

❧ APPLICATION PURSUANT TO SECTION 130(g) OF WESA ❧

Background

When a person dies after March 31, 2014 and there is no Will, section 130 of WESA sets out the priority among the applicants, that is the persons to whom the court may grant administration of the Deceased's estate in an intestacy situation, in the following order of priority:

- (a) the surviving spouse of the Deceased or a person nominated by the spouse;
- (b) a child of the Deceased, having the consent of a majority of the children of the Deceased;
- (c) a person nominated by a child of the Deceased, if that person has the consent of a majority of the Deceased's children;
- (d) a child of the Deceased, not having the consent of a majority of the Deceased's children;
- (e) an intestate successor other than the spouse or child of the Deceased, having the consent of the intestate successors representing a majority in interest of the estate, including the intestate successor who applies for a grant of administration;
- (f) an intestate successor other than the spouse or child of the Deceased, not having the consent of the intestate successors representing a majority in interest of the estate, including the intestate successor who applies for a grant of administration;
- (g) any other person the court considers appropriate to appoint, including, without limitation, the Public Guardian and Trustee, subject to the Public Guardian and Trustee's consent.

If the applicant does not qualify under sub-paragraphs (a) to (f) and the applicant is “any other person the court considers appropriate to appoint...”, the application will be made under sub-paragraph (g) of section 130 of WESA.

Note: For **pre-WESA deaths**, the appropriate sub-section of section 6 of the *Estate Administration Act* that applies instead of s. 130(g) of WESA – see ***Supplemental Information – Pre-WESA Deaths***.

When the applicant is applying pursuant to section 130(g), the application will be referred to the court and will require:

1. a ***Form 35 – Order***;
2. a ***Form 109 – Affidavit*** in support of the application; and
3. ***Form P41 – Requisition***.

Procedure

Neither the WESA nor Part 25 of the Rules set out the procedure to appoint “any other person the court considers appropriate to appoint...”. However, the procedure below, has been accepted by the probate registry and the steps to follow are:

1. Prepare **Form 35 – Order**

Prepare the **Order** (see example below), have it signed by the supervising lawyer and attach to the **Order** a **Backing Sheet** (see chapter **Wills – Documents**).

2. Prepare **Consents**

Although Part 25 of the Rules does not require the applicant to file consents or renunciations from persons having a prior or equal right to apply for a grant than the applicant, it is prudent to obtain such consents and attach them to the **Affidavit** (see **Consent** below).

3. Prepare **Form 109 – Affidavit** in support of the Order

The **Affidavit** in support of the **Order** sets out the reason why the persons who qualify under subsections 130(a) to (f) of WESA are not the applicants and why the applicant is applying.

The examples in the **Affidavit** below are suggestions only. The supervising lawyer should review the file and decide what information should be included in the Affidavit to support the claim for the **Order**.

Arrange for the **Affidavit** to be sworn by the applicant and ensure that all exhibits referred to therein are properly attached.

4. Prepare **Form P41 – Requisition**

Prepare the **Requisition** (see example below). If you require a court-certified copy of the Order, insert the words “Court-certified copy of the Order required” after the word “Required”.

Have the **Requisition** signed by the supervising lawyer.

5. Make changes and additions to other application documents:

- (a) **Form P2 – Submission:** in paragraph 7, list the above supplementary documents (**Order**, **Affidavit** and **Requisition**);
- (b) **Form P5 – Affidavit:** in paragraph 3, insert “g” as the paragraph of section 130 of WESA.

CONSENT

RE: THE ESTATE OF {NAME OF DECEASED}, Deceased

CONSENT

WHEREAS {NAME OF DECEASED}, late of the City of {City}, in the Province of British Columbia, died on {Date}, at {City}, British Columbia, intestate;

In the following paragraph, explain the situation –list the persons who have had a greater or equal right to apply than the applicant(s) and show their relationship to the Deceased. For the list, see paragraphss (a) to (f) of section 130 of the Wills, Estates and Succession Act.

AND WHEREAS I/WE, {NAME} and {NAME}, are the parents/siblings/etc. of the Deceased and intestate successors as the Deceased had no spouse and no children.

We consent to the Court granting a Grant of Administration without Will Annexed of the estate of the Deceased to **{NAME OF APPLICANT}, WITHOUT SECURITY.**

Dated at the City of _____, China, this _____ day of _____, 2017.

SIGNED in the presence of:)
)
)
)
_____)
Name)
)
_____)
Address)
)
_____)
)
_____)
Occupation)
AS TO BOTH SIGNATURES)

{NAME}

{NAME}

AFFIDAVIT

FORM 109

This is the {3rd} Affidavit of {Name}
in this case and was made on {date}

No. _____
{Location}Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the matter of the Estate of {NAME OF THE DECEASED}, Deceased

AFFIDAVIT

I, {NAME OF APPLICANT}, {occupation}, of {address}, {City} Province of {Province},
SWEAR/AFFIRM THAT:

1. I am the applicant for a grant of administration without will annexed in relation to the estate of the deceased and I am the *{relationship to the Deceased}* of the Deceased.
2. The Deceased died intestate.
3. The following are the intestate successors of the Deceased:
 - (a) *{list the names of the intestate successors and their relationship to the Deceased};*
4. *Describe here why the people listed in the above paragraph are not applying, for example:*
 - (a) the parents of the deceased {NAMES} are elderly and do not speak English;
 - (b) the siblings {NAMES} reside in _____ and are unable to administer the estate.
5. {NAME} and {NAME} have asked me to apply for the grant of administration without will annexed as I am in a better position to administer the estate in an effective and timely manner.
6. Attached to this affidavit and marked Exhibit "A" is a copy of the Consent signed by {NAME} and {NAME}.

SWORN/AFFIRMED BEFORE ME at the)
 {City} of _____, Province of British)
 Columbia, this ___ day of _____, 20___)
)
) _____)
) **{NAME OF APPLICANT}**)
)
) _____)
) A Commissioner for taking Affidavits)
) in British Columbia)

REQUISITION

FORM P41 (RULE 25-14(1))

No. _____
{Location} Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE ESTATE OF *{NAME OF DECEASED}*, DECEASED

REQUISITION – ESTATES

Filed by: *{NAME OF APPLICANT}*

Required:

1. The rule or other enactment relied on is Rule 25-14 and section 131(g) of the *Wills, Estates and Succession Act*.
2. Attached to this requisition are:
 - (c) Affidavit of *{NAME OF APPLICANT}* sworn *{Date}*;
 - (d) a draft of the order required.
3. The evidence in support of the application is the application for a grant of administration without will annexed.

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

Street address for service: *{address}*
 Fax number address for service (if any): *{fax number}*
 E-mail address for service (if any): *{email}*
 Telephone number: *{Tel. number}*

Date: *{date}*

Signature of
 filing person
 lawyer for filing person
{NAME OF LAWYER}