
❧ SECURITY FOR GRANT OF ADMINISTRATION (BOND) ❧

Background⁽¹⁾

Security is a collateral or guarantee for the performance of the administrator's duties as administrator of the estate of an intestate deceased, which is posted by the administrator at the direction of the Public Guardian and Trustee and as ordered by the court. Under the former *Estate Administration Act*, it was known as a "bond".

A bond is an insurance agreement whereby the administrator (as principal) and an insurance company (as surety) guarantee to a third party (in this instance, the court) the performance of the administrator's duties. A bond may be applied for through an insurance broker (or agency), who will instruct the insurance company on the bond's requirements. The cost of the insurance premium for the bond is usually paid out of the assets of the estate.

Section 128(1) of WESA provides that security (often a bond) for the administration of an estate is only required to be provided by an applicant for a grant of administration when:

- a minor or a mentally incapable person (without a nominee who has authority to represent the mentally incapable person in estate matters) is interested in the estate; or
- the court, on application by a person interested in the estate, requires security.

In this explanation, we are only dealing with bonds required by the Public Guardian and Trustee when there are minors, which is the most common situation.

If security is required under subsection (1), the applicant for a grant of administration must apply to the court to determine the kind of security that is required and the court may, on that application, do one or both of the following:

- accept any form or amount of security; and
- impose a restriction on the powers of the proposed administrator that may be exercised without prior approval of the court or the Public Guardian and Trustee.

Supreme Court Civil Rules do not specify the form of the bond (unlike the former *Estate Administration Act*).

If a bond is not possible, restrictions on an administrator's power, such as requiring leave of the court to sell or mortgage real property or deal with a bank account, may also be used as an alternative to security. However, at present, a bond is the preferred form of security when the Public Guardian and Trustee is concerned.

When obtaining a bond is not possible (for example the applicant is not bondable, or the insurance company refuses to issue a bond) see **Alternate Security to Bond** below.

⁽¹⁾ For a more detailed explanation, see **Security** in chapter III A-1 – **Pre-Application Procedure**.

Ensure that the prospective administrator is bondable

If the supervising lawyer has any doubts as to whether or not the prospective administrator is bondable, it is wise to ascertain that this is, in fact, the case.

Often, the easiest way is to complete an **application form for a bond** from a surety underwriter or insurance company (which can be obtained from an insurance broker or agent) and then submit a draft of the application to the insurance agent who will liaise with the underwriter.

Each underwriter has its own form of application. In general, the underwriter will require written reference letters as well as information regarding employment record, permanent residence, and assets and liabilities of the applicant, and will investigate the information provided. In addition to being bondable, the prospective administrator must disclose a lot of personal information that he or she may be reluctant to do.

Keep in mind that the surety underwriter (or insurance company) will only deal through the intermediary of an insurance broker or agent. A member of the public cannot buy a bond or surety directly from the underwriter.

When the draft of the completed application is submitted to the underwriter, they will evaluate the qualifications of the bond applicant (prospective administrator) in a manner similar to that used by a bank to evaluate the credit worthiness of an applicant.

However, the application for a bond cannot be finalized until:

- the application for an estate grant is filed with the probate registry;
- the Public Guardian and Trustee's comments are available; and
- an Order has been obtained (see below).

If the applicant is unable to obtain a bond, see **Alternate Security to Bond** on page 8.

Procedure

Once it is determined that the applicant is bondable, follow the steps below. These steps are in addition to the usual steps and procedure for an application for a grant of administration without will annexed,

1. Send Notice pursuant to section 121 of WESA to the Public Guardian and Trustee

Concurrently with the delivery of Notices required pursuant to section 121 of WESA and Rule 25-2 of the Probate Rules⁽¹⁾, send the requisite Notice and fee to the Public Guardian and Trustee (see **Letter 1 to Public Guardian and Trustee** in chapter III B-2 – **Notice of Proposed Application in Relation to Estate**).

⁽¹⁾ Probate Rules in this chapter refer to Part 25 of the *Supreme Court Civil Rules*.

2. Prepare the application documents

See the following chapters for the preparation of documents to apply for a grant of administration with or without will annexed:

- III A-1 – Pre-Application Procedure;
- III B-1 – Application for Representation Grant Procedure;
- III B-3 – Probate Forms.

3. File the application documents with the probate registry

Follow the instructions to file the application documents in the appropriate probate registry (see Chapter III B-1 **Application for Representation Grant Procedure**).

Keep in mind that, at this time, you are just submitting the application documents to the probate registry to be filed and examined by the probate registry staff. You are not requesting the Order or the estate grant. Accordingly, the draft Order (see below) is not filed.

The registry will process the application documents (check the contents and accuracy of each document) pending receipt of the comments from the Public Guardian and Trustee.

4. Mail letter with copies of filed documents to the Public Guardian and Trustee

When you receive stamped copies of the filed application documents from the probate registry, send a copy of each document to the Public Guardian and Trustee (see **Letter 2 to Public Guardian and Trustee** in chapter III B-2 – **Notice of Proposed Application in Relation to Estate**).

The office of the Public Guardian and Trustee will only evaluate the situation when it receives copies of the filed application documents.

5. Apply to probate registry for Order

After examining the documents, the Public Guardian and Trustee will determine whether or not a bond is required, the amount of such bond, and will send out a letter setting out its consent to the application, the amount of the bond, and its **comments**.

Upon receiving the **comments** from the Public Guardian and Trustee, prepare:

- **Form P41 – Requisition** (see Requisition No. 1 on page 5);
- **Form 35 – Consent Order** (see Order on page 6); and
- **Backing Sheet for the Order** (see chapter **Wills – Documents – Backing Sheet**).

When the Requisition and Consent Order have been finalized and signed, file them with the probate registry, together with the **comments** from the Public Guardian and Trustee.

6. Apply to the insurance company for bond

Upon receipt of the *Order*:

- finalize the **application for bond** referred to above;
- have the application signed by the applicant.
- mail or deliver the completed and signed application, together with any documents required by the insurance company, to the insurance broker (or, if instructed, directly to the insurance company) with a request to process the application.

When the bond is approved, the insurance company will advise the broker of the amount of the premium payable to obtain the bond. This fee is usually paid out of the estate assets before the bond is issued. The cost of the bond varies depending on the amount of the bond, and other factors, such as the estate's assets and liabilities, and the applicant's personal credit rating, assets and liabilities.

Once the application is processed and the premium paid, the insurance company will provide the law firm with the actual *bond*.

7. Apply to the probate registry for the grant of administration

The probate registry will only issue the grant when it receives the bond.

Prepare *Form 17 – Requisition* (see *Requisition No. 2* on page 7) and have it signed, attach to the original *bond* and file it the probate registry.

When the grant of administration is issued by the probate registry, you can proceed to deal with the assets of the estate in the usual way.

8. Mail a copy of the Order and the estate grant to the Public Guardian and Trustee

Prepare and mail a covering letter to the Office of the Public Guardian and Trustee enclosing

- a copy of the Order; and
- a notarially-certified copy of the grant of administration.

9. Diarize dates

(a) Renewal date of the bond

Although each year the insurance agent will contact the administrator directly to collect the fee (or insurance premium) payable with respect to the bond, you should also diarize the renewal date and the amount of the premium payable.

(b) When youngest minor reaches majority

If minors are involved, the bond will expire upon the youngest minor reaching majority. At that time, bring the file forward to the attention of the supervising lawyer.

REQUISITION NO. 1

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 THE DECEASED}*, Deceased

REQUISITION – ESTATES

Filed by: *{NAME OF THE APPLICANT}*

Required: *{Court-certified copy of the Order required}*

1. The rule or other enactment relied on is 25.14(1)(j).
2. Attached to this requisition is a draft of the order required.
3. The evidence in support of the application is.
 - (a) documents filed with the application on *{filing date of application}*;
 - (b) Public Guardian and Trustee’s Comments (attached).

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

Street address for service:	<i>{address of law firm}</i>
Fax number address for service (if any):	<i>{fax number of law firm}</i>
E-mail address for service (if any):	<i>{e-mail address of supervising lawyer}</i>
Telephone number:	<i>{tel. number of law firm}</i>

Date: *{date}*

Signature of
 filing person
 lawyer for filing person
{Type or print name}

ORDER

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

No. *{Number}*
{Location} Registry

In the Supreme Court of British Columbia

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

ORDER MADE AFTER APPLICATION

BEFORE	}	◆ THE HONOURABLE JUSTICE ◆ or AJUDGE OF THE COURT or ◆ ASSOCIATE JUDGE or AN ASSOCIATE JUDGE OF THE COURT	}	<i>{dd/mmm/yyyy}</i>
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ON THE APPLICATION of *{NAME OF THE APPLICANT}* without a hearing and on reading the materials filed by *{NAME OF LAWYER}*;

THIS COURT ORDERS that:

1. A bond in the amount of *#{amount}* be filed to the satisfaction of 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
 party lawyer for the Applicant

{NAME OF LAWYER}

BY THE COURT

 Registrar

REQUISITION No. 2

FORM 17
(Rule 23-1(9))

No. _____
{Location} Registry

In the Supreme Court of British Columbia

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

REQUISITION - GENERAL

Filed by: *{NAME OF APPLICANT}*

Required: *{Court-certified}* grant of administration with/without will annexed

This requisition is supported by the following:

1. Bond *{description – company, date, number, amount}*

This Requisition is filed by *{NAME OF APPLICANT}*, the Applicant in this proceeding, whose address for service is as follows:

{Name and address of law firm}

Fax number address for service (if any): *{fax number}*

E-mail address for service (if any): *{e-mail address}*

Dated: *{date}*

 Signature of
 filing party
 lawyer for filing party/ies
{Type or print name}

☞ ALTERNATE SECURITY TO BOND ☞

The Public Guardian and Trustee usually recommends to the Court that a Bond be posted in the amount of the minor's share of an estate for the full length of the estate administration. In certain limited circumstances, when the applicant is unable to obtain a bond (for example, he or she is not bondable, or the insurance company refuses to issue a bond) the Public Guardian and Trustee may agree to recommend alternate security such as a restriction on sale of real property.

However, a restriction on sale may not be appropriate when the personal representative intends to sell (or attempt to sell) the real property within the administrator's year (the year following the issuance of the Grant) because such a restriction on sale involves various extra steps that result in additional expenses to the estate such as lawyer's fees and disbursements which expenses far exceed the cost of bonding for one (or even two years). Some of the additional steps are:

- evaluation of the alternate security proposal by the Public Guardian and Trustee and the Court;
- registration of the Court Order imposing the restriction with the Land Title Office (Form 17) by the Administrator;

Because of the additional steps, the restriction on sale of real property should only be used as a last resort when there is a compelling reason to do so.

Procedure for Alternate Security

The steps below are in addition to the steps in the procedure for applying for a bond, and only when it is discovered that the applicant is unable to obtain a bond.

1. Contact the Public Guardian and Trustee

The supervising lawyer should contact by Public Guardian and Trustee to discuss the situation and determine if the Public Guardian and Trustee will agree to the form of alternate security.

When the Public Guardian and Trustee has reviewed the application materials and has no objection to a Grant of Letters of Administration being granted to the applicant without bond the will confirm by letter setting out the provisions for alternate security be included in the Order:

2. Prepare Order

The paragraph below sets out the usual wording which should replace paragraph No. 1 in the **Order** (page 6):

“1. that the Administrator be restricted from selling, transferring or encumbering the property at *{address of property}* legally described below, without the written consent of the Public Guardian and Trustee or further Order of the Court:

PID:

Lot _____

District Lot ____ **Plan** ____

(hereinafter referred to as “the real property”)

2. that the Court Order be registered against the real property pursuant to section 284 of the *Land Title Act*, RSBC 1996, c.250.”

3. File the Order with the probate registry

Prepare a **Requisition** in **Form 17** or in **Form P41** and under “Required” add a requisition for a court-certified copy of the Order.

File the **Order** and the **Requisition** with the probate registry.

4. File the Order in the Land Title Office

When the Order is received arrange to file it (section 284 of the *Land Title Act*) with a **Form 17** – Transfer – and file it electronically with the court certified copy of the Order.

The filing creates create an injunction which restricts dealings with the real estate. This injunction would then appear on title searches.

5. Sale of real property

When there is a purchaser for the property and before the property is sold, the Administrator must provide an irrevocable letter of direction to the lawyer for the estate:

- appointing the lawyer for the estate as agent to receive the net proceeds of sale of the real property, in trust; and
- directing the lawyer for the estate that, after the Estate accounts are passed, the lawyer for the estate will pay the minor’s share, net of real estate commissions, adjustments, legal fees and other outstanding Estate debts to the Public Guardian and Trustee in trust for the minor.

In addition, the lawyer for the estate must provide a written undertaking to the Public Guardian and Trustee that, upon receipt of the sale proceeds, the law firm will forward the minor’s share of the net sale proceeds to the Public Guardian and Trustee to hold in trust for the minor.

At the time of completion of the sale, the lawyer for the estate and a lawyer for the Public Guardian and Trustee must make arrangements with respect to the appropriate time and manner for lifting the restriction on sale. The Public Guardian and Trustee’s lawyers will then provide a letter to the lawyer for the estate for submission to the Land Title Office stating that the Public Guardian and Trustee does not object to the restriction on title being lifted.