
☞ **PASSING OF ACCOUNTS** ☞

INDEX

	Page
Background	
Definitions.....	3
Who can apply	2
Remuneration of Personal Representative	3
Costs	4
Discharge of Personal Representative.....	4
Timing	4
Persons under legal disability and minors.....	5
Procedure / Checklist	7
Consent to Act as Litigation Guardian	12
Certificate of Fitness	14
Form P38 – Affidavit in support to Pass Accounts.....	16
Form P39 – Certificate	22
Form P40 – Statement of Account Affidavit	22
Form P41 – Requisition	34
Form 34 – Order.....	36

❧ PASSING OF ACCOUNTS ❧

Background

One of the main duties of the personal representatives is to account to the beneficiaries with respect to the assets and debts of an estate. This has to be done before the residue of the estate is distributed to the beneficiaries. The *Guide* sets out the most common procedure to accomplish this:

- the preparation of the accounts (e.g. trust reconciliation);
- the preparation of the Releases of the personal representative and if appropriate, the law firm;
- having both approved in writing by the residual beneficiaries; and
- only distributing the assets of the estate once all the approved accounts and the signed Releases are received by the personal representatives or their lawyer.

However, even if the personal representative has received the Releases, in certain situations, the personal representative is required to pass his or her accounts. Passing of accounts means that the personal representative must provide a formal accounting to the residual beneficiaries by following the procedure set out in Rule 25-14(1) (o) or (p) of the *Supreme Court Civil Rules* (the “Rules”). The most common requirements for passing accounts are:

- at least one beneficiary refuses to approve the personal representative’s accounts. Note that any beneficiary is entitled to an accounting. However, in practice, the personal representative should account only to the residual beneficiaries (for example, not to the legatee of a fixed bequest);
- a beneficiary is missing and his/her shares of the residue is being paid into court;
- a beneficiary without legal capacity (for example, a minor or a person who is mentally incapable) is unable to approve the personal representative’s accounts and sign the Release
- a class of beneficiaries is unascertained (for example, a trust is created for a beneficiary and his or her descendants or there are unborn beneficiaries);
- a personal representative requests to be discharged;
- the personal representative’s remuneration must be set;
- the court may, on application, make an order it considers proper as to the time and manner of passing the accounts (s. 99 (5) of the *Trustee Act*).

In other words, there may be no need to pass accounts if none of the above apply and if:

- the accounts are approved or consented to in writing by all residual beneficiaries, or
- the court otherwise directs;

Who can apply to pass accounts

A personal representative or a person interested in an estate administered by the personal representative may apply for passing of accounts or for an order to fix and approve the personal representative’s remuneration or to discharge the personal representative.

Definitions

In this chapter,

- **personal representative** includes: the executor of the Will, the administrator of the estate, Trustee under a Will and judicial trustee;
- the “**grant**” refers to the grant of probate, a grant of administration and any other grant
- **beneficiary under legal disability** in this chapter only, includes a minor, person under legal disability or a person who is mentally incapable of approving the personal representative’s accounts. Note that some of the Acts and Rules refer to the persons mentally incapable as “persons mentally incompetent”.
- **Commencement date** of a statement of account is either:
 - the date of death if it is the first (and often the only) application to pass accounts;
 - the effective date (cut-off) date of a previous accounting if there are several applications to pass accounts;
- **effective date** of the statement of account is the cut-off date at which you have reconciled the assets, liabilities, income etc. It is not necessarily the date of the affidavit but the affidavit should be dated on or after the effective date.

For a discussion on **commencement date** and **effective date**, see “Timing” below.

Remuneration of personal representative

At the time of passing accounts, if the personal representatives are seeking remuneration, it is customary to include such request in the application to pass accounts.

Under s 88 of the Trustee Act the personal representatives are entitled to, and it is lawful for the Supreme Court, or a registrar of that court if so directed by the court, to a fair and reasonable allowance, not exceeding 5% on the gross aggregate value of the estate. This includes capital and income of all the assets of the estate. The remuneration is to compensate the personal representatives for their care, pains and trouble and their time spent in and about the trusteeship, executorship, guardianship or administration of the estate and effects vested in them under any will or grant of administration, and for administering, disposing of and generally in arranging and settling the affairs of the estate as the court, or a registrar may direct.

In addition, a person may apply annually to the Supreme Court for a care and management fee and the court may allow a fee not exceeding 0.4% of the average market value of the assets. If the personal representative wishes to claim remuneration annually, he or she would have to pass new accounts annually.

The above remunerations are over and above out of pocket expenses incurred by the personal representatives (see **Special Costs** below). The above percentages are the maximum fee set by statute. Depending on the size of the estate, the complexity of the administration and the time spent on the administration of the estate, the Court may reduce that fee and often sets it at 2.5% or even less and in any case, it is rarely above 3% except in very large and complicated estates.

If several applicants claim the remuneration, it is shared among them.

The personal representative may apply for an Order to approve his or her remuneration without passing his or her accounts (Rule 25-13(1)). However, usually the two applications are combined.

Bear in mind that the personal representative's fee is taxable in the personal representative's hands. It is recommended that the person claiming the remuneration obtain tax advice from an accountant.

Costs

Unless the court orders otherwise, if costs are payable on an application to pass accounts, Rule 25-13 (7) provides that the costs must be assessed as special costs.

When assessing special costs, a registrar must allow those costs that were proper or reasonably necessary to administer the estate and consider all of the circumstances involved and determine which disbursements have been necessarily or properly incurred in the administration of the estate and allow a reasonable amount for those disbursements.

Discharge of Personal Representative

If the applicant is seeking to be discharged as executor of the will and the administrator of the estate, the applicant should also seek an Order that on the applicant filing a certificate stating that s/he has distributed the balance of the monies of the estate in their hands, in accordance with the accounts as approved, the applicant be discharged as executor of the Will and administrator of the estate of the deceased.

If this Order is granted, then the applicant can likely apply for a discharge, after distributing the remaining estate, by desk order under Rule 8-3.

Timing

Rule 99 (1) of the *Trustee Act* sets out the timing for the personal representatives to obtain an Order for passing their accounts which is:

- the first account within two years from the date of the grant or from the date of their appointment; or
- if served with notice by a person beneficially interested in the property covered by the trust, to pass their subsequent accounts annually within one month from the anniversary of the grant or of their appointment.

Generally, you would pass accounts when the Income Tax Return has been filed, a Notice of Assessment has been received, and a partial or final distribution of the estate assets is necessary.

However, the personal representative may be required by court or compelled by a person interested in the estate to pass accounts earlier or later than the dates required by the *Trustee Act* or may pass accounts at another time as required by circumstances.

The period of time covered by the first passing of accounts is between the date of death (which is the commencement date of the first passing of accounts) and the cut-off date for the period, which is the effective date (not the date the statement of account is prepared and the affidavits signed). The commencement date of the subsequent passing of accounts is the effective date of the previous passing of accounts and the new effective date (the cut-off date) for that period becomes the commencement date of the next passing of accounts. And so on...

Persons under legal disability or minors

If a beneficiary is under a legal disability or is a minor, a litigation guardian must be appointed (Rule 20-2) to represent the minor or a person under legal disability.

A litigation guardian must be:

- a competent adult;
- resident of British Columbia;
- represented by a lawyer; unless the litigation guardian is the Public Guardian and Trustee and
- must not have any interest in the estate in conflict with the minor or a person under legal disability.

If there is an attorney appointed for a person under a legal disability under the *Power of Attorney Act* of British Columbia, that person may act as the litigation guardian.

Unless the court otherwise orders or an enactment otherwise provides:

- a person may be a litigation guardian of a person under disability without being appointed by the court;
- before the person becomes a litigation guardian in a proceeding, that person must sign a ***Consent to Act as Litigation Guardian*** which consent must be filed with the application.

If there are minors with different interests, they may require separate litigation guardians and of course, separate ***Consents to Act as Litigation Guardians***.

No Consent of litigation guardian is required if:

- a person has already been appointed by the court (i.e. a person has been appointed committee under the *Patients Property Act* – that person must be the litigation guardian of the patient in any proceeding unless the court orders otherwise); or
- a representative is the litigation guardian under section 35(1) of the *Representation Agreement Act*;

In these proceedings, the litigation guardian must be represented by a lawyer who, before acting must sign and file a certificate (the ***Certificate of Fitness***) that the lawyer knows or believes that:

- the person to whom the certificate relates is a minor or a person under legal disability, giving the grounds of that knowledge or belief;

- if the person to whom the certificate relates is a minor or a mentally incapable person, that no committee has previously been appointed for the person, or alternatively;
- the litigation guardian is a representative under that representation agreement and is authorized under section 7(1)(d) of the *Representation Agreement Act* in relation to the proceeding;
- the proposed litigation guardian of the minor or the person under legal disability has no interest in the proceeding adverse to that person.

Bottom line, each case should be carefully considered by the supervising lawyer to ensure that the litigation guardian is appointed.

PROCEDURE/CHECKLIST



The procedure set out in this chapter covers the passing of accounts within the existing court proceedings by consent desk Order. The formal passing of accounts before the associate judge is quite rare since in most cases the beneficiaries consent to the accounts without need for a formal passing of accounts before the court. The explanation and preparation of documents is only covered for non-litigious estates. Applications in contentious estates and procedures for the formal passing of accounts with a hearing are beyond the scope of this Guide.

The procedure in this chapters deals with passing of accounts when:

- there is a probate file for the estate in the court
- the application is not contested;
- Releases have been received from all persons concerned.

On the other hand, if there is no probate file for the estate, then the application must be commenced by petition which is not covered in this chapter as it is beyond the scope of the *Guide*.

If all the persons interested have approved the personal representative's accounts and consented to the distribution by signing a Release, the passing of accounts may not be necessary (see Chapter III C-1 – Post Application Procedure -- *Distribution or Transfer of Assets to Beneficiaries or Intestate Successors*).

The passing of accounts usually is done when the Income Tax Return has been filed and a Notice of Assessment (or Clearance Certificate) has been received, and a partial or final distribution of the estate assets is necessary. Assemble all documents relating to the assets and liabilities of the estate.

1. **If a beneficiary is a minor or a person under legal disability**, prepare the following and arrange for their signature:
 - (a) **Consent to Act as Litigation Guardian**
 - (b) **Certificate of Fitness**
2. Prepare:
 - (a) *Accounts of Personal Representative* and attach it to the Release as a schedule. These may be in the form of the Statements attached to Form P40.
 - (b) *Release (by Residuary Beneficiary* (see Post-Application chapter)
3. Send the documents in Item 1 to all persons interested by "*Letter to interested parties*" (see procedure in the **Post Application** chapter) also in instructions to letter list whom the documents are sent.

4. Receive signed Releases and approval of accounts and attach them to **Form P38** as Exhibits.
5. For all the applications continue and prepare:
 - (a) If the applicant is seeking remuneration, prepare an ***Affidavit with respect to Work Done***. There is no precedent shown for this as each situation requires a customised description of work done. The body of the Affidavit will change from file to file depending on the circumstances and the extent and complexity of work done. This information may be included in **Form P38**.
 - (b) **Form P38** – Affidavit in support to Pass Accounts that sets out:
 - (i) Evidence to support the application, including the Releases, and any Consents or Certificates or Fitness required
 - (ii) If the personal representative is seeking an order for remuneration, set out work done by the personal representative unless you prepare a separate ***Affidavit with respect to Work Done***
 - (c) **Form P40 – Statement of Account Affidavit**
 - (d) **Form P41** – Requisition

Note: Some practitioners prefer to use **Form 31 – Requisition** which is a form used in litigation matters. We have checked with the Probate Registry and although Form P41 is the correct Requisition using Form 31 is accepted.
 - (e) **Order** setting out what is sought

This is a draft only and will be signed by the Associate Judge after the accounts have been approved.
 - (f) **Form P39 – Certificate** – Prepare only if the personal representative is seeking remuneration – this form will be signed by the Probate Registry.

Note: If the accounts are not approved in chambers because the judge determines that the matter is too complex to be approved in chambers, the judge may refer the matter to the Registrar. The procedure with respect to such contested matter is not covered in this Guide at this time.
6. When the documents have been prepared, approved by the supervising lawyer and signed or sworn (where applicable) by the interested parties, assemble for filing with the Probate Registry:
 - (a) **Form P38** with the following documents attached to it and listed as Exhibits:
 - (i) Signed **Releases** with, as Schedules, approved accounts
 - (ii) If a beneficiary is a minor or under legal disability:
 - (A) Consent to Act as Litigation Guardian
 - (B) Certificate of Fitness signed by the lawyer of the Guardian

- (iii) *Affidavit* with respect to work done (if the applicant is seeking remuneration and if not included in *Form P38*)
- (iv) *Form P41 -- Requisition*
- (v) *Form 34 – Order -- draft*
- (vi) *Form P39 – Certificate -- draft*

The filing fee for this application is \$80.00.

It is preferable to e-file the documents online through Court Services. If e-filing the documents online, prepare *Form 119 – Electronic Filing Statement* (see **Chapter IV - Appendix E -- Electronic Filing System** and Court Services Online)

7. The court will contact you to let you know if the Order has been approved
8. When you receive the entered and signed Order, you can proceed to the next step, it being either paying out the balance to the beneficiaries (subject to conditions set out in the **Post-Application** chapter) or dealing with the assets as directed by the Order. Check with the supervising lawyer as to the outstanding matters.
9. When minors are involved, unless the Will created a trust for a minor (s. 153 of WESA) the minor's share must be paid to the Public Guardian and Trustee. The procedure for such payment is not covered in the Guide. You should contact the Public Guardian and Trustee as they would have been involved since before Probate was obtained and will give you instructions on how to pay it to them.

LETTER TO INTERESTED PARTIES WHEN PASSING ACCOUNTS**General Notes**

This letter may be used when sending documents for approval and signature of interested parties.

It is sent to:

- all residuary beneficiaries;
- if there are several personal representatives and only one is the applicant, to the other personal representatives; and
- if there are minors or persons under legal disability, to the Public Guardian and Trustee.

Preparation

- ① See the General Notes above setting out to whom the letter is to be sent to.
- ② Insert the name of the person who will be the applicant for the passing of accounts.
- ③ Attach any other documents

Processing

On the Statement of Account, print the following:

I, _____ (<i>print name</i>) hereby approve this Statement of account. Dated: _____
--

File No. _____

Date: _____



Dear _____:

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

{Name if applicant} ❷ has requested that we apply to Court for an Order to pass his/her accounts as the personal representative of the estate of the Deceased. In this respect, we enclose:

1. Statement of Account to be attached to the enclosed Release; and
2. Release 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;

3. ❸

Upon receipt of the executed Releases and approved Statement of Account from all *beneficiaries/parties interested*, we shall apply to the Court to pass the accounts of the estate. We will be unable to proceed until **all** signed Releases and the approved Statements of Account have been returned to the writer duly signed and witnessed.

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

Yours truly,

CONSENT TO ACT AS LITIGATION GUARDIAN**General Notes**

A litigation guardian must be appointed to represent a minor or a person under legal disability (Rule 20-2). Such a person must:

- be a competent adult;
- be resident of British Columbia;
- be represented by a lawyer; and
- have no interest in the proceeding adverse to that person.

Unless such person has been appointed by the court, or is the litigation guardian under section 35 (1) of the *Representation Agreement Act* of a party to these proceeding, before the person's name is used in a proceeding as a litigation guardian for a minor or a person under legal disability, that person (or the person's lawyer) must sign a consent and the signed consent must be filed with the application (see page 5 –**Persons under legal disability or minors**).

If there are minors with different interests, they may require separate litigation guardians and of course, separate *Consents to Act as Litigation Guardians*.

Preparation

- ❶ If the Consent is signed by the litigation guardian who will act on behalf of a person under legal disability (instead of a minor), replace these words with:

“{NAME OF PERSON UNDER LEGAL DISABILITY},
who is a person under legal disability”

and omit any reference to age.

- ❷ Ensure that the witness is of the age of majority and does not have an interest in the estate.

Processing

See Step 6 in the Procedure/Checklist for instructions to file this Consent with the Registry.

No. _____
{Location} Registry

In the Supreme Court of British Columbia

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

CONSENT TO ACT AS LITIGATION GUARDIAN

I, {NAME} of {address} British Columbia, {occupation} hereby undertake to act as Litigation Guardian for ❶ {NAME(S) OF MINOR(S)}, who is/are all under the age of 19❶.

I further state that:

1. I have no interest in the proceeding adverse to that of ❶{NAME(S) OF MINOR(S)}❶;
2. I am a competent adult and reside in British Columbia;
3. I am represented by a lawyer;

Dated at the City of {City}, in the Province of British Columbia, this ____ day of _____, 20__.

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

{NAME}
Litigation Guardian for ❶{NAME(S) OF
MINOR(S)}

CERTIFICATE OF FITNESS**General Notes**

Rule 20-2 (8) of the Rules states that, unless a committee has been appointed, the lawyer for a person under legal disability, before acting in a proceeding, must file a certificate that the lawyer knows or believes that:

- the person to whom the certificate relates is a minor or mentally incapable person, giving the grounds of that knowledge or belief, and if the person to whom the certificate relates is a mentally incapable person, confirm that a committee has **not** been appointed for the person, and
- the proposed litigation guardian of the person under legal disability has no interest in the proceeding adverse to that person.

Furthermore, Rule 20-2(9) states that, the lawyer for a person who, under section 35(1) of the *Representation Agreement Act*, has a litigation guardian, the lawyer must also, before acting in a proceeding to which the person is a party, file a certificate certifying that the lawyer knows or believes that:

- the person has entered into a Representation Agreement,
- the litigation guardian is a representative under that Representation Agreement and is authorized under section 7 (1) (d) of the *Representation Agreement Act* in relation to the proceeding, and
- the litigation guardian has no interest in the proceeding adverse to the person.

Preparation

- ❶ Insert the number assigned to the court's file by the probate registry in this estate. It can be found on the Grant.
- ❷ Check the previous Affidavits filed by this applicant and insert the next sequential number for this Affidavit and the date it was sworn.
- ❸ Insert the name of the minor and minor's date of birth. If there are several minors, repeat this paragraph.
- ❹ If there is a person under legal disability, use this paragraph and list the document(s) on which the assumption that the person is under legal disability is based.

If the litigation guardian has been appointed by a Power of Attorney, replace this paragraph with the following:

"4. I am of the belief that ***{NAME OF THE PERSON UNDER LEGAL DISABILITY}*** has entered into a representation agreement and has a litigation guardian, namely ***{NAME OF THE LITIGATION GUARDIAN}*** is who is authorized under section 7 (1) (d) of the *Representation Agreement Act* to act in the proceeding"

Processing

This Certificate of Fitness must be signed by a lawyer and attached to ***Form P38 - Affidavit***

No. ❶ _____
{Location} Registry

In the Supreme Court of British Columbia

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

CERTIFICATE OF FITNESS

TO: **The Supreme Court of British Columbia**

RE: The Estate of *{LEGAL NAME OF DECEASED}*

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am a member in good standing of the Law Society of British Columbia.
2. I have reviewed the following documents:
 - (a) Release and Consent for *{NAME OF LITIGATION GUARDIAN}*, litigation guardian of *{NAME OF PERSON UNDER LEGAL DISABILITY}*;
 - (b) Affidavit No. ❷ of *{NAME OF APPLICANT}* (the “Applicant”) being the Form P40 - Statement of Account Affidavit, made ❷*{date}*.
3. ❸I am of the belief that *{NAME OF MINOR}* is a minor based on my examination of copies of her identification, which stated her date of birth as *{date}*.
4. I am of the belief that ❹*{PERSON UNDER LEGAL DISABILITYN}* is under legal disability based on my examination of ❹ and no committee has been appointed for this person nor has this person entered into a Representation Agreement.
5. I have made due inquiries of the applicant(s) and as a result of such inquiries, I am of the opinion that the applicant(s) has/have no interest in the proceeding that is adverse to *{NAME OF MINOR or NAME OF PERSON UNDER LEGAL DISABILITY}* .

Signed by me on the ____ day of _____, 20__ at _____, British Columbia

{NAME OF LAWYER FOR LITIGATION GUARDIAN}:
{Occupation}:
{Address}

FORM P38
(Rule 25-13(2))
AFFIDAVIT IN SUPPORT OF APPLICATION TO PASS ACCOUNTS

General Notes

A personal representative or a person interested in an estate administered by a personal representative (such as a beneficiary or intestate successor) may apply for an order for one or both of an order to:

- approve and pass the personal representative's accounts in relation to the estate; and/or
- appoint *{name(s)}* as litigation guardian(s) of *{the name of the minor or person with legal disability}*;
- fix and approve the personal representative's remuneration;
- approve costs;
- discharge the personal representative as executor of the Will and administrator of the estate.

In some circumstances, the parties have already approved the accounts of the personal representative but have not fixed his or her remuneration (or vice-versa). Accordingly, the court needs only to pass account or to fix remuneration. Both can be heard together.

Preparation

- ① Specify the type of representation/estate grant to which this affidavit applies:
 - a grant of probate;
 - a grant of administration with will annexed;
 - a grant of administration without will annexed;
 - an ancillary grant of probate;
 - an ancillary grant of administration with will annexed;
 - an ancillary grant of administration without will annexed; or
 - the resealing of a foreign grant.
- ② Delete the word “except” if not applicable. If there is an exception, describe any compensation that the applicant has been awarded for his/her services as personal representative.
- ③ List the persons interested in the administration of the estate as residual beneficiaries of the Deceased.
- ④ Delete the word “except” if not applicable. If there are beneficiaries under the age of 19 years, list them.

Continued...

FORM P38 (RULE 25-13(2))

This is the *{1st/2nd/3rd/etc.}*
affidavit of *{Name}* in this case and
was made on *{dd/mmm/yyyy}*.

No. _____
{Location} Registry

In the Supreme Court of British Columbia

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

**AFFIDAVIT IN SUPPORT OF
APPLICATION TO PASS ACCOUNTS**

I, *{NAME}*, of *{address}*, *{Occupation}*, SWEAR/AFFIRM THAT:

6. A ❶ of the estate of *{LEGAL NAME OF DECEASED}*, deceased, was made to me by this court on *{dd/mmm/yyyy}*.

7. I have administered the estate to the best of my ability.

8. I have filed with the registrar a full and correct accounting of the estate, showing all property, money and effects and the proceeds from them that have come into my hands as personal representative, and also a full and correct statement of all disbursements, with a full and correct statement of the assets not yet disposed of.

9. I have not been awarded any compensation for my services as personal representative by this or any other court ❷ except ❷.

10. The persons interested in the administration of the estate as beneficiaries of the deceased are as follows:

(a) ❸ *{NAME(S)}*,

and all of them are of the full age of 19 years ❹ except:

(a) ❹ *{NAME(S)}*,

who have guardians at litem whose consents are attached hereto.

Continued...

FORM P38
(Rule 25-13(2))
AFFIDAVIT IN SUPPORT OF APPLICATION TO PASS ACCOUNTS

Preparation *(Continued)*

- ❶ Delete the word “except” if not applicable. If there are any creditors of the estate who still have unsettled (unpaid) claims that the applicant considers to be valid, list the names.
- ❷ Describe the unadministered portion of the estate, for example:
“The residence of the Deceased at {address}.”
- ❸ Insert the reason why a portion of the estate remains unadministered, for example:
“Extensive renovations are being carried on the property and once completed, the applicant will endeavour to sell same.”

Processing

If the application is brought by the personal representative, it must be supported by this affidavit (Probate Rule 25-13(6)(b)).

Form P38

11. I know of no creditors of the estate who still have unsettled claims against it that I consider to be valid ❶ except ❶.

(a) ❶ {NAME(S)};

(b) ❶ {NAME(S)}.

12. The only portion of the estate that remains unadministered is as follows: ❷, and the reason it has not been administered is: ❸.

SWORN/AFFIRMED BEFORE ME at)
{Name of City/Town}, {British Columbia},)
this ___ day of _____, 20__)

_____)
A commissioner for taking affidavits)
for British Columbia)
{print name or affix stamp of commissioner})

_____)
{NAME}

FORM P39
(Rule 25- 13(5))
CERTIFICATE

General Notes

Pursuant to Rule 25-13(5), if the court directs the registrar to conduct an inquiry, assessment or accounting under subrule 25-13(3)(b), unless the court otherwise orders, the registrar must certify the result of the inquiry, assessment or accounting by issuing the *Form P39 – Certificate*.

If filed under Rule 18-1(9), the *Certificate* is binding, subject to appeal, on the persons interested in the estate who:

- had notice of the inquiry, assessment, or accounting;
- consented to the accounts or the remuneration; or
- are the subject of an order made under Rule 18-1(20)(b).

Notes: Rule 18-1(9) provides that a party to whom this *Certificate* is provided under subrule may file that *Certificate*.

Rule 18-1(20)(b) provides that in any case in which it appears that it is impracticable for any reason to serve a person with a notice of order under subrule (18), “*the court may order that that person be bound by any order made to the same extent as if the person had been served with notice of the order...*”

Preparation

- ❶ Insert the number assigned to the court’s file by the probate registry in this estate. It can be found on the Grant.
- ❷ If there is no Will (administration only) delete the words “executor of the Will”
- ❸ Insert the commencement date (see *Form P40*). The commencement date may be:
 - the date of death; or
 - the effective (cut-off) date of a previous accounting.
- ❹ Insert the effective date of the account from the *Statement of Account* attached to *Form P40 – Statement of Account Affidavit*.
- ❺ Insert the conditions if any.
- ❻ Insert the amount of the remuneration to the personal representative.

FORM P39 (RULE 25- 13(5))

No. ①
{Location} Registry

In the Supreme Court of British Columbia

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

CERTIFICATE

I CERTIFY that the results of the inquiry, assessment or accounting ordered under Rule 25-13(3)(b) are as follows:

1. The accounts of {NAME OF PERSONAL REPRESENTATIVE} being the ② executor of the Will and ② administrator of the estate of {LEGAL NAME OF DECEASED}, covering the period ③ {dd/mmm/yyyy} to ④ {dd/mmm/yyyy}, which accounts are attached to the affidavit of {NAME} sworn {dd/mmm/yyyy} are approved

as presented

⑤ subject to {describe condition(s)}

2. {NAME OF PERSONAL REPRESENTATIVE} receive the amount of \$⑥ _____ as remuneration.

3. The costs of the passing of the accounts of {NAME OF PERSONAL REPRESENTATIVE} be payable from the estate as {special costs/specified basis}.

4. This certificate is binding on the beneficiaries without further order of the court.

Date: {dd/mmm/yyyy}.

Registrar

FORM P40
(Rule 25-13(6))
STATEMENT OF ACCOUNT AFFIDAVIT

General Notes

Form P40 -- Statement of account Affidavit is sworn by the personal representative in response to a request for an accounting by an interested party and is filed in addition to any other materials that may be required for an application for either a passing of accounts of the personal representative or to fix and approve the personal representative's remuneration, or both.

The overarching goals of the statement of account is to show where the estate assets went between date of death and the date of the statement of account. Additional schedules are often needed in order to present the simplest picture of the assets to the registrar reviewing the application to pass accounts or to the other interested parties in the estate as the case may be.

This affidavit must have a *Statement of Account* (see next pages) as exhibit **A** attached to it. The *Statement of Account* must contain information required by Rule 25-13(6).

If the applicant is not a personal representative, he or she must file an affidavit explaining why an accounting is required.

Preparation

If a person other than the personal representative applies to pass accounts, the supervising lawyer should dictate the appropriate affidavit

- ❶ Insert the number assigned to the court's file by the probate registry in this estate. It can be found on the Grant.

Processing

Prepare the Schedule (on the next pages) entitled "*Statement of Account*".

FORM P40 (RULE 25-13(6))

This is the {1st/2nd/3rd/etc.}
affidavit of {Name} in this case and
was made on {dd/mmm/yyyy}.

No. ① _____
{Location} Registry

In the Supreme Court of British Columbia

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

STATEMENT OF ACCOUNT AFFIDAVIT

I, {NAME OF PERSONAL REPRESENTATIVE}, of {address}, {Occupation},
SWEAR/AFFIRM THAT:

1. Attached and marked as Exhibit A is a Statement of Account for the Estate of {LEGAL NAME OF DECEASED}.
2. The information set out in this statement of account is true and complete to the best of my knowledge.

SWORN/AFFIRMED BEFORE ME at)
{Name of City/Town}, {British Columbia},)
this ___ day of _____, 20__)
)
)
)
_____)
A commissioner for taking affidavits)
for British Columbia)
{print name or affix stamp of commissioner})

{NAME OF PERSONAL
REPRESENTATIVE}

FORM 40
(Rule 25-13(6))
STATEMENT OF ACCOUNT AFFIDAVIT

General Notes (Continued)

This Statement of Account is attached as Exhibit A to *Form P40 – Statement of Account Affidavit* and contains information required by Rule 25-13(6).

Note: This schedule to the *Statement of Account Affidavit* and all the tables which form part of the schedule are referred to as “*Statement of Account*” in the descriptions on the following pages.

Preparation

- ① Insert the “commencement date” which is either:
 - the date of death, if this is the first *Statement of Account* since the date of death of the Deceased; or
 - the effective (cut-off) date of the prior statement, if a prior Statement of Account was filed with respect to this estate.
- ② Insert the effective date of the statement of account. It is the cut-off date at which you have reconciled the assets, liabilities, income etc. It is not necessarily the date of the affidavit.
- ③ Delete if no remuneration is sought at this time.

Note: If you delete this paragraph, the numbering underneath will adjust automatically.

Continued ...

Form P40

This is Exhibit A referred to in the affidavit of *{NAME}* sworn/affirmed before me on *{dd/mmm/yyyy}*.

A commissioner for taking affidavits for British Columbia

**STATEMENT OF ACCOUNT FOR THE ESTATE
OF *{LEGAL NAME OF DECEASED}*, DECEASED**

For the period from ❶ *{commencement date - dd/mmm/yyyy}* to ❷ *{effective date of this statement of account - dd/mmm/yyyy}*.

1. In this Statement of Account, the “commencement date” means:
 - (a) the deceased’s date of death, or
 - (b) if one or more statements of account have been filed in respect of the estate under Rule 25-13(6) of the *Supreme Court Civil Rules*, the effective date of the most recent of those statements of account.

2. This Statement of Account consists of the following:
 - (a) Statement of Assets and Liabilities of the Estate of as at *{commencement date - dd/mmm/yyyy}*;
 - (b) Statement of Capital Transactions of the Estate of *{LEGAL NAME OF DECEASED}*;
 - (c) Statement of Income Transactions of the Estate of *{LEGAL NAME OF DECEASED}*;
 - (d) Statement of Assets and Liabilities of the Estate of *{LEGAL NAME OF DECEASED}* as at *{effective date of this statement of account – dd/mmm/yyyy}*;
 - (e) ❸ Statement of Proposed Remuneration in relation to the Estate of *{LEGAL NAME OF DECEASED}*;
 - (f) Statement of Distribution of the Estate of *{LEGAL NAME OF DECEASED}*;
 - (g) Statement of Proposed Distribution of Residue of the Estate of *{LEGAL NAME OF DECEASED}*.

FORM 40
(Rule 25-13(6))
STATEMENT OF ACCOUNT AFFIDAVIT
STATEMENT OF ASSETS AND LIABILITIES OF THE ESTATE
SECTIONS A, B AND C

General Notes

This statement lists all the assets from the commencement date (see the definition on page 3) to the effective date (the cut-off date or the date of the statement). If the estate administration has not been completed, you will have to prepare a further *Statement of Assets and Liabilities of the Estate*, in which the commencement date will be the effective date of this Statement (see **Timing** on page 4).

Preparation

If space is insufficient or there are numerous items (assets or liabilities), include the relevant information in an attached Schedule, list the schedule in the appropriate section and bring forward the totals from such schedules into each appropriate section.

- ❶ Describe all estate assets as at the commencement date. The assets listed here should match those listed in Form P10 (and as amended by Form P14). The description may be paraphrased. For example, if real estate is involved, you could insert the address and the description of the property (for example: residence or holiday cottage). If a liability is registered against the asset and was shown as such on Forms P10/P14, list them here and not in Section B.
- ❷ Insert fair market value of each asset as at the commencement date of this statement of account.
- ❸ Describe all liabilities (debts) of estate as at the commencement date (see ❶ on the previous page). The amounts will likely differ in what was included on Forms P10/P14 forms as unsecured debts are not listed in Forms P10/P14. The debts here could also include funeral costs, outstanding lines of credit, etc. but only if they exist at the date of death (for the first application that is at the date of death). If a debt is secured (for example a mortgage registered against a property, it should be listed in A following the description of the property against which such debt is registered.
- ❹ Insert the amounts of liabilities as at the commencement date.
- ❺ List the capital transactions in chronological order.
“Capital transactions” means sale or purchase of any capital asset; for example, an “asset of a permanent or fixed nature or employed in carrying on business or trade,”⁽¹⁾ such as real estate or machinery. You may be able to combine capital transactions and the income transactions.
- ❻ Insert the date of each transaction in chronological order.
- ❼ Describe each capital transaction. If space is insufficient, include that information in an attached Schedule and bring forward totals here.

Continued...

⁽¹⁾ Black’s Law Dictionary

Form P40 - Sections A, B and C

STATEMENT OF ASSETS AND LIABILITIES
OF THE ESTATE OF {LEGAL NAME OF DECEASED}
As at {commencement date - dd/mmm/yyyy}

Item	Assets	Asset value
A1	① {Describe asset}	\$ ② _____
A2	① {Describe asset}	\$ ② _____
	Total asset values	\$ _____

Item	Liabilities	Liabilities ④
B1	③ {Describe liability/debt}	\$ ③ _____
B2	③ {Describe liability/debt}	\$ ③ _____
	Total amount of liabilities	\$ _____

STATEMENT OF CAPITAL TRANSACTIONS
OF THE ESTATE OF {LEGAL NAME OF DECEASED}

For the period from {commencement date - dd/mmm/yyyy}
to {effective date of this statement of account - dd/mmm/yyyy}

Item	Date	Transaction	Debit	Credit
C1 ⑤	⑥	⑦	\$ _____	\$ _____
C2			\$ _____	\$ _____
		Totals	\$ _____	\$ _____

FORM 40
(Rule 25-13(6))
STATEMENT OF ACCOUNT AFFIDAVIT
SECTIONS D, E, F AND G

Preparation (Continued)

If space is insufficient or there are numerous transactions, include the relevant information in an attached Schedule, list the schedule in the appropriate section and bring forward the totals from such schedules into each appropriate section.

- ① List the income transactions in chronological order during the period between the commencement date of this *Statement of Account* and its effective date. An example of an income transaction is interest earned on GIC or dividends on shares held in a company. Often the capital transactions and income transactions are combined. However, if you have no entries in this table and delete it, do not adjust the sequencing of the letters.
- ② Insert the date of each income transaction in chronological order.
- ③ Describe the income transaction.

Sections E and F show a new statement of assets as at the effective date which is different from Section A.

- ④ Insert the effective date of the Statement of Account.
- ⑤ Describe estate assets as at the effective date of the *Statement of Account* (see ② on page ◆ of the *Statement of Account*) for example.
 - for real estate the new value from BC Assessment or a new appraisal;
 - funds realized from the sale of some assets as well as funds received from the bank;
 - any other assets that still belong to the estate.

Note: If an asset has been sold and the proceeds are invested in an GIC, show the amount of the GIC, not the sale proceeds of the asset.

- ⑥ Describe liabilities of estate as at the effective date – in other words debts of the estate that still have to be paid (not debts as at the date of death) after all the capital and income transactions have been listed on this and the previous page. This is the “image” of what happened at the end of the reporting period.
- ⑦ Describe liabilities of estate as at the effective date.
- ⑧ Insert the amounts of liabilities as at the effective date.

Continued...

Form P40 – Section E, E, and F

**STATEMENT OF INCOME TRANSACTIONS
 OF THE ESTATE OF {LEGAL NAME OF DECEASED}**

For the period from *{commencement date - dd/mmm/yyyy}*
 to *{effective date of this statement of account - dd/mmm/yyyy}*

Item	Date	Transaction	Debit	Credit
D1 ❶	❷	❸	\$ _____	\$ _____
D2			\$ _____	\$ _____
		Totals	\$ _____	\$ _____

**STATEMENT OF ASSETS AND LIABILITIES
 OF THE ESTATE OF {LEGAL NAME OF DECEASED}**

As at ❹ *{effective date of this statement of account - dd/mm/yyyy}*

Item	Assets	Asset value
E1	❺	\$ ❻ _____
E2	❺	\$ ❻ _____
	Total asset values	\$ _____

Item	Liabilities	Liabilities
F1	❼	\$ ❸ _____
F2	❼	\$ ❸ _____
	Total amount of liabilities	\$ _____

FORM 40
(Rule 25-13(6))
STATEMENT OF ACCOUNT AFFIDAVIT
PROPOSED REMUNERATION

General Notes

Section 88(1) of the Trustee Act, states that “*A trustee under a deed, settlement or will, an executor or administrator, ... is entitled to, and it is lawful for the Supreme Court, or a registrar of that court if so directed by the court, to allow him or her a fair and reasonable allowance, not exceeding 5% on the gross aggregate value, including capital and income, of all the assets of the estate by way of remuneration for his or her care, pains and trouble and his or her time spent in and about the trusteeship, executorship, guardianship or administration of the estate and effects vested in him or her under any will or letters of administration, and in administering, disposing of and arranging and settling the same, and generally in arranging and settling the affairs of the estate as the court, or a registrar of the court if so directed by the court thinks proper.*”

If the personal representative is seeking remuneration with respect to the administration of the estate, include this ***Statement of Proposed Remuneration***. Otherwise, delete the whole page. If you remove the whole page of any table, leave the subsequent letter numbering without adjusting it. In other words, if you remove E and F, do not move G to E.

Preparation

- ❶ Copy the totals from the ***Statement of Capital Transactions*** (C1, C2, etc.) – this is the value of the capital assets that have been sold between the commencement date and the effective date of the ***Statement of Account*** (for example, income property sold by the personal representative).
- ❷ Insert the total market value as at the effective date of any assets that have been transferred but for which the estate did not receive any proceeds (for example, bequest of real estate to a child).
- ❸ Insert the value of assets that have neither been realized nor transferred – that is, which remain in the name of the personal representative in the form in which they were at the commencement date of the Statement of Account.
- ❹ Insert claimed percentage up to a maximum of 5 per cent (authorized by section 88(1) of the *Trustee Act*) and calculate the amount by multiplying (D) x percentage.
- ❺ Insert gross income earned from Statement of Income Transactions (D1, D2, etc.).
- ❻ Insert claimed percentage up to a maximum of 5 per cent on (F).
- ❼ Prepare one set of the following calculations for each year following the commencement date from date of death to the date of final distribution.
- ❽ Insert the claimed percentage pursuant to Section 88(3) of the *Trustee Act*, which authorizes a person entitled to an allowance under subsection (1) to apply annually to the Supreme Court for a care and management fee, and the court to allow a fee not exceeding **0.4%** of the average market value of the assets.
- ❾ Add :
 - (E) Capital Fee
 - (G) Income Fee
 - (K) Care Management Fee for every year (see ❽).

Continued...

Form P40

**STATEMENT OF PROPOSED REMUNERATION IN RELATION
 TO THE ESTATE OF {LEGAL NAME OF DECEASED}**

As at {effective date of this statement of account - dd/mm/yyyy}

Capital Fee		
(A)	Proceeds of disposition of capital assets realized since the commencement date	① \$ _____
(B)	Market value of capital assets, realized or transferred since the commencement date, in respect of which no proceeds of disposition have been obtained	② \$ _____
(C)	Current value of unrealized capital assets included, on the commencement date, in the estate	③ \$ _____
(D)	Gross aggregate value of capital assets of estate <i>{Add (A) + (B) + (C) to obtain D}</i>	\$ _____
(E)	Capital Fee: (D) x ④ %	④ \$ _____

Income Fee		
(F)	Gross income earned by the estate for the period from <i>{commencement date - dd/mm/yyyy}</i> to <i>{effective date of this statement of account - dd/mm/yyyy}</i> except interest income already capitalized and included in (D)	⑤ \$ _____
(G)	Income Fee: (F) x ⑥ % <i>{insert claimed percentage, up to a maximum of 5%}</i>	\$ _____

Care Management Fee ⑦		
(H)	Market value of estate assets as at the beginning of the reporting period	\$ _____
(I)	Market value of estate assets at the end of the reporting period	\$ _____
(J)	Average market value of estate assets for the reporting period <i>{H} + (I)/2}</i>	\$ _____
(K)	Care and Management Fee for reporting period ⑧ <i>{(J) x 0.4%}</i>	⑧ \$ _____

Total of Fees Claimed		
(L)	Total Remuneration sought ⑨	\$ _____

FORM 40
(Rule 25-13(6))
STATEMENT OF ACCOUNT AFFIDAVIT

General Notes

This table of distribution is included only if there was a Will and if there were bequests and legacies in the Will.

Preparation

- ❶ Complete the table of specific Bequests and Legacies by describing each item given under the Will or the amount of the legacy. Indicate whether or not the item or the amount of money has been distributed, as well as the date of distribution. If there was no Will or there were no bequests, insert “N/A” in the first column or remove the whole section.
- ❷ Include the total from the table entitled “Assets” as at the effective date (E1, E2, etc.).
- ❸ Insert the amount of holdback as specified. With respect to the holdback, consult the estate accountants and confirm with the supervising lawyer. Ensure that there are sufficient funds to cover liabilities listed as at the effective date on the previous page for a holdback.
- ❹ Identify the beneficiaries who receive assets or cash from residue.
- ❺ Identify assets distributed to the named beneficiary and the market value of those assets.
- ❻ Indicate amount of cash paid to the named beneficiary or the cash value of the asset distributed in specie to the beneficiary.

Form P40

**STATEMENT OF DISTRIBUTION
 OF THE ESTATE OF {LEGAL NAME OF DECEASED}**

Specific Bequests and Legacies ❶

Item	Distribution (Yes/No)	Date of Distribution	Beneficiary
❶	Yes/No		
	Yes/No		
	Yes/No		

RESIDUE OF ESTATE

(R1)	Market value of estate assets at effective date of this statement of account	❷ \$ _____
(R2)	Applicant's estimated reserve for final income tax, accounting and legal costs and remuneration	❸ \$ _____
(R3)	Distributable estate (R1) - (R2)	\$ _____

**STATEMENT OF PROPOSED DISTRIBUTION OF RESIDUE
 OF THE ESTATE OF {LEGAL NAME OF DECEASED}**

Beneficiary ❹	Assets ❺	Cash ❻
❹	❺	❻ \$ _____

FORM P41
(Rule 25-14(1))
REQUISITION – ESTATES

General Notes

If there is already a court file with respect to this estate, Rule 25-14 allows subsequent applications that are related to the initial application for probate or administration to be filed in the same court file. **Form P41 – Requisition** is used for such applications. Having a single court file related to all matters involving an estate makes it easier for the court and the public to find all relevant information related to that estate.

Form P41 may also be used to commence a new proceeding with respect to the estate (see Part 8 of the *Supreme Court Civil Rules* [Applications]), in which case Rule 17-1 applies instead of Rule 2-11 and (2)(a) and (b). The subsequent filings relating to the same estate will have the same court number.

Some practitioners prefer to use **Form 31 – Requisition** which is a form used in litigation matters. We have checked with the Probate Registry and although **Form P41** is the correct Requisition using Form 31 is accepted.

Applications under Rule 25-14(1) may proceed under Part 8 of the Rules, for example:

- for the passing of accounts;
- fixing and approving the remuneration of a personal representative; or
- other matters as described in that Rule.

However, if any of these matters are contentious, the procedure may vary (such as service) and is not covered in the Guide at this time. However, if there is demand, we shall include it in the future.

Preparation

This Requisition may be signed by the person who is filing it or by his or her lawyer.

- ❶ Complete the number already assigned to the existing proceeding.
- ❷ When passing accounts the Rule on which the applicant is relying is 25-14(o) but check with the supervising lawyer.
- ❸ List all documents filed in support of the application, for example:

“(a) Affidavit No. __ of {NAME OF PERSON} made {date};” etc.
- ❹ Complete the address for service including the street address. If available, insert a fax number and/or an e-mail address as additional addresses for service.

Processing

Attach all documents relating to this application that are listed above.

FORM P41 (RULE 25-14(1))

No. ❶ _____
{Location} Registry

In the Supreme Court of British Columbia

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

REQUISITION – ESTATES

Filed by: {NAME OF APPLICANT (S)}

Required:

1. The rule or other enactment relied on is ❷ {set out rule or enactment relied on}.
2. Attached to this requisition is a draft of the order required.
3. The evidence in support of the application is:
 - (a) ❸.

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

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

Date: {dd/mmm/yyyy}.

Signature of
 filing person
 lawyer for filing persons

{type or print name}

ORDER

General Notes

This document is used to obtain an Order without the requirement for a hearing before an associate judge and an attendance at the court or without the applicant having to speak to the matter.

Preparation

The court requires that the Order be in at least 12 font and that the document does not contain any bolded text. The words in the example on the opposite are only bolded for emphasis.

- ❶ Complete the number already assigned to the existing proceeding.
- ❷ Leave the date blank. It will be completed by the Court.
- ❸ Insert the name(s) of the applicant(s).
- ❹ Inset in separate numbered paragraphs the matters being ordered.
- ❺ Type the names of each party consenting to this order and indicate whether the signature is by the party or the party's lawyer.

Processing

Once the Order has been approved and signed by the lawyer acting for each consenting party, it should be filed with the court registry.

The documents can be e-filed online through Court Services. If e-filing the documents online, prepare **Form 119 – Electronic Filing Statement** (see **Chapter IV** - Appendix E -- **Electronic Filing System** and Court Services Online). Form 119 is available on the Evin Ross Publications website.

No. ❶
{Location} REGISTRY

FORM 34 (Rule 8-3 (1), 13-1 (3), and 17-1 (2))

CONSENT ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

RE: ESTATE OF FULL NAME OF THE DECEASED, DECEASED

ORDER MADE AFTER APPLICATION

BEFORE)
) A JUDGE OF THE COURT)
) AN ASSOCIATE JUDGE OF THE COURT) ❷ _____, 20__
) A REGISTRAR)
)

ON THE APPLICATION of ❸ {NAME(S) OF A APPLICANT(S)} without a hearing and by consent;

THIS COURT ORDERS that: ❹

1. The accounts of {NAME OF APPLICANT} covering the period of {date} to {date} be approved passed as presented.
2. {NAME OF PERSONAL REPRESENTATIVE} be entitled to a total payment of {amount} as remuneration in relation to the administration of the Estate of {FULL NAME OF THE DECEASED} covering the period from {Commencement date} to {Effective Date}.
3. {NAME OF LITIGATION GUARDIAN} be appointed as Litigation Guardian for {NAME OF MINOR/PERSON UNDER LEGAL DISABILITY} in this matter.
4. {NAME OF PERSONAL REPRESENTATIVE}, the executor of the will and administrator of the estate of the Deceased be released from all liability.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE

Signature of
 party lawyer for {name(s)}
{Type or print name}

BY THE COURT

Registrar

