

FORM P42
(Rule 25-14(2))
NOTICE OF APPLICATION
(SPOUSAL HOME OR DEFICIENCIES IN WILL)

General Notes

This *Notice of Application* is used for an application if there is already an existing proceeding within which it is appropriate to apply for an order under sections 30, 33, 58, and 59 of WESA.

If there is no existing proceeding within which it is appropriate to seek such an order, the new proceeding must be commenced by *Form P43 – Requisition*.

Preparation

- ❶ Insert the existing proceeding number, as this is an application within an existing proceeding.
- ❷ Insert the name of the party bringing the application. The applicant is usually your client and may not necessarily be the applicant for the estate grant.
- ❸ Insert the name of the party to whom the application is addressed.
- ❹ Insert the hearing date as instructed by the lawyer. Check with the registry
- ❺ Insert the time of hearing at the registry in question. Check the time with the Registry.
- ❻ Check whichever one or more of the immediately following 4 boxes are correct and, using numbered paragraphs, set out the order(s) that will be sought at the application and indicate against which person(s) the order(s) is/are sought.

ONLY INCLUDE THE PARAGRAPH THAT IS APPLICABLE AND DELETE THE OTHERS

- ❼ Check this box if you are applying under section 30 of WESA [Dispute over Value of Deceased Person's Interest] to determine the value of a Deceased's interest in a spousal home within the meaning of WESA and describe the order(s) sought.
- ❽ Check this box if you are applying under section 33 of WESA [Retention of Spousal Home] relating to a spousal home within the meaning of WESA and describe the order(s) sought.
- ❾ Check this box if you are applying under section 58 of WESA [Court Order Curing Deficiencies] respecting deficiencies in a document that does or may disclose a testamentary intention or testamentary disposition of a Deceased and describe the order(s) sought.
- ❿ Check this box if you are applying under section 59 of WESA to rectify a Will and describe the order(s) sought.

Continued...

FORM P42 (RULE 25-14(2))

No. **1** _____
{Location} Registry

In the Supreme Court of British Columbia

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

**NOTICE OF APPLICATION
(SPOUSAL HOME OR DEFICIENCIES IN WILL)**

Name(s) of applicant(s): **2***{NAME(S) OF APPLICANT(S)}*.

To: **3***{NAME(S)}*

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at *{address of registry in which the proceeding is being conducted}* on **4** at **5** for the order(s) set out in Part 1 below.

PART 1: ORDER(S) SOUGHT 6

- 7**The applicant(s) seek(s) the following order(s) under section 30 of the *Wills, Estates and Succession Act*:
 - (1) **7**;
 - (2) **7**;

- 8**The applicant(s) seek(s) the following order(s) under section 33 of the *Wills, Estates and Succession Act*:
 - (1) **8**;
 - (2) **8**;

- 9**The applicant(s) seek(s) the following order(s) under section 58 of the *Wills, Estates and Succession Act*:
 - (1) **9**;
 - (2) **9**;

- 10**The applicant(s) seek(s) the following order(s) under section 59 of the *Wills, Estates and Succession Act*:
 - (1) **10** ◆;
 - (2) **10** ◆;

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Preparation (Continued)

- ❶ Using numbered paragraphs, set out a brief summary of the facts supporting the application. If any person sues or is sued in a representative capacity, identify the person and describe the representative capacity (for example, if the guardian applies on behalf of a minor).
- ❷ Using numbered paragraphs, specify any rule or other enactment relied on and provide a brief summary of any other legal arguments on which the applicant(s) intend(s) to rely in support of the orders sought. If appropriate, include citation of applicable cases.
- ❸ Using numbered paragraphs, list the affidavits served with the notice of application and any other affidavits or documents already in the court file on which the applicant(s) will rely. Each affidavit included on the list must be identified – see example as follows:

“Affidavit No. ___ of {NAME OF PERSON SWEARING THE AFFIDAVIT}, made {date}”.
- ❹ Check the appropriate box (see the **Notice** chapter) with respect to **minors or mentally incompetent persons**.
- ❺ Insert the lawyer’s estimate of the total time required to hear the application, including the time required by the other side.
- ❻ Check the appropriate box.

Continued...

Form P42**PART 2: FACTUAL BASIS**

1. **①**
2. **①**

PART 3: LEGAL BASIS

1. **②**
2. **②**

PART 4: MATERIAL TO BE RELIED ON

1. **③** Affidavit No. ___ **④** of {NAME}, made {dd/mmm/yyyy}

2. **③**

④

④ I am not obliged under section 29(1)(c) of the *Wills, Estates and Succession Act* to deliver a filed copy of this notice of application to the Public Guardian and Trustee.

④ I am obliged under section 29(1)(c) of the *Wills, Estates and Succession Act* to deliver a filed copy of this notice of application to the Public Guardian and Trustee.

The applicant(s) estimate(s) that the application will take **⑤**.

⑥ This matter is within the jurisdiction of a master.

⑥ This matter is not within the jurisdiction of a master.

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Preparation (Continued)

- ❶ Insert the date on which the *Notice of Application* is signed.
- ❷ The *Notice of Application* may be signed by the person who is filing this Form or by his or her lawyer.
- ❸ Leave the box blank – it will be completed by the court.

Procedure

Prepare and attach to *Form P42* an affidavit in support of the order sought.

File with *Form P43 – Requisition*.

Form P42

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form P33,
- (b) file the original of every affidavit, and of every other document, that (i) you intend to refer to at the hearing of this application, and (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other person to whom notice of this application must be provided one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that have not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: ❶ {dd/mmm/yyyy}.

 ❷ Signature of
 applicant
 lawyer for applicants

{type or print name}.

❸

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: {dd/mmm/yyyy}.

 Signature of Judge
 Master