
✧ CANCELLING A BOND ✧

PROCEDURE

Once the Bond has been ordered by the Court (see **Security for Grant of Administration – Bond** on the Evin Ross website: **Supplemental Information**), it will be in effect during the administration of the estate by the person on whom the Bond is imposed (the personal representative) and until it is cancelled. During that time, the insurance company will collect the premium from the personal representative and will only cancel the Bond on receipt of a court-certified copy of an Order cancelling the Bond.

Although the Wills, Estates and Succession Act refers to “security”, we are using here the term “Bond” which is more familiar to most people. In addition, under the former *Estate Administration Act*, it was known as a “bond”.

The procedure set out here explains the steps to cancel such a Bond once the following conditions have been met:

- all debts have been paid and all claims have been settled;
- all ***Income Tax Returns*** for the estate have been prepared, all income taxes have been paid and a ***Clearance Certificate*** for distribution purposes has been obtained from Canada Revenue Agency;
- the residue of the estate has been distributed to the beneficiaries or intestate successors;
- all those to whom the duty is owed (that is all beneficiaries, intestate successors, unpaid legatees and creditors, as well as any other person who may be interested in the estate) have approved the accounts of the personal representative and have signed a ***Release and Indemnity***; or
- the personal representative has advertised for creditors (section 154 of WESA) (see **Chapter III A-1 – Pre-Application Procedure – Publish Notice to Creditors and Other Claimants**) unless the personal representative decides that such a publication is not necessary; and
- the accounts of the personal representative have been passed under the *Trustee Act* or the court has determined that the accounts need not be passed⁽¹⁾.

When these conditions have been met, the personal representative may arrange to apply to the Court to have the **Bond** cancelled. Such application is made pursuant to Rule 8-4 of the *Supreme Court Civil Rules* that governs application for which notice is not required.

At present, we do not show the procedure to discharge the personal representative.

Obtain a Release and Indemnity

Before distributing the residue of the estate, the personal representative must obtain:

⁽¹⁾ The procedure to pass accounts is not covered in the Guide. See the Forms folder on the Precedents CD for pdf instructions and the precedents. If you need assistance, email contact@evinross.ca.

- accounts or accounting statements for approval by those to whom the duty to account is owed which are usually prepared by an accountant and should be as detailed as possible and include:
 - a list of assets at the beginning of the administration (usually from the date of death);
 - statement of receipts and disbursements or distribution (both capital and income);
 - a list of assets at the end of the period for which the accounts are prepared;
 - proposed remuneration of the personal representative (if any); and
 - statement of proposed final distribution; and
- a **Release and Indemnity** for each person or party to whom a duty is owed.

The **Release and Indemnity** (see example below) with the accounts attached as Schedule 1 must be signed and delivered to the lawyer to enable him or her to prepare the requisite documentation to apply to the court for the cancellation of the **Bond**. Alternatively, the law firm would prepare the **Release and Indemnity** if it is in possession of all the information.

Prepare application documents

- **Affidavit of Administrator (Form 109)**

This Affidavit (see example below) can only be prepared and sworn when all signed the **Releases and Indemnities** have been obtained. The **Releases and Indemnities** must be attached as Exhibits to the Affidavit.

- **Requisition (Form 31)**

This document initiates the application to cancel the **Bond**.

- **Order (Form 35) (with a Backing Sheet)**

A draft Order is prepared and filed with the Probate Registry with the other application documents and, if approved by the court, will be signed and returned to you (together with the requested certified copy).

File documents with the court registry

The documents should be filed in Probate Registry in the usual way.

Provide a court-certified copy of Order to insurance company

Once **Bond** and the **Order** and a court-certified copy have been received, forward:

- the court-certified copy of the **Order** and the original of the **Bond** to the insurance company with a request to cancel the **Bond** and to refund the unused portion of the premium, if applicable; and
- a copy of the **Order** to the Public Guardian and Trustee.

RELEASE AND INDEMNITY

General Notes

A *Release and Indemnity* must be prepared for each party to whom duty is owed (for example: a residual beneficiary, intestate successor or a creditor) who must release the personal representative in his or her capacity as Administrator of the estate (or Executor of the Will). The party signing a release is called a “Releasor”.

By signing this document, the Releasor:

- approves the accounts of the personal representative;
 - if applicable, waives the requirement of the personal representative for a formal passing of accounts;
 - acknowledges receipt of his or her share of the estate or of a particular asset; and
- gives up his or her right to a claim against the personal representative.

Preparation

- ① Copy the name of the Deceased and the name of the personal representative from the original estate grant.
- ② Insert the name and the address of the Releasor. Keep in mind that a separate *Release and Indemnity* is prepared for each Releasor.
- ③ Describe the relationship of the Releasor to the Deceased or the estate, for example:
 - one of the intestate successors of the Deceased;
 - a beneficiary or a legatee under the Will of the Deceased;
 - a creditor.
- ④ The accounts are usually prepared from the date of death up to and including the date the personal representative is ready for the final distribution. Copy these dates from the accounts attached to this *Release and Indemnity*.
- ⑤ If the Releasor’s share is other than cash, describe the asset received.
- ⑥ Delete the words “and each of them” if there is only one Releasee.
- ⑦ If not applicable, delete the text to the end of the paragraph.

Continued...

Re: the Estate of ❶ {NAME OF THE DECEASED}

Late of the City of {City}, in the Province of British Columbia.

RELEASE AND INDEMNITY

To: ❶{NAME(S)} (the “Releasee(s)”) Administrator(s) of the Estate of ❶{NAME OF THE DECEASED}

I, ❷{NAME}, of {Address}, being one of ❸ *{the residual beneficiaries}* of the Estate (the “Estate”) of {NAME OF THE DECEASED} (the “Deceased”) who died on or about {date}:

1. acknowledge that I have received from the Releasee(s) and reviewed the accounts for the Estate from ❹{date} to ❹{date} attached hereto as Schedule 1 and I approve these accounts, and hereby waive requirement for the formal passing of accounts by the Releasee(s) and declare that I will not, at any time in the future, request that Releasee(s) do so;
2. acknowledge receipt of ❺ the funds listed in Statement attached as Schedule 2 hereto as my share of the Estate in full satisfaction of my beneficial interest in the Estate;
3. remise, release and forever discharge the Estate and the Releasee(s) as the Administrator(s) of the Estate from all manner of proceedings, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contract, liens, claims and demands whatsoever which I ever had, now have against the Releasee(s), or which I shall or may have against the Releasee(s) ❻ and each of them, ❼ except for my claim to my proportionate share of the remaining funds still held by the Releasee(s) as a holdback amount as set out in the accounts after payment of any further amounts properly payable to the Releasee(s) as Administrator(s), and except for my claim to share in any assets of the Estate that may come into the Releasee’s hands as Administrator of the Estate after the date to which the accounts are prepared, including, without limitation, any interest earned on the funds retained by the Releasee as Administrator of the Estate as a holdback amount in respect of the Estate;

Continued...

RELEASE AND INDEMNITY

Preparation {Continued}

- ❶ Insert the name of the law firm.

Processing

Attach to each *Release and Indemnity*:

- **Schedule 1** – a copy of the accounts or accounting statement. Type the words “Schedule 1” on each copy in the upper right hand corner; and
- **Schedule 2** – the statement of final distribution listing the names of the beneficiaries and the description of all the assets being distributed and their market value. Type the words “Schedule 2” on each copy in the upper right hand corner

Once the *Release and Indemnity* is dated, signed and witnessed, attach it as one of the Exhibits to the *Affidavit of the Administrator*, with the following notation typed on the *Release and Indemnity* (or if available, affix an exhibit stamp with similar wording):

<p>THIS IS EXHIBIT “___” referred to in the Affidavit of <i>{NAME}</i> sworn before me at the City of <i>{City}</i>, in the Province of British Columbia, this _____ day of _____, 20____.</p> <p>_____</p> <p>A Commissioner for taking Affidavits for British Columbia</p> <p><i>or:</i></p> <p>A Notary Public in and for the Province of</p> <p>_____</p>
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The *Affidavit of Administrator* and the Exhibit must be sworn before the same lawyer and the dates on both documents must be the same.

Prepare a *Requisition* and file all documents in support of the cancellation of the **Bond** with the probate registry.

- 4. confirm that I have been advised by **①**, solicitors for Estate and for the Releasee, to obtain independent legal advice concerning the Estate and this Release and Indemnity, but I have chosen not to do so; and
- 5. declare that this Release and Indemnity shall be binding on my heirs, executors, administrators, successors and assigns and shall enure to the benefit of the Releasee's respective heirs, executors, administrators, beneficiaries, successors and assigns.

SIGNED in the presence of:)
)
)
 _____)
 Signature of Witness)
)
 _____)
 Name of Witness)
)
 _____)
 Address)
 _____)
 _____)
 Occupation)

{NAME OF RELEASOR}

STATEMENT OF FINAL DISTRIBUTION

General Notes

When the personal representative is ready to proceed with the final distribution of the assets of the estate, prepare a statement showing the proposed final distribution.

Preparation

STATEMENT OF FINAL DISTRIBUTION		
Name of Beneficiary	Description and market value of Assets passing to the Beneficiary	Amount of Cash distributed to the Beneficiary
{Name}	{Description – \$___}	\$_____

Dated at _____, B.C. {date}

{NAME OF THE BENEFICIARY},

Processing

When the Statement is signed by the Beneficiary, make two copies of each signed Statement and:

- in the upper right-hand corner of one copy, type the words “**Schedule 2**” and attach the copy to the ***Release and Indemnity*** of that Beneficiary on page 5; and
- in the upper right-hand corner of the other copy, type the words “**Schedule 1**” and attach the copy to the ***Certificate*** on page 8.

CERTIFICATE OF ADMINISTRATOR

General Notes

There is no prescribed form or wording for this Certificate in the *Supreme Court Civil Rules*. The Order states is that the Applicant has filed a Certificate confirming that all the assets of the estate have been distributed.

Preparation

I, ***{NAME OF THE APPLICANT}***, hereby certify that the assets of the estate have been distributed and paid out to the beneficiaries in accordance with the Statement of Final Distribution signed by the beneficiaries and attached as Schedule 1 hereto, and that each of the beneficiaries has signed a Release and Indemnity attached as Exhibit(s) “A”, “B” and “C” to my Affidavit sworn *{date}* which Affidavit is filed with the application to cancel the Administrative Bond No. *{number}*.

Dated at _____, B.C. *{date}*

{NAME OF THE APPLICANT},
 Administrator of the Estate of
{NAME OF THE DECEASED}, Deceased

Processing

File this Certificate with the other application document.

AFFIDAVIT OF ADMINISTRATOR

General Notes

Generally, the **Bond** is obtained in an administration situation and, accordingly, the wording here refers to an Administrator. If the **Bond** was obtained in a probate situation, change the word “Administrator”, wherever it appears, to “Executor”.

Preparation

- ❶ Check what other affidavits were filed for these proceedings (including the application for the estate grant) and insert the next number.

The style of proceeding must be **identical** throughout all documents and is copied from the original application for the estate grant.

- ❷ Insert the name of the personal representative(s) from the original estate grant.
- ❸ Copy the name of the Court and the date from the original estate grant.
- ❹ Insert the particulars of the **Order** ordering the **Bond** (this date is different from the date in ❸ above).
- ❺ List the names of all beneficiaries, for example, the spouse and the four children. A **Release and Indemnity** must be signed by each of the persons listed.
- ❻ The names are usually the same as in ❺ but you may have additional names, such as creditors.
- ❼ As each of the **Releases and Indemnities** will be attached as separate Exhibits, identify them consecutively as “A”, “B”, “C”, etc.

Processing

Attach **Releases and Indemnities** as Exhibits to this Affidavit with an exhibit stamp or notation on each **Release and Indemnity** (see page 5).

The applicant must date and swear the Affidavit before a lawyer or notary public.

Prepare a **Requisition** and file all documents in support of the cancellation of the **Bond** with the probate registry.

FORM 109 (Rule 22-2(2) and (7))

This is the ❶ {1st/2nd} Affidavit of {Name} in this case and was made on {date}

No. ❶ Vancouver Registry

❶ In the Supreme Court of British Columbia

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

AFFIDAVIT

I, ❷ {NAME OF APPLICANT}, {occupation}, of {residential address}, in the {City}, of _____, SWEAR/AFFIRM THAT:

- 1. I am the Administrator of the Estate of {NAME OF THE DECEASED} who died on {date} at {City}.
2. An estate grant was issued to me by the Supreme Court of British Columbia, Probate Registry at ❸ on ❸ {date}.
3. Pursuant to the order of a {Master of the Supreme Court} or {the Honourable Justice {name}} dated ❹ {date}, I posted an administration bond in the amount of \$❹ payable to the order of the Registrar of the Supreme Court of British Columbia, and this bond was filed with the Registrar.
4. To the best of my knowledge, all debts, taxes, duties, probate fees and income taxes due and owing by the estate of the Deceased have been paid there are no liabilities for which the Estate may be liable.
5. The Deceased left surviving him/her ❺ who are all of the age of majority.
6. The following are interested in the Estate: ❻ and all have:
(a) approved my accounts as to the administration of the Estate and signed Releases and Indemnities;
(b) waived a formal passing of account; and
(c) have received their distributive portions of the Estate pursuant to those accounts.
7. Copies of the Releases and Indemnities signed by the aforementioned persons are attached hereto and marked Exhibits ❼ "A" and "B" respectively.

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

_____ {NAME OF ADMINISTRATOR}

REQUISITION

General Notes

The Application to cancel a bond is made pursuant to Rule 8-4 of the *Supreme Court Civil Rules: Applications of Which Notice Is Not Required* may be made by:

- a *Requisition* in *Form 31*;
- a draft of the proposed *Order* in *Form 35*; and
- an *Affidavit* or other evidence in support of the application.

The application to cancel a **Bond** is initiated by a *Requisition*.

Preparation

- ❶ The style of proceeding must be **identical** throughout all documents. The number is obtained from the initial application for the estate grant.
- ❷ Check the appropriate box.
- ❸ Describe all Affidavits being filed.

Processing

Once all documents in support of the application to cancel the **Bond** are ready, that is:

- *Releases and Indemnities* with accounts and Statements of Final Distribution attached;
- *Affidavit of Administrator*; and
- draft *Order*;

they are filed together with this *Requisition*.

FORM 31

(Rules 7-8(17), 8-3(1), 8-4(1), 17-1(2) and 25-9(2))

1No. _____
Vancouver Registry

In the Supreme Court of British Columbia

1 Re: the Estate of {NAME OF THE DECEASED}, Deceased**REQUISITION FOR CONSENT ORDER OR
FOR ORDER WITHOUT NOTICE**Filed by: *{NAME OF APPLICANT}*

Required: An order without notice

1. The rule or other enactment relied on is Rule 8-4(1).
2. Attached to this requisition is a draft of the order required.
3. Each party affected has consented to the order.

 2 The evidence in support of the application is:

- (a) **3** Affidavit No. *{number}* of *{Name}* made *{date}* with Releases and Indemnities exhibited.

4. **2** No party is under a legal disability. **2** *{name of party}* is under a legal disability, namely *{set out legal disability}*.This requisition is filed by *{NAME OF APPLICANT}* the Applicant in this proceeding, whose address for service is as follows:*{Address of law firm}*Fax number address for service (if any): *{fax number}*E-mail address for service (if any): *{email address}*Dated: *{date}*_____
Signature of filing party lawyer for filing party(ies)*{print name}*

ORDER

General Notes

For a discussion as to when this Order is applied for, see “**Procedure**” on the previous pages.

Preparation

- ❶ The style of proceeding must be **identical** throughout all documents. The number is obtained from the initial application for the estate grant.
- ❷ Leave the date blank. It will be completed by the Probate Registry when the Order is signed.
- ❸.. Complete the name of your law firm and the name of the filing agent. If you do not, the solicitor will have to attend at the Registry to pick-up the **Bond** to be cancelled.

Processing

Have the **Order** signed by the solicitor (or the applicant) and attach a **backing sheet** ⁽¹⁾ showing the style of proceeding, name of document and name and particulars of the law firm. Make one copy for the file.

All documents in support of the cancellation of the **Bond** must be filed with the **Requisition**.

⁽¹⁾ An electronic copy of the backing sheet is provided on the CD accompanying the Guide

FORM 35 (Rules 8-4(1), 13-1(3), 17-1(2) and 26-0(2))

No. ❶ _____

Vancouver Registry

In the Supreme Court of British Columbia

Re: the Estate of {NAME OF THE DECEASED}, Deceased

ORDER MADE AFTER APPLICATION

BEFORE) **THE HONOURABLE JUSTICE**)
) *{NAME}*)
) **or A JUDGE OF THE COURT**)
) **Or**) ❷ _____
) **MASTER {name}** _____)
) **or A MASTER OF THE COURT**)

ON THE APPLICATION of: {NAME OF ADMINISTRATOR} without a hearing and on reading the materials filed by {name of party/lawyer} and {name of party/lawyer};

THIS COURT ORDERS that:

1. the passing of accounts of the Applicant as Executor/Administrator of the estate of the {NAME OF THE DECEASED}, Deceased, be dispensed with;
2. on the Applicant filing a certificate stating that he/she has distributed the balance of the monies (all assets of the estate) in accordance with the statement of final distribution attached as Schedule 2 to Exhibits “A”, “B” and “C” to his Affidavit sworn {date}, the administrative bond No. {number} be released to the applicant’s solicitor ❸ {name of the law firm} c/o its agent {name of agent} to be cancelled.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
 party lawyer for {name(s)}

BY THE COURT

Registrar