

PUBLICATION

New Notice and Reporting Requirements for Executors Acting without a Grant

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Since the enactment of the Estate Administration Act (the “EAA”) on June 1, 2015, which repeals the Administration of Estates Act (the “AEA”), there have been notable changes to Wills & Estates law in Alberta. One of the most significant changes under the EAA deals with personal representatives (“executors”) named in the Will who are not applying to the Court for a Grant of Probate or Administration, or “non-grant administrations” (“NGA”). The EAA now requires an executor to provide notice to certain individuals in an NGA. Although the EAA specifically refers to personal representatives, for the purposes of this article, we will use the term executor, both of which have the same meaning.

The individuals who now require notice in an NGA can be divided into four categories: beneficiaries, family members, the spouse, and the Public Trustee. The applicable law to these categories is Section 10 of the EAA and Rule 9.1 of the new Surrogate Rules (the “Rules”).

Beneficiaries

Applicable Section: Section 10(1)(a), 10(2)

Applicable Rule & Form: Rule 9.1(1); NGA 1

Section 10(1)(a) requires the beneficiary of the deceased person to be provided notice as per the requirements of Section 10(2). In addition, Section 10(2) references the Rules, Rule 9.1(1), and what else must be included in the notice to the beneficiary, along with the prescribed form, NGA 1. One noteworthy item is that Rule 9.1(1) requires only a residuary beneficiary be provided with a copy of the Will, similar to Rule 26(2). The requirement to disclose an inventory of property and debts, as in an application for a grant, does not apply. In addition, each beneficiary of the deceased must receive their own separate and customized notice according to the requirements of Rule 9.1(1).

Family Members

Applicable Section: Section 10(1)(b)

Applicable Rule & Form: Rule 9.1(2); NGA 2

Section 10(1)(b), “any family members of the deceased person, an attorney, a trustee, the Public Trustee or a guardian, on whom notice would be required to be served under Section 11(1),” must be given notice by the executor in an NGA. Section 11 states that a spouse, adult interdependent partner, each adult child or child, attorney of an adult interested in the estate, trustee of a represented adult interested in the estate, the guardian of any minors interested in the estate, or the Public Trustee in respect to any minors interested in the estate, all require notice. Although neither Rule 9.1(2) nor NGA 2 reference a time limit (as time only begins to run when a grant is issued), if the executor waits more than six months before distributing any property of the estate and serving notice, they may be subject to a future application for maintenance and support by a family member. To prevent this from occurring, a prudent executor may choose to apply for a grant in order to trigger the six month limitation period for the application of maintenance and support.

Spouse

Applicable Section: Section 10(1)(c)

Applicable Rule & Form: Rule 9.1(3); NGA 3 Section 10(1)(c) references

Section 11(2), which requires that a spouse as defined in the Matrimonial Property Act (“MPA”) must be given notice, as long as they are not the sole beneficiary under the Will. Similar to Rule 9.1(2), there is no mention of a limitation due to the fact no grant is being filed, which is required in a similar form, (NC 22), where a grant is being sought. In addition, form NGA 3, along with form NGA 1 & 2, acknowledges that the document the executor is acting under is not determined to be the deceased’s last Will, which is not required in notice to a spouse under Rule 9.1(3). Section 11(3) allows an executor to apply to the Court to disperse with notice to a spouse under Section 11(2) if the Court can be satisfied that the spouse does not have a right to claim against the estate under the MPA.

Public Trustee

Applicable Section: Section 10(1)(d)

Applicable Rule & Form: Rule 9.1(4); NGA 4 (would accompany NGA 1)

The Public Trustee must be provided with notice by an executor, as per Section 12, which includes when there is an attorney acting for someone interested in the estate, a minor, a represented adult, a missing person, or the guardian of a minor. Rule 9.1(1) uses the wording “must at least include” and differs slightly in what is required compared to Rule 9.1(1)-(3). Further, no distinction is made between non-residuary and residuary beneficiaries for receiving a copy of the Will, unlike Rule 9.1(1)(f). The reasoning behind this may be due to the fact that non-residuary beneficiaries would have no way of accessing a copy of the Will, unlike when an executor is applying for a grant where a trustee for the non-residuary beneficiary can obtain a copy from the court file. In addition, due to the wording of form NGA 4, it assumed that executor will provide the representative with form NGA 1, which is directed to the beneficiary, and NGA 4. However, for a more efficient approach, all such information could be incorporated into one document that would provide notice to the Public Trustee, following the Rules 9.1(4)(a)-(b) and 9.1(a)-(e).

Although there are certain requirements under Rule 9.1, the forms that are prescribed under the subrules, NGA 1 to NGA 4, are recommended, but not mandatory, which is signified by the use of “may” rather than “must”. However, following the forms may be helpful to ensure there is no oversight of any of the requirements. In addition, Rule 9.1(5) notes that all Section 10 notices “must be given in a manner that is likely to bring the notice to the attention of the intended recipient,” regardless if the prescribed form is used.

It should be noted, the EAA does not impose any specific penalty for an executor’s failure to give notice under Section 10. The only foreseeable consequence would be that such failure may ground an application for relief under Section 8 of the EAA.

An executor would be best advised to consult a lawyer practicing estate law to determine whether or not a Grant is required, and if not, what notices should be issued. For assistance, please contact the authors or any lawyer in our Wills & Estates Group.