

- ❸ This matter is within the jurisdiction of a master.
- ❸ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form P33,
- (b) file the original of every affidavit, and of every other document, that (i) you intend to refer to at the hearing of this application, and (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other person to whom notice of this application must be provided one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that have not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: ❹ {dd/mmm/yyyy}.

❺ Signature of
 applicant
 lawyer for applicants
{type or print name}.

❸

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: *{dd/mmm/yyyy}*.

Signature of Judge
Master

FORM P43
(RULE 25-14(2))
REQUISITION

General Notes

Use this form if there is **no existing** proceeding within which it is appropriate to apply for an order:

- under section 30 of WESA determining the value of a Deceased's interest in a spousal home; or
- under section 33 of WESA relating to a spousal home.

If there is already an existing proceeding within which it is appropriate to seek such an order, the application must be brought by *Form P42 – Notice of Application* (page 30).

Preparation

- ❶ Leave this number blank, as the court will assign a number for the proceeding.
- ❷ Insert the name of the party bringing the application: the surviving spouse, the personal representative, the Deceased's descendants, or the Public Guardian and Trustee.
- ❸ Check this box if you are applying under section 30 of WESA [Dispute over value of Deceased's interest] to determine the value of a Deceased's interest in a spousal home within the meaning of WESA and describe the order sought.
- ❹ Check this box if you are applying under section 33 of WESA [Retention of Spousal Home] relating to a spousal home within the meaning of WESA and describe the order sought.

INCLUDE ONLY THE PARAGRAPH THAT IS APPLICABLE AND DELETE THE OTHERS

- ❺ List all documents filed in support of the application, for example:

“(a) Affidavit No. ___ of {NAME OF PERSON} sworn {date};” etc.
- ❻ Insert the full address for service. If available, insert a fax number and/or an e-mail address as additional addresses for service. If you are using the law firm's address as address for service, insert the name of the supervising lawyer under the law firm's name.

Processing

Prepare and attach to the *Requisition* a draft of the order using *Form 34 – Consent Order*.

Continued...

FORM P43 (RULE 25-14(2))

No. ❶
{Location} Registry

In the Supreme Court of British Columbia

In the Matter of the Estate of
{LEGAL NAME OF DECEASED}, Deceased

REQUISITION

Filed by: ❷{NAME(S) OF APPLICANT(S)} (the “applicant(s)”)

Required:

The applicant(s) seek(s) the following order(s):

- 1. ❸The applicant(s) seek(s) the following order(s) under section 30 of the *Wills, Estates and Succession Act*:
 - ❹The applicant(s) seek(s) the following order(s) under section 33 of the *Wills, Estates and Succession Act*:
 - (1) ❹;
 - (2) ❹;
- 2. Attached to this requisition is a draft of the order required.
- 3. The evidence in support of the application is:
 - 1. ❺;
 - 2. ❺;

This requisition is filed by {NAME}, whose address for service is as follows:

Street address for service: ❻{Street and city address for service}
 Fax number address for service (if any): ❻{Fax number address for service}
 E-mail address for service (if any): ❻{E-mail address for service}
 Telephone number: ❻{Telephone number}

Date: {dd/mmm/yyyy}.

Signature of
 filing person
 lawyer for filing persons
 {type or print name}

