


ESTATES

POST-APPLICATION LETTERS

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**For general instructions regarding the preparation of letters
 see: Wills • Letters – Introduction to Letters**

LETTER TO PUBLIC GUARDIAN AND TRUSTEE WITH COPY OF GRANT

General Notes

If the Public Guardian and Trustee has been given Notice pursuant to the Probate Rules, section 124(2) of WESA requires the personal representative to deliver to the Public Guardian and Trustee a copy of the representation grant within 45 days of the grant being issued.

Preparation

- ❶ Insert the name of the appropriate representation grant.
- ❷ Insert this paragraph when a grant of administration has been obtained and a beneficiary or an intestate successor is a minor; or there is no Trustee or no trust created for a minor's interest in the Deceased's Will. Pursuant to section 153 of WESA, the personal representative must pay or transfer the minor's interest in the estate to the Public Guardian and Trustee.
- ❸ Complete the explanation about when you expect the law firm to be able to pay the funds (e.g. "the funds are received from the *{bank}*, Income Tax Returns are prepared, all taxes paid and the Clearance Certificate is received from Canada Revenue Agency").

Processing

Attach a copy of the representation grant the letter.

File No. _____

Date: _____

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

Attention: _____

Dear Sirs:

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

Further to our letter dated *{date}*, we enclose a copy of the Grant of ❶ with respect to the above.

❷ When ❸ *{we have realized all assets of the estate}*, we shall pay all the debts, prepare and file the requisite Income Tax Returns, obtain a Clearance Certificate, and remit to you the share of the estate of *{name of minor}*.

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

Yours truly,

cc: client

LETTER TO FINANCIAL INSTITUTION (Transferring Account)

General Notes

Refer to the financial institutions reply to your initial request for information for the procedure to transmit or transfer funds held by them (see *Letter of Enquiry to Bank – Pre-Applications Letters*). Generally, banks and other financial institutions require a notarially-certified copy of the representation grant (see *Notarially-Certified Copy – Post-Application Documents*).

The simplest is for the law firm to receive the funds in trust for the estate. If the assets are to be transferred directly to a personal representative, instruct the personal representative to attend at the appropriate branch of the financial institution and make the necessary arrangements to deal with such asset.

Preparation

Note: Check the address of the institution in their reply. Often, it is not the same as the address you used in your initial inquiry letter.

- ❶ If an Indemnity Agreement is required by the financial institutions, it should provide the law firm with this document when replying to the letter of enquiry (see above).
- ❷ Some institutions require a written authorization to forward funds to the law firm. If the institution has not provided their form of authorization, prepare one (see example below). Adapt the authorization for brokers and transfer agents. ⁽¹⁾

AUTHORIZATION to FINANCIAL INSTITUTION, BROKER or TRANSFER AGENT

{Copy the name of bank, address, attention line, and re: from correspondence received from the financial institution or broker}

As personal representative[s] of the above estate, I/we hereby authorize you to pay the funds to *{name of law firm}*, Barristers and Solicitors, in trust and to close the above account[s].

Yours truly,

{Name of personal representative}

- ❸ Refer to the personal representative's instructions and insert the correct paragraph.

Processing

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

Diarize the file for two weeks and follow up if you have not received a reply.

⁽¹⁾ The authorization is a separate document on the CD accompanying the *Guide "Authorization_Bank_Broker"* in the sub-directory **Post-App_Letters**.

File No. _____

Date: _____

{name and address of financial institution}

Attention:

Dear Sirs:

Re: Estate of *{name of the Deceased, with all aliases}*, Deceased
Account No. _____
G. I. C./Term Deposit No. _____
R.R.S.P./R.S.P. No. _____

As solicitors acting in the administration of the above estate, we enclose:

1. notarially-certified copy of the Grant of *{Probate/Administration, etc.}*;
2. ❶ Indemnity Agreement; and
3. ❷ Authorization.

If you find the enclosed to be in order, please ...

❸

...provide us with your cheque representing the balance of the above account[s] payable to *{name of law firm}*, in trust, as per the enclosed authorization.

(or:)

... transfer the account to *{name of personal representative or beneficiary}*. Please confirm to us when the account has been transferred.

For income tax purposes, please confirm the amount of interest earned on each of the above accounts:

- from the date of death to the end of the year of death;
- from January 1st, 20__ to the date of payout.

Please close all accounts of the Deceased at your bank/credit union/trust company.

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

Yours truly,

cc: client

LETTER TO BROKER OR TRANSFER AGENT (Transfer Securities)

General Notes

The name of the transfer agent is usually located at the bottom of the certificate, in very small print). Confirm the transfer agent's name through the website of "*sedar.com*" (see **Stocks, Shares and Bonds – Post-Application Procedure**). Once you have ascertained the names of each transfer agent, separate and group the different securities by transfer agent and mail one letter to each transfer agent. Some brokers or transfer agents will require additional documentation (such as a *Power of Attorney* and their own form of *Declaration of Transmission – Post-Application Documents*) to accompany each individual security.

If the Deceased had numerous securities, you may want to use a broker. Confirm this with the personal representative, as there may be additional charges.

Preparation

- ❶ To determine the transfer agent's name and address - see above. Telephone the transfer agent to confirm:
 - agent's address;
 - amount of fees, if any, payable for handling each security;
 - documentation required to effect the transfer; and
 - additional information or special documentation required by the transfer agent with respect to the transferee (i.e. person to whom the securities will be transferred).
- ❷ Insert the information (all found on the Certificates). List each Certificate separately.
- ❸ Complete the amount of the fee payable and enclose the cheque (see ❶ above).
- ❹ Complete all the required information regarding the transferee in accordance with instructions received from the personal representative.

Processing

Prepare the enclosures referred to in the letter and ensure that they are properly executed and attached. For precedents and explanations, see:

- **Post-Application** chapter:
 - *Power of Attorney to Transfer Bonds or Shares*;
 - *Declaration of Transmission (Shares and Stocks)*; and
 - *Notarially-Certified Copy* of grant.
- this chapter: *Authorization* (see notes opposite *Letter to Financial Institutions*);

As it may be difficult and expensive to replace lost securities, send the letter either by registered mail or by courier (asking the courier company for a receipt).

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

Diarize the file for two weeks and follow up if you have not received a reply.

REGISTERED MAIL or COURIER

File No. _____

Date: _____

❶ *{name and address of broker or transfer agent}*

Attention:

Dear Sirs:

**Re: Estate of *{name of the Deceased, with all aliases}*, Deceased
Account No.**

As solicitors acting in the administration of the above estate, we enclose:

1. The following securities:

<u>No. of Certificate</u>	<u>Name of Company</u>	<u>Registered Owner</u>	<u>Number and Class of shares</u>
❷ _____	_____	_____	_____

2. Power of Attorney for the above securities;

3. Declaration of Transmission;

4. notarially-certified copy of the representation grant;

5. Authorization; and

6. our cheque in your favour in the amount of \$❸, being your transfer fee.

If you find the enclosed to be in order, please transfer the securities into the name of *{name of beneficiary or personal representative}* as set out below and provide us with new Certificates.

❹ Name: _____

Address: _____

S.I.N. _____

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

Yours truly,

cc: client

PAYOUT LETTER **(Land Tax Deferment Act Program)**

General Notes

Taxes deferred pursuant to the *Land Tax Deferment Act* Program, together with interest and administrative fees, must be paid when the principal residence of a deceased is transferred to a different owner, save and except a qualifying surviving joint tenant (the survivor must be over 60 and the property must be his or her principal residence). To determine if a person qualifies, see the link **Defer your Taxes in Addresses and Links – Helpful Information** chapter or go to **Government of British Columbia** site **Pay or Defer your annual taxes ⇒ Defer Your Taxes**.

Once you have ascertained the balance owing to the Ministry of Finance and Corporate Relations with respect to an Agreement registered against the Title to the Deceased's property (see *Fax to Ministry of Finance and Corporate Relations – Land Tax Deferment Act Program – Pre-Application Letters*), it may be paid to the Ministry, either:

- right away, if funds are available; or
- when the property is sold, on the completion date.

Preparation

- ❶ Copy the Agreement number from the Land Title Office search.
- ❷ Insert the name of the owner of the property as it appears on the Land Title Office search.
- ❸ Copy the date of death from the *Death Certificate*.
- ❹ The address of the property to which the charge applies must be the Deceased's principal residence.
- ❺ Insert the legal description (including Parcel Identifier Number) exactly as shown on the Land Title Office search.
- ❻ The amount of the cheque is the total of ❷, ❸ and ❹.
- ❼ Insert the net amount owing as at the date of death from the reply to the *Fax to the Ministry of Finance and Corporate Relations – Land Tax Deferment Act Program – Pre-application Letters*. This amount must be the same as the one in the *Statement of Assets, Liabilities and Distribution*.
- ❽ Calculate the interest to the date the cheque is expected to be received by the Ministry. Add at least one day for the delivery.
- ❾ Include any charges from the reply letter from the Ministry.

Processing

Attach the cheque, payable to the **Minister of Finance**, to the letter and arrange to have it delivered by courier.

Make copies of the **signed** letter and **cheque** and attach them to your application to register the transfer with respect to the property (Form 17 or Form A).

File No. _____

{Date}:

Ministry of Finance and Corporate Relations
 Taxation Branch
 1802 Douglas Street
 P. O. Box 9446
 Stn. Prov. Govt.
 Victoria, BC
 V8W 9V6

Dear Sirs:

Re: Land Tax Deferment Act Agreement No. ①
Owner: ② {Deceased}
Date of Death: ③
Address of Property: ④
Legal Description: ⑤

We enclose our trust cheque in the amount of \$⑥, being:

1.	the balance owing under the above Agreement as at the date of death:	\$⑦
2.	interest calculated up to and including <i>{date}</i> :	\$⑧
3.	administrative charges:	\$⑨
	Total:	\$⑥

The enclosed funds are forwarded to you on the specific understanding and trust condition that you will:

1. file with the Land Title Office a Notice of Satisfaction discharging the above Land Tax Deferment Act Agreement; and
2. provide us with written discharge particulars.

Thank you for your cooperation.

Yours truly.

cc: Client

LETTER TO ACCOUNTANTS **(Requesting Preparation of Income Tax Returns)**

General Notes

The law firm or the personal representative should arrange to prepare and file the required Income Tax Returns promptly. Generally, the following Returns must be prepared:

- T3's for the year[s] prior to the date of death – if not already prepared and filed by the Deceased;
- T3 for the year of death - up to the date of death; and
- T1's for the years during which the estate is administered.

In this regard refer to:

- **Pre-Application Procedure:**
 - Preparation of Income Tax Returns and Request for Clearance Certificates; and
 - Diarize Limitation Dates; and
- **Post-Application Procedure: Conditions Precedent to Distribution – Income Tax Returns Have Been Prepared and Filed and Clearance Certificates Have Been Received.**

Unless you are a chartered accountant or certified general accountant, or have some special training in the accounting field, do not attempt to prepare the Returns yourself.

Obtain from the personal representative:

- the name and address of the accountant(s); and
- confirmation that the law firm is to instruct the accountants to prepare Income Tax Returns (in other words, liaise with the accountants).

If the personal representative has no preference as to an accountant, ask the supervising lawyer to recommend one.

Preparation

- ❶ Insert the name and address of the accountant, which is usually provided to the law firm by the personal representative.
- ❷ Change the wording if the title of the document is different. For example, the document may be entitled “Statement of Estate Assets” or a similar such title.
- ❸ Attach copies of the replies received from the financial institutions, as they usually contain the information that the accountants may require, such as interest earned and paid on funds held in accounts, etc.
- ❹ If available, attach copies of the last Income Tax Return(s) and/or Assessment Notices.

Processing

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

Diarize the file for four weeks and follow up if you have not received the prepared Tax Returns.

File No. _____

Date: _____

① *{name and address of
Chartered Accountant[s]/Certified General Accountants}*

Dear Sirs:

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

As solicitors acting in the administration of the above estate, we enclose:

or:

On instructions from *{name of personal representative}*, the personal representative of the above estate, we enclose:

1. notarially-certified copy of the Grant of *{Probate/Administration, etc.}*;
2. copy of Statement of Assets, Liabilities and Distribution;
3. Trust Reconciliation Statement; ②
4. copies of letters from financial institutions ③ *{list letters}*; and
5. copies of the *{year}* to *{year}* Income Tax Returns; ④

Please attend to the following:

1. prepare the requisite Income Tax Returns for the Deceased and, if applicable, for the estate;
2. advise us of the amount of income tax payable;
3. provide us with your estimated invoice for services rendered; and
4. make the necessary arrangements to apply for the Clearance Certificate (including the preparation of the Letter of Authority and Form TX19 – Asking for a Clearance Certificate.

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

Yours truly,

cc: client

LETTER TO CANADA REVENUE AGENCY (Enclosing Income Tax Returns)

General Notes

Income Tax Returns for the Deceased and the estate which have been prepared by the accountants (on instructions received from the personal representative and with the co-operation of the law firm) are usually forwarded to the law firm, together with confirmation of the amount of Income Tax owing to Canada Revenue Agency.

Upon receipt of the documents from the accountants, attend to the following:

- arrange for the personal representative to sign the Income Tax Returns (and any other documentation provided by the accountants – such as authorizations, *Form TX 19 – Asking for a Clearance Certificate*, etc.);
- obtain the necessary funds to pay any outstanding income taxes. By now, the law firm may have sufficient funds in trust to pay the taxes, so that you may issue a trust cheque (payable to the Receiver General) to cover what is owing. The supervising lawyer will usually discuss the arrangements with the personal representative and obtain the authority or instructions to disburse such funds. If the cheque is provided by the personal representative, it should be a bank draft or a money order (payable to the Receiver General).

When all the documents have been signed and the funds have been obtained, prepare the letter opposite.

Preparation

- ① List all Income Tax Returns (T1's and T3's). Keep in mind that the Deceased may not have filed Returns for several years prior to his/her death.
- ② If a cheque other than the law firm's trust cheque is enclosed, change this paragraph accordingly.

Processing

Check the following:

- all Returns are properly signed by the personal representative; and
- the required cheque is attached.

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

Do not mail the *Form TX19 – Asking for a Clearance Certificate* at this time, as it will be mailed later with the *Letter to Canada Revenue Agency (Applying for Clearance Certificate)*.

Diarize the file for six weeks and follow-up if the Assessment Notice[s] or a reply has not been received. This step requires a lot of patience, as Canada Revenue Agency will process each Return and then often ask for additional funds, or conversely, refund payments made before the Assessment Notice is mailed. This may take several months.

File No. _____

Date: _____

Canada Revenue Agency
Taxation Office
9755 King George Highway
Surrey, B. C.
V3T 5E5

Dear Sirs:

Re: Estate of (name of the Deceased, with all aliases), Deceased

As solicitors acting in the administration of the above estate, we enclose:

1. **①**{year} T1 Income Tax Return for the Deceased;
2. **①**{year} T3 Income Tax Return for the estate;
3. copy of the Grant of *{Probate/Administration, etc.}* dated *{date}*;
4. copy of Statement of Assets, Liabilities and Distribution; and
5. our **②**trust cheque payable to the order of the Receiver General in the amount of \$_____, being the balance owing as per attached Income Tax Returns.

Pursuant to Sections 159(2) and 159(3) of the *Income Tax Act*, and in order to enable us to distribute the balance of the assets of the above estate, and to wind-up same, please provide us Assessment Notices at your very earliest convenience.

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

Yours truly,

cc: client

LETTER TO CANADA REVENUE AGENCY
(Applying for Clearance Certificates)

General Notes

Upon receipt of the Assessment Notices from the Canada Revenue Agency (see the two preceding pages for explanation), forward the following to the Canada Revenue Agency:

- **Form TX19 – Asking for a Clearance Certificate (Post-Application Documents).**
- Authorization from the personal representative instructing Canada Revenue Agency to mail the **Clearance Certificate** to the law firm (see below); and

Preparation

- ① Although the first letter to Canada Revenue Agency (enclosing Income Tax Returns) is addressed to the Surrey Taxation Office, address this letter to the address shown opposite.
- ② Omit this paragraph if the **Clearance Certificates** are not being sent to the law firm.
 N.B. There may be different **Clearance Certificates**: one for the Deceased up to the date of death and, if it is an ongoing estate, another **Clearance Certificate** for the estate if a T3 Estate Return has been filed and the estate has sufficient income to justify the accounting cost of preparing a T3 Return.

Prepare the authorization below, have it signed by the personal representative, and attach it to the letter if the Clearance Certificates are to be mailed to the law firm⁽¹⁾:

**AUTHORIZATION FROM PERSONAL REPRESENTATIVE TO MAIL
CLEARANCE CERTIFICATE TO LAW FIRM**

Date: _____

Canada Revenue Agency
 Estate Section 471-12
 1166 West Pender Street
 Vancouver, B. C. V6E 3H8

Dear Sirs:

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

I/We, the undersigned, being the personal representative[s] for the above estate, hereby authorize you to forward the Clearance Certificates for the Deceased and the estate to:

{Name of Law Firm}, Barristers and Solicitors
{Address: _____}
 Attention: _____

Yours truly,

{name of the personal representative}

Processing

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.

⁽¹⁾ The authorization is a separate document on the CD accompanying the *Guide* "Authorization_CRA_Clearance Certificate" in the sub-directory **Post-App_Letters**.

File No. _____

Date: _____

① Canada Revenue Agency
Estate Section 471-12
1166 West Pender Street
Vancouver, BC
V6E 3H8

Dear Sirs:

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

We enclose:

1. Form TX19 – Asking for a Clearance Certificate; and
2. ② Authorization signed by *{name of personal representative}*, the personal representative of the Deceased, to forward the Clearance Certificate to our law firm.

Please...

(select as applicable:)

... forward the Clearance Certificate to *{name of accountant}*.

(or:)

... provide us with the Clearance Certificate at your earliest convenience.

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

Yours truly,

cc: client

LETTER TO RESIDUARY BENEFICIARY (Forwarding Releases)

General Notes

Before distributing the assets of the estate, you must obtain signed Releases from all beneficiaries (see *Release – Post-Application Documents*).

If several distributions are necessary, you may have to prepare *Releases* for each interim or partial distribution, as well as Releases for the final distribution.

Prepare a *Trust Reconciliation Statement* for funds or assets received and disbursed or a list of any other assets to be distributed, and attach to this letter.

Note: Although we do not show such a statement in this chapter, an electronic version in Excel is provided. It is only a suggested format but if you are familiar with Excel spreadsheets you may find it useful (see *Trust Reconciliation Statement – Helpful Information – Checklists*).

Preparation

- ❶ Adapt this paragraph if it is an **interim** or **partial** release (i.e. **before** receiving the *Clearance Certificate* – for example say: “We have now received the Assessment Notice ...”).
- ❷ Change the name of the document if you do not call it a Trust Reconciliation Statement.
- ❸ Change the word “final” to “partial”, “interim”, “first”, or “second” if this is not the final distribution.

Processing

Prepare and attach the *Release* and the *Trust Reconciliation Statement*.

Prepare a list of all Releases being mailed and put it on the file. When the Releases are received, check them off against 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 three weeks and follow up if you have not received all *Releases*. Diarize any subsequent reminders.

File No. _____

Date: _____

{name and address of beneficiary}

Dear _____:

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

① We have now received the Clearance Certificate from the Canada Revenue Agency, and accordingly, we enclose a:

1. Release in favour of the personal representatives of the Estate, which we would ask you to sign before a witness and return to the writer. As the law firm acts only as lawyers in the administration of the above estate, we would strongly recommend that you obtain independent legal advice before signing the enclosed Release; and
2. ② Trust Reconciliation Statement.

We confirm that, upon receipt of the executed Releases from all beneficiaries, we shall forward to you our trust cheque for your share of the ③ final distribution of the assets of the estate. We are unable to disburse any funds until **all** Releases have been returned to the writer duly signed and witnessed.

If you have any questions, please contact the writer.

Yours truly,

cc: client

LETTER TO LEGATEE/BENEFICIARY (Forwarding Bequest)

General Notes

Forward cash legacies (gifts of money) and bequests (gifts of specific articles or items) to the legatees and beneficiaries before the bulk of the estate (the residue) is distributed to the residuary beneficiaries (those who receive the balance of the estate after all debts, expenses, legacies and bequests have been paid).

The legacies and bequests should be accompanied by a receipt that is to be signed by the legatees and returned to the law firm (see *Receipt and Release – Post-Application Documents*).

Preparation

- ❶ Adapt this wording depending on whether you are attaching the law firm’s trust cheque or a cheque issued by the personal representative on the account opened for the estate. The amount is the amount of the bequest described in the Will.

Check the *Trust Reconciliation Statement* or any other reconciliation that was prepared for this distribution to ensure that the correct amount or asset is inserted.

- ❷ Omit this paragraph if the legatee or beneficiary is not a minor or does not have a committee.
- ❸ Include this paragraph if the bequest is sent to a charity.
- ❹ If no Receipt and Release is attached, insert the following paragraph:

“Please acknowledge receipt of {cheque or description of item} by signing and returning the enclosed copy of this letter.”

Processing

Make an extra copy of the letter and print on it the following:

Receipt of *{cheque or description of item}* is hereby acknowledged.

{Signature}

{Print Name}

Date: _____

Attach a self-addressed (stamped) envelope.

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

Diarize the file for two weeks (depending where the legatees are located) and follow up if you have not received all *Receipts and Releases*, especially the ones from the charities. When received, send receipts from charities to the accountants.

File No. _____

Date: _____

{name and address of legatee}

Dear _____:

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

We enclose:

1. **①**our trust cheque payable to your order in the amount of \$_____, being the legacy bequeathed to you pursuant to the Will of the Deceased;

(and/or:)

{description of any other asset being sent, such as a Canada Savings Bond, G.I.C. etc.}

2. Receipt and Release, which we ask you to sign and return in the envelope provided.

②The above *{cheque or description of item}* is forwarded to you as the *{Guardian of {name of minor} or: {committee of {name}}}*.

As the law firm acts only as solicitors in the administration of the above estate, we would strongly recommend that you obtain independent legal advice before signing the enclosed Receipt and Release

③Please provide us with a receipt for income tax purposes.

④Please acknowledge receipt of *{cheque or description of item}* by signing and returning the enclosed copy of this letter.

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

Yours truly,

LETTER TO RESIDUARY BENEFICIARY (Forwarding Share of Residue)

General Notes

You may only distribute the assets when all the Releases have been received from the residuary beneficiaries.

Preparation

- ❶ Adapt this wording depending on whether you are attaching:
 - the law firm's trust cheque; or
 - a cheque issued by the personal representative on the account opened for the estate.

Check the *Trust Reconciliation Statement* or any other reconciliation that was prepared for this distribution to ensure that the correct amount or asset is inserted and paid out.

- ❷ Omit this paragraph if the beneficiary is not a minor or does not have a committee.

Processing

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

File No. _____

Date: _____

{name and address of beneficiary}

Dear _____:

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

Further to our letter dated *{refer to previous letter forwarding Releases for execution}*, we confirm that we have received Releases from all beneficiaries and now enclose:

❶

... our trust cheque in your favour in the amount of \$_____, being your *{first/final}* distributive share of the above estate.

(or:)

{description of any other asset being sent, such as a Canada Savings Bond, G.I.C. etc.}

❷ The enclosed *{cheque or description of item}* is forwarded to you as *{the Guardian of {name of minor} or {committee of {name}}}*.

We trust that you will find the foregoing to be in order. If you have any questions, please contact the writer.

Yours truly,

REPORT LETTER TO CLIENT

General Notes

When all matters pertaining to the estate have been completed, prepare a comprehensive report to the personal representative describing their administration management. This will give you an opportunity to review the file and ascertain that all assets and other matters have been handled.

It is a good idea to make an extra copy of the *Statement of Assets, Liabilities and Distribution* and use it as a “checklist”. A reminder though: assets held jointly or assets where there is a designated beneficiary are not included in the *Statement of Assets, Liabilities and Distribution*.

The letter on the following pages sets out the wording for most of the frequently encountered assets in an estate and, of course, should be adapted to suit the circumstances.



The legal assistant may prepare a draft letter covering all the issues and give it to the supervising lawyer with such additions and changes flagged for the lawyer to decide if s/he wants to include them, strike them, or reword them.

In order to cover all situations, whenever possible the words “Executor” and “Administrator” have been replaced with “personal representative” and the word “Grant” refers to all representation grants.

Preparation

When preparing this report, review and check off the following:

- initial instructions – every item;
- initial letter to the personal representative;
- all subsequent notes and correspondence; and
- *Statement of Assets, Liabilities and Distribution*.

❶ In the case of Administration:

Replace as applicable:

- the words “Grant of Probate” with:
“Grant of Administration”
or: “Grant of Administration with Will annexed”; and
- the words “Executor of the Will of the Deceased” with the words “Administrator of the estate”.

❷ Insert the date of publication.

❸ Insert the date in the *Notice to Creditors and Other Claimants (Pre-Application Documents)*.

❹ If the *Notice to Creditors and Other Claimants* was not published, insert one of the two paragraphs according to the circumstances.

❺ Describe arrangements made to pay outstanding debts (if there are any).

Continued...

File No. _____

Date: _____

{name and address of personal representative(s)}

Dear _____

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

The Grant of ❶ Probate (the “Grant”) appointing you as the Executor❶ of the Will (*or Administrator of the Estate*) was issued by the Supreme Court of British Columbia on _____, 20__.

Notice to Creditors and Other Claimants

Section 154 of the *Wills, Estates and Succession Act* states that the personal representative may publish a Notice to Creditors and Other Claimants in the British Columbia Gazette to afford creditors and other claimants the opportunity of submitting any claims against the estate of the Deceased within the specified time.

The Notice to Creditors and Other Claimants was published in the British Columbia Gazette on ❷ specifying that the creditors and other claimants are required to present their claims against the estate of the Deceased to the personal representative on or before ❸, which is thirty days from the publication of the Notice. Pursuant to Section 154 of the *Wills, Estates and Succession Act*, you are at liberty to distribute the proceeds of the estate after that date without regard to the claims of any creditors who did not give notice in the meantime. The publication does not prejudice the right of a creditor to follow the proceeds or assets into the hands of the person who received them.

(or:)

❹ Pursuant to your instructions, no Notice to Creditors and Others was published.

(or:)

We have not published a Notice to Creditors and Others and request your instructions to do so.

Debts and liabilities

❺ We understand from *{usually: name of the personal representative}* that all debts and liabilities of the Deceased have been paid.

Continued...

REPORT LETTER TO CLIENT

Preparation (Continued)

- ① By now, arrangements for the preparation of the required Income Tax Returns should be in place. For a general discussion and more specific information, review the following:
 - **Post-Application Procedure** chapter – **Preparation of Income Tax Returns and Request for Clearance Certificate** –; and
 - in this chapter:
 - *Letter to Accountants (Requesting the Preparation of Income Tax Returns)*; and
 - *Letter to Canada Revenue Agency (Enclosing Tax Returns)*.
- ② Use this paragraph in the case of joint tenancy.
- ③ Use this paragraph only in the case of transmission to the personal representative (i.e. when the property was not held in joint tenancy).
- ④ Use this paragraph only in the case of transfer of the property to the beneficiary (after first transmitting same to the personal representative).
- ⑤ Transcribe the list of encumbrances from the Land Title Search of the property or, if available, from the State of Title Certificate.
- ⑥ If the property is transferred to a beneficiary before 210 days have elapsed from the date of a representation grant, add the following paragraph:

“The Title to the property is subject to a notation pursuant to section 155 of the *Wills, Estates and Succession Act*. If no filing under this Act is made on or before *{date}*, being 210 days from the date of the issuance of the grant, this notation will expire by effluxion of time and an application will have to be made to remove the notation from the Title.”
- ⑦ Modify this to describe any other arrangements made regarding the accounts, e.g.:

“... and have requested that all funds be forwarded to this law firm, in trust. We shall then attend to the payment of the following debts *{list}* and distribute the estate as follows:”

Continued...

Income Tax Returns

① We have forwarded a copy of the Grant and the Statement of Assets, Liabilities and Distribution to *{name of accountant}*, the accountant for the estate.

Under the *Income Tax Act*, the personal representatives are required to file the appropriate Income Tax Returns on behalf of the Deceased and the estate. If the personal representatives fail to file such Returns, pay any tax found to be owing and obtain Clearance Certificate[s] from the Department of National Revenue, the personal representatives may be personally responsible for payment of any tax owing by the Deceased or by the estate.

Property at {civic address of property}

② Form 17 transferring the Deceased's interest in the above property to *{name of the surviving joint tenant}*, the surviving joint tenant, was filed in the *{location}* Land Title Office on *{date}* under No. *{number}*. We have applied for a State of Title Certificate and shall provide you with a copy of same upon receipt.

③ Form 17 transmitting Title with respect to the above property from the Deceased to the personal representative was filed in the *{location}* Land Title Office on *{date}* under No. *{number}*. We have applied for a State of Title Certificate and shall provide you with a copy of same upon receipt. We await your further instructions with respect to any further disposition of this property.

④ Pursuant to the terms of the Will, the Title to the above property was transferred to *{name of the beneficiary/transferee}* on *{date}*, under No. *{number}*. For your records, we enclose a copy of the State of Title Certificate dated *{date}* showing *{name of the beneficiary}* as the registered owner of the property, subject to the following encumbrances:

⑤

⑥

Accounts with Financial Institutions (Banks, Credit Unions and Trust Companies)

We have forwarded a notarially-certified copy of the Grant to *{name of bank or other financial institution}* and ⑦ understand that you will contact the bank directly to arrange for the transfer of the various accounts to the personal representative(s).

Canada Pensions

It is our understanding that you will deal (or have already dealt) directly with the Canada Pension Office regarding any Survivor or Canada Pension Benefits. If you require any information, you should contact them at 1-800-277-9914. If you are planning to attend at their office, you should telephone them to make an appointment. If you are mailing any documents to Canada Pension, the address is P. O. Box 1177, Federal Building, Victoria, BC V8W 2V2.

Continued...

REPORT LETTER TO CLIENT**Preparation (Continued)**

- ❶ Describe the arrangements or the manner in which you have dealt with, or intend to deal with, any other estate assets, for example:
- insurance policies;
 - securities and bonds;
 - motor vehicle(s); and
 - miscellaneous other assets.

For a general discussion on the transmission and transfer of assets, see **Transmission of Assets to Personal Representative – Post-Application Procedure**.

Insert the reference to the “distribution” if you did not include it in the *Letter of Instructions to Personal Representative* (Chapter III-A-2 – **Pre-Application Letters**).

- ❷ Insert the date, which is 210 days from the date of the issuance of the representation grant.
Note: Diarize this date.
- ❸ Insert this paragraph in the case of probate or administration with will annexed
- ❹ Insert this paragraph in the of administration without will annexed

Continued...

Transmission of Assets to Personal Representative(s)

We confirm that you will attend to the transmission of the following assets into your name(s) as the personal representative(s):

- ① (a) accounts with *{name of bank or other financial institution}*;
- (b) *{year}* motor vehicle;
- (c) *{description of any other assets to be dealt with}*.

For this purpose, we have provided you with additional notarially-certified copies of the Grant and understand that you have sufficient copies of the Death Certificate.

(or:)

We confirm that we have received no instructions with respect to the transfer of the assets listed in Part II (Personal Property) of the Statement of Assets, Liabilities and Distribution. If you require any assistance in transferring or realizing any of these assets, please advise us.

Distribution of estate

Section 155 of the *Wills, Estates and Succession Act* (“WESA”) provides that the personal representative may only distribute the estate assets after the expiration of the period of 210 days from the issue of the Representation Grant if no proceeding has been commenced under Division 6 [Variation of Wills] of WESA, except by order of the court or subject to the conditions and rules described below

In other words, if no filing under Division 6 [Variation of Wills] of WESA is made on or before ②*{date}*, you will then be at liberty to distribute the assets of the estate subject to the conditions:

- regarding the Notice to Creditors and Other Claimants;
- regarding the Income Tax Returns described above; and
- set out in section 155 of WESA.

The conditions and rules for early distribution of the estate assets set out in section 155 of WESA are:

- ③ (1.1) *The personal representative of a deceased person who died **with a will** may distribute the estate of the deceased person within the 210 days following the date of the issue of a representation grant with the consent of all of the following:*
 - (a) *all beneficiaries who have an interest in the estate;*
 - (b) *all persons who may commence a proceeding under Division 6 [Variation of Wills] of Part 4 [Wills] in relation to the estate.*
- ④ (1.2) *The personal representative of a deceased person who died **without a will** may distribute the estate of the deceased person within the 210 days following the date of the issue of a representation grant with the consent of all intestate successors entitled to a share of the estate.*

Continued...

REPORT LETTER TO CLIENT**Preparation (Continued)**

- ❶ Insert the paragraphs below if there is a possibility that a beneficiary may not be located and be available to sign a consent.
- ❷ Insert the paragraphs below for all situations.

Continued...

- ① (1.3) *Despite subsections (1.1) and (1.2), the personal representative of a deceased person may distribute the estate of the deceased person without the consent of one or more persons whose consent would otherwise be required if the personal representative sets aside all of the following:*
- (a) *all the specific gifts to beneficiaries who have not been located;*
 - (b) *a sum equal to the share of the residue of all beneficiaries who*
 - (i) *have an interest in the residue, and*
 - (ii) *have not been located;*
 - (c) *a sum equal to the share of the estate of all intestate successors who*
 - (i) *have an interest in the estate, and*
 - (ii) *have not been located;*
 - (d) *a sum equal to an amount sufficient to satisfy any claim under **Division 6 [Variation of Wills] of Part 4 [Wills]** in relation to the estate.*
- (1.4) *A personal representative is liable for loss or damage to any person arising from a distribution of the estate of the deceased person under subsection (1.3) unless the personal representative demonstrates that the personal representative has done all of the following:*
- (a) *set aside all the specific gifts referred to in subsection (1.3) (a);*
 - (b) *set aside the sums equal to the shares referred to in subsection (1.3) (b) and (c);*
 - (c) *determined and set aside a sum equal to the total amount sufficient to satisfy all claims referred to in subsection (1.3) (d), if those claims are successful.*
- ② (2) *The personal representative of a deceased person must not distribute the estate of the deceased person after the period referred to in subsection (1) without consent of the court if:*
- (a) *a proceeding has been commenced to determine whether a person is or is not a beneficiary or intestate successor in respect of the deceased person's estate,*
 - (b) *relief is sought under Division 6 [Variation of Wills] of Part 4 [Wills], or*
 - (c) *other proceedings have been commenced which may affect the distribution of the estate.*
- (3) *Nothing in this section*
- (a) *affects any right or remedy against a person to whom an estate has been distributed in whole or in part,*
 - (b) *extends any applicable limitation period, or*
 - (c) *affects the ability to make a payment to a creditor.*

Division 6 [Variation of Wills] of WESA states that:

“Despite any law or enactment to the contrary, if a will-maker dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in an action by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.”

A proceeding by a person claiming the benefit under this Division of WESA must be commenced within 180 days of the date the representation grant is issued in British Columbia. In other words, a Will-Maker's spouse and children have 180 days within which to contest the Will.

REPORT LETTER TO CLIENT

Preparation (Continued)

- ① If minors are involved, check the following:
 - what trusts, if any, are set up in the Will; and
 - until what age the assets will be held for such minors (if no Will, usually, until the age of majority).
- ② List the names of all documents filed with the application (see the **Application – Procedure**). If the documents have already been forwarded to the client, omit this paragraph.
- ③ Insert the correct name of the document. For example, it may be called a “Reconciliation Statement”.

Processing

Make a list of any outstanding matters (despite the fact that this is the “final” reporting letter, there may be some items that will have to be attended to at a later date). In the meantime, this letter could be used as an interim report. If an item is outstanding:

- Diarize that item for future action; and
- Include comments regarding the item.

Continued...

The above provisions only protect the personal representative from personal liability. Please note that if there has been any early distribution, whether by consent or by court order, under Part 4, Division 6 of WESA, it does not affect the rights of a claimant, to pursue funds into the hands of the recipients.

We recommend that you obtain a Release from each legatee before distributing any bequests under the Will.

We confirm that you will personally attend to ...

(select one:)

... the distribution of the estate pursuant to the Will.

(or:)

... the payment of the bequests to the various beneficiaries and legatees and the distribution of the remainder of the estate pursuant to the Will.

Minors

❶ As Executor of the Will of the Deceased, you are required to hold the residue of the estate in trust for *{name[s] of minor[s]}*, and utilize same for their benefit until they each attain the age of *{year}* years *{or: until {date}}*. You should take care not to commingle these trust funds with any other moneys. You should keep accurate and complete records of all debits and credits from the estate account, including receipts for all expenditures, so that, at the termination of your duties as Executor, you are able to complete and deliver a full and complete trust accounting.

Enclosures

We enclose:

1. notarially-certified copy of the Grant;
2. ❷ *{list names of the application documents filed}*;
4. copy of our letter dated *{dated}* to *{names of bank or financial institutions}*;
5. copy of our letter dated *{dated}* to the accountants for the estate;
6. *{Interim/First/Final}* ❸ Trust Reconciliation Statement; and
7. statement of our account (marked paid in full).

Yours truly,

