
PRE-WESA DEATHS
PROOF OF A PHOTOCOPY OR
☞ A NOTARIALLY CERTIFIED COPY OF WILL ☞

When a death occurred **before March 31, 2014** (before WESA came into effect), and an application is made under WESA, the *Estate Administration Act* applies but the new forms under the *Supreme Court Civil Rules* are used.

The procedure and additional precedents to comply with the pre-WESA requirement are in the previous version of this Guide. The pre-WESA guide is only available to subscribers. To access it, email: "contact@evinross.ca".

In this regard, the following are the main issues we have encountered so far in the case of applications for administration with or without will annexed:

- **Probate**

- proof of a photocopy of a Will

Complete Form P4 instead of Form P3 and check paragraph 6(c.1). In addition to the usual documents, you may require Affidavit(s) explaining why only a copy is available and the original is not. For example, you may have to obtain:

- an Affidavit of the lawyer who prepared the original Will and who attended on its execution setting out the circumstances surrounding its preparation and execution and the efforts made to locate the original Will;
- an Affidavit of one (or both) witness(es) to the Will (if available) setting out the facts surrounding the execution of the Will.

In addition to the Affidavits, prepare the following (set out below):

- **Form P41 – Requisition;** and
- **Form 35 – Order.**

- proof a notarially certified copy of a Will

The instructions below assume that the will made in the foreign jurisdiction complies with the requirement of Division 1 of Part 4 of WESA.

Complete Form P4 instead of Form P3 and check paragraph 6(c.2)).

In addition to Form P4, prepare the following (set out below):

- **Form P41 – Requisition;** and
- **Form 35 – Order.**

- **Administration with or without will annexed:**

- Form P3, P4 and P5 Affidavits

Sections 130 and 131 of WESA that govern the priority of the individuals who may apply for a grant of administration (with or without will annexed) do not apply when the death occurred before WESA came into effect. You will have to

delete the reference to WESA and insert instead the appropriate sub-section of section 6 of the *Estate Administration Act*.

- Renunciations and Consents

If several persons have a prior or equal entitlement to apply, they must either apply jointly or renounce their rights and consent to the application of one (or more) of them. Those who have an equal or greater right must renounce and consent and those who have an equal right must consent.

For a more detailed explanation, and the precedents, see the *Pre-Application Documents* in the pre-WESA Guide and prepare as applicable:

- *Renunciation of Administration and Consent* (page 12); and
- *Consent (to Administration)* (page 14),

- Desk Order and Requisition

Since the Administrator is appointed by the Court, an Order must be signed as the official appointing document. This document, along with the estate Grant, confirms such appointment. Prepare the following:

- *Form P41 – Requisition*; and
- *Form 35 – Order*.

The Order and the Requisition are set out below.

- Consents of all creditors

In the case of an application for administration with or without will annexed only, consents must be obtained from all creditors (i.e. all persons or institutions to which the Deceased was indebted or owed money and which debts remain unpaid at the time of the application).

For a more detailed explanation, and the precedents, see the *Pre-Application Documents* in the pre-WESA Guide and prepare:

- *Creditor's Consent* (page 20).



List any additional documents described above in paragraph 7 of *Form P2 – Submission for Estate Grant*.

**DESK ORDER – PROOF OF A PHOTOCOPY
OR A NOTARIALY CERTIFIED COPY OF WILL**

FORM 35 (RULES 8-4(1), 13-1(3) AND 17-1(2)) AND 25-9(2))

No. {number}
{Location} Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

ORDER MADE AFTER APPLICATION

BEFORE } ◆ THE HONOURABLE JUSTICE }
 } }
 } ◆ or AJUDGE OF THE COURT }
 } or }
 } ◆ ASSOCIATE JUDGE } {dd/mmm/yyyy}
 } or AN ASSOCIATE JUDGE OF THE }
 } COURT }

ON THE APPLICATION of {NAME OF THE APPLICANT} without a hearing and on reading the materials filed by {NAME OF THE APPLICANT} and {NAME OF LAWYER};

THIS COURT ORDERS that:

For a copy of a Will

- 1. probate of the Will dated {date} of {NAME OF THE DECEASED}, Deceased, a photocopy of which is attached as Exhibit “A” to the affidavit of {NAME} sworn {date}, be granted to {NAME OF EXECUTOR/S}, the Executor(s) named in the Will, limited until the original will or a more authentic copy of it is ◆proved◆ brought in to the registry.

For a notarially-certified copy of a Will

- 1. probate of a notarially-certified copy of a {jurisdiction} Will of (NAME OF THE DECEASED, WITH ALL ALIASES), Deceased, dated the _____ day of _____, 20____, be granted to (NAME OF EXECUTOR), the Executor named in the Will.

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 {NAME OF LAWYER}
lawyer for {NAME OF APPLICANT}

BY THE COURT

Registrar

**REQUISITION – PROOF OF A PHOTOCOPY
OR A NOTARIALY CERTIFIED COPY OF WILL**

FORM P41 (RULE 25-14(1))

No. *{number}*
{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

for a copy of the Will: Rule 25-3(3)(a)
for a notarially certified copy is: Rule 25-3(3)(b)
2. Attached to this requisition is a draft of the order required.
3. The evidence in support of the application is the application for a grant of administration with/without will annexed.

Date: _____,

 Signature of
 filing person
 lawyer for filing persons

{NAME OF LAWYER}

DESK ORDER – ADMINISTRATION WITHOUT WILL ANNEXED

FORM 35 (RULES 8-4(1), 13-1(3) AND 17-1(2))

No. *{number}*
{Location} Registry

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

ORDER MADE AFTER APPLICATION

BEFORE) A MASTER OF THE COURT) _____, 20__
)
)
)
)
)

ON THE APPLICATION of *{NAME OF THE APPLICANT}* without a hearing and on reading the materials filed by *{NAME OF THE APPLICANT}* and *{NAME OF LAWYER}*;

THIS COURT ORDERS that:

- Grant of Administration with/out Will Annexed of all the estate which by law devolves to and vests in the personal representative of *{NAME OF THE DECEASED}*, late of the *{City}* of *{Location}*, in the Province of British Columbia, who died intestate on *{date}*, at the *{City}* of *{Location}*, in the Province of British Columbia, be granted to *{NAME OF APPLICANT}*, *{relationship to the Deceased}*, (WITHOUT BOND).
- ◆ a bond in the amount of \$◆ be filed in a form satisfactory to the Registrar

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 *{NAME OF LAWYER}*
lawyer for *{NAME OF APPLICANT}*

BY THE COURT

Registrar

REQUISITION – ADMINISTRATION WITHOUT WILL ANNEXED

FORM P41 (RULE 25-14(1))

No. *{number}*
{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:

- 4. The rule or other enactment relied on is 25-14(1)(m)(i).
- 5. Attached to this requisition is a draft of the order required.
- 6. The evidence in support of the application is the application for a grant of administration with/without will annexed.
- 7.

Date: _____,

 Signature of
 filing person
 lawyer for filing persons

{NAME OF LAWYER}