

Information for Executors and Administrators of Estates

EXCERPTS FROM THE SURROGATE RULES AND FROM THE LEGAL EDUCATION SOCIETY OF ALBERTA 1996 SEMINAR ON NEW SURROGATE RULES

EXECUTORS' DUTIES

1. Making arrangements for the disposition of the body and for funeral, memorial or other similar services.
2. Determining the names and addresses of those beneficially entitled to the estate property and notifying them of their interests.
3. Arranging with a bank, trust company or other financial institution for a list of the contents of a safety deposit box.
4. Determining the full nature and value of property and debts of the deceased as at the date of death and compiling a list, including the value of all land and buildings and a summary of outstanding mortgages, leases and other encumbrances.
5. Examining existing insurance policies, advising insurance companies of the death and placing additional insurance, if necessary.
6. Protecting or securing the safety of any estate property.
7. Providing for the protection and supervision of vacant land and buildings.
8. Arranging for the proper management of the estate property, including continuing business operations, taking control of property and selling property.
9. Retaining a lawyer to advise on the administration of the estate, to apply for a grant from the court or to bring any matter before the court.
10. Applying for any pensions, annuities, death benefits, life insurance or other benefits payable to the estate.
11. Advising any joint tenancy beneficiaries of the death of the deceased.
12. Advising any designated beneficiaries of their interests under life insurance or other property passing outside the will.

13. Arranging for the payment of debts and expenses owed by the deceased and the estate.
14. Determining whether to advertise for claimants, checking all claims and making payments as funds become available.
15. Taking the steps necessary to finalize the amount payable if the legitimacy or amount of a debt is in issue.
16. Determining the Income tax or other tax liability of the deceased and of the estate, filling the necessary returns, paying any tax owing and obtaining income tax or other tax clearance certificates before distributing the estate property.
17. Instructing a lawyer in any litigation.
18. Administering any continuing testamentary trusts or trusts for minors.
19. Preparing the personal representative's financial statements, a proposed compensation schedule and a proposed final distribution schedule.
20. Distributing the estate property in accordance with the will or intestate succession provisions.

LAWYERS' BASIC LEGAL DUTIES

CORE LEGAL SERVICES (TABLE 1)

1. Receiving Instructions from the Executors
2. Giving the Executors information and advice on all matters in connection with the administration of the estate, including the following:
 - a). the basis for the lawyer's fees for the different categories of legal services;
 - b). the basis for the personal representative's compensation and preparation of the proposed compensation schedule;
 - c). providing a copy of this Schedule to the Executors.
3. Reviewing the will or the provisions of the Alberta Legislation with the personal representative.
4. Receiving information from Executors about the following:
 - a). the deceased;
 - b). the beneficiaries;
 - c). the estate property;
 - d). the deceased's debts;
 - e). minors.

- 5.** Obtaining details of all the property and debts of the deceased for the purposes of an application to the court, including the following:
 - a).** the full nature and value of the property of the deceased as at the date of death including the value of all land and buildings and a summary of outstanding mortgages, leases and any other encumbrances.
 - b).** any pensions, annuities, death benefits and any other benefits;
 - c).** any debts owed by the deceased as at the date of death;
 - d).** preparing all required documents for grant applications;
 - e).** preparing notices to all beneficiaries;
 - f).** arranging for surviving spouse or surviving adult interdependent partner to receive notices under Alberta Legislation, if necessary;
 - g).** arranging for dependents to receive notices under the Alberta Legislation, if necessary;
 - h).** attending on signing of application for grant, filing with the court, payment of fees and dealing with the clerk;
 - i).** advising the Public Trustee, if necessary;
 - j).** receiving the grant.
- 6.** Preparing documents to advertise for claimants, arranging for advertising and obtaining affidavit of publication, if necessary.
- 7.** Preparing declarations of transmission and powers of attorney for stocks and bonds transferable under the Alberta grant.
- 8.** Preparing transmission and transfer documents for land transferable under the Alberta grant.
- 9.** Preparing all other documents required to transmit and transfer property transferable under the Alberta grant.
- 10.** Advising the Executors on any trusts required by the will.
- 11.** Advising the Executors to prepare and file tax returns.
- 12.** Confirming receipt of clearance certificates from Revenue Canada.
- 13.** Submitting Executors' financial statements for approval to the beneficiaries on an informal basis.
- 14.** Preparing releases and obtaining and filing them with the court if so instructed by the Executors.
- 15.** Generally advising the Executors on all matters referred to in this Table.

POSSIBLE OTHER DUTIES OF LAWYERS

NON-CORE LEGAL SERVICES (TABLE 2)

- 1.** Acting as conveyancing lawyer on any sale of land.
- 2.** Acting as lawyer on the sale of other property or businesses.
- 3.** Preparing Executors' financial statements for submission to residuary beneficiaries.
- 4.** Preparing all documents and acting for the Executors in any court proceedings involving the estate, including but not limited to the following:
 - a).** formal proof of will;
 - b).** formal passing of accounts;
 - c).** all other contention matters.
- 5.** Negotiating with any taxing authorities in Alberta or elsewhere with respect to the assessment and payment of any taxes or duties levied against the deceased, the estate or the beneficiaries and preparing all documents in connection with the negotiations.
- 6.** Arranging to obtain a resealed or ancillary grant in another jurisdiction.
- 7.** Preparing all documents and obtaining a resealed or ancillary grant in Alberta.
- 8.** Preparing all documents and obtaining a grant of double probate.
- 9.** Preparing all documents and obtaining a grant of trusteeship of minors' estates.
- 10.** Dealing with any claims by claimants.
- 11.** Setting up any trusts required by the will and arranging for the reimbursement of the trustees for services rendered to the trusts.
- 12.** Identifying property not forming part of the estate but passing by survivorship or passing directly to a named beneficiary outside the will, including
 - a).** preparing documentation to transfer land and other property held in joint tenancy to the surviving tenants;
 - b).** preparing documentation to pass property to designated beneficiaries outside the will.
- 13.** Arranging for any other legal services not included in Table 1.
- 14.** Generally advising the personal representative on all matters referred to in this Table.

LEGAL AND PERSONAL REPRESENTATIVE COMPENSATION (SCHEDULE 1)

Definition

1. For the purpose of this Schedule,
 - a). “core legal services” are the legal services listed in Table 1 of Part 2 normally rendered by a lawyer for the Executors in connection with the administration of an estate;
 - b). “non-core legal services” are legal services listed in Part 2 Table 2 rendered by a lawyer for the Executors that are in addition to the core legal services required in the administration of an estate;
 - c). “Executors’ duties” are the tasks listed in the Table in Part 1 normally required to be performed by a personal representative in the administration of an estate.
 - d). “time of distribution” means
 - (i). when the estate property is distributable to the beneficiaries immediately on the death of the deceased, the time when distribution to the beneficiaries is complete,
 - (ii). the time when the transfer of a minor’s property to the minor’s trustees is complete, or
 - (iii). when the estate property is not all distributable to the beneficiaries immediately on the death of the deceased because trusts delay the final distribution, the time when distribution of immediately distributable property to the beneficiaries is complete, and transfer of the property to the trustees is complete.

PART 1 EXECUTORS’ COMPENSATION

Determination

- 1 (1). Executors may receive fair and reasonable compensation for their responsibility in administering an estate by performing the Executors’ duties.
- 1 (2). Compensation paid to a personal representative is for all the services performed by the personal representative to complete the administration of the estate including distribution of the estate and the conclusion of any trusts.

- 1 (3).** A personal representative may receive compensation for the care and management of property in an estate only if
- a).** there is no outright distribution of that estate property at the date of death, and
 - b).** the trust is not varied by agreement among the affected beneficiaries or by the court.

Factors to be considered

- 2.** The following factors are relevant when determining the compensation charged by or allowed to Executors:
- a).** the gross value of the estate;
 - b).** the amount of revenue receipts and disbursements;
 - c).** the complexity of the work involved and whether any difficult or unusual questions were raised.
 - d).** the amount skill, labour, responsibility, technological support and specialized knowledge required;
 - e).** the time expended;
 - f).** the number and complexity of tasks delegated to others;
 - g).** the number of Executors appointed in the will, if any.

Additional compensation

- 3.** Additional compensation may be allowed when Executors
- a).** are called upon to perform additional roles in order to administer the estate, such as exercising the powers of a manager or director of a company or business,
 - b).** encounter unusual difficulties or situations, or
 - c).** must instruct on litigation.

Compensation fixed in will

- 4.** If the compensation payable to the personal representative is fixed in a will, no greater amount can be charged or allowed unless the fixed amount is varied by agreement among the affected beneficiaries or by order of the court.

Compensation to be shared

- 5.** The compensation once determined must be shared among the Executors in proportions agreed to among the Executors or as ordered by the court.

Pre-taking compensation

- 6 (1).** Executors may be paid compensation before completing the administration of the estate if
- a).** the will provides for it,
 - b).** all the affected beneficiaries agree to it, or
 - c).** the court orders it.
- 6 (2).** If all or any part of the amount of compensation paid to a personal representative under subrule (1) is later reduced by the court, the personal representative must repay the disallowed amount immediately to the estate with interest at a rate and for a period set by the court.

Lawyer Performs Executors' Work

- 7.** If a lawyer or other agent performs some or all of the duties of the personal representative, the amount payable to the personal representative must be reduced commensurately.

Schedule on accounting

- 8.** If a personal representative is required to give the beneficiary of an estate an accounting in which compensation to the personal representative is shown, the personal representative must give the beneficiary a copy of this Part.

Expenses

- 9.** Executors are entitled to reimbursement for expenses properly incurred by them in the administration of the estate, including the following:
- a).** expenses reasonably incurred by the Executors in carrying out their duties;
 - b).** fees or commissions to agents, including lawyers, accountants, real estate agents, securities brokers, investment advisors, appraisers, auctioneers and other professionals, engaged to perform estate administration services or to buy or sell estate property.

PART 2
LAWYERS' COMPENSATION

Categories of service

1. A lawyer may charge fees for the following categories of legal services in the administration of estates:
 - a). core legal services;
 - b). non-core legal services.

Executors' duties

2. A lawyer may charge fees for legal services that involve carrying out Executors' duties.

Agreement

- 3 (1). The lawyer and the Executors must agree to the categories of service that the lawyer will perform and to an arrangement or amount for each category of fees, disbursements and other charges.
- 3 (2). The fees agreed to must cover, up to the time of distribution of the estate,
 - a). all the core legal services or non-core legal services,
 - b). any Executors' duties required to be performed by the lawyer, and
 - c). any other services required to be performed by the lawyer.

Lawyer as personal representative

4. When a lawyer is also appointed as the personal representative under a grant, the lawyer may charge additional fees for any core and non-core legal services performed by the lawyer as a lawyer.

Factors to be considered

5. The following factors are relevant when determining the fees charged by or allowed to a lawyer:
 - a). the complexity of the work involved and whether any difficult or novel questions were raised;
 - b). the amount of skill, labour, responsibility and specialized knowledge required;
 - c). the lawyer's experience in estate administration;
 - d). the number and importance of documents prepared or perused;
 - e). whether the lawyer performed services away from the lawyer's usual place of business or in unusual circumstances;

- f). the value of the estate;
- g). the amount of work performed in connection with jointly held or designated assets;
- h). the results obtained;
- i). the time expended;
- j). whether or not the lawyer and the personal representative concluded an agreement and whether the agreement is reasonable in all the circumstances.

Disbursements

6. Reasonable costs incurred by a lawyer as disbursements and other charges in performing services in any category are allowed in addition to any fees charged.

Statement of fees and disbursements to be in writing

- 7 (1). A lawyer must present a written statement of fees, disbursements and other charges to the personal representative, showing the details of the services performed, together with a copy of this Part.
- 7 (2). If the personal representative is required to give the beneficiaries of an estate an accounting in which legal fees are shown, the personal representative must give them a copy of this Part.

Taxing accounts

- 8 (1). The lawyer or the personal representative may have the lawyer's account reviewed by the taxing officer under rules 627 to 658 of the Alberta Rules of Court (Alta. Reg. 390/68).
- 8 (2). The taxing officer or the court may review fees, disbursements and other charges and may increase or decrease any of them.

SCHEDULE 2 COURT FEES

- 1 (1). For issuing grants of probate or letters of administration or resealing grants, excluding trusteeship but including one certified copy of the document, where the net value of property in Alberta is
- | | |
|--|-------|
| a). \$10,000 or under | \$25 |
| b). over \$10,000 but not more than \$25,000 | \$100 |
| c). over \$25,000 but not more than \$125,000 | \$200 |
| d). over \$125,000 but not more than \$250,000 | \$300 |
| e). over \$250,000 | \$400 |

- 1.2. This section applies to all grants of probate and letters of administration issued on or after February 25, 2000 and the grants resealed on or after February 25, 2000.
- 1.3. This section comes into force on July 1, 2000.
2. Except items referred to in section 1, for documents that require the opening of a court file respecting an estate and all subsequent filings or acts; a single fee of \$200
3. For each application for trusteeship \$200
4. For issuing each grant of double probate, supplemental grant or grant of administration of unadministered property \$200
5. For each caveat filed \$200
6. For each certified copy of a document other than the initial certified copy \$10
7. For each search \$10
8. For a photostatic copy or faxed copy, per page \$1
9. AR 130/95 Sched. 2; 132/2000

**SUGGESTED FEES GUIDELINES
FOR LAWYERS AND EXECUTORS**
IN THE ADMINISTRATION OF ESTATES OF DECEASED PERSONS
ADMINISTRATION OF THE ESTATES OF MINORS

1. These guidelines are prepared for the guidance of lawyers, Executors, and beneficiaries and heirs. They have no official sanction but are consistent with the charging principles set out in the Surrogate Rules. The parties are free to negotiate fees as they see fit.

Lawyers' Fees

2. Lawyers' fees and disbursements are a matter of contract between the lawyer and the Executors. However, Executors may have them "taxed" and the beneficiaries of the estate may call the personal representative to account for the amount of legal fees and disbursements the representative has paid.
3. Fees should be set according to the criteria set out in Schedule 1 of the Surrogate Rules.
4. All fees and disbursements are subject to taxation by the taxing officer and the court who have the discretion to increase or decrease fees or decrease disbursements.

FEE FOR CORE LEGAL SERVICES

5. The fee consists of two components:

5 (1). a base fee, and

5 (2). an estate value fee.

These may be reduced if the lawyer performs less than the normal core legal services, or by other arrangement.

6. The base fee component:

6 (1). is constant regardless of the value of the estate;

6 (2). reflects the normal core legal services that are required to administer any estate.

7. The estate value fee component:

7 (1). is a further allowance based on a percentage of the gross value of the estate;

7 (2). increases at a point where the size of the estate is likely to introduce more complexity in the administration.

8. When calculating the gross value of the estate, values of the following property are not included:

8 (1). All property held in joint tenancy by the deceased and another person.

8 (2). All property passing directly to a named beneficiary outside the will.

8 (3). Canada Pension Plan payments to a spouse or child of the deceased.

8 (4). Personal property outside Alberta if the deceased's usual residence was outside Alberta on the date of death.

8 (5). Land outside Alberta.

8 (6). All other property which does not pass through the hands of the Executors.

Suggested Fee Guidelines – Lawyers

CORE LEGAL SERVICES

| 9. Gross Value of Estate | Base Fee | Estate Value Fee |
|---|----------|------------------|
| On estates with a gross value up to \$150,000 | \$2,250 | ½ x 1% |
| On estates with a gross value over \$150,000 | \$2,250 | 1% |

NON-CORE LEGAL SERVICES

10. The fee for non-core legal services is on a quantum meruit basis.

Executors' Fees

- 11.** The affected beneficiaries or heirs of the estate must approve the fees and expenses for Executors' work, or the court must order.
- 12.** Fees should be set within the suggest ranges according to the criteria set out in Schedule 1 of the Surrogate Rules.
- 13.** The fees and expenses are subject to review by the court which has the discretion to increase or decrease fees or decrease expenses.
- 14.** There are three categories of Executors' fees:
 - 14 (1).** fees charged on the gross capital value of the estate;
 - 14 (2).** fees charged on revenue received by the estate during administration;
 - 14 (3).** care and management fees charged in trust estates.
- 15.** All fees may be varied up or down by agreement among the affected beneficiaries or heirs, or by the court.

CAPITAL ACCOUNT

- 16.** Fees are charged against capital receipts. No fees are charged on capital disbursements.
- 17.** Fees should not exceed 5% of the gross capital value of the estate, unless circumstances warrant a higher fee.

REVENUE ACCOUNT

- 18.** Fees are charged against revenue receipts. No fees are charged on revenue disbursements.
- 19.** Fees should not exceed 6% of the revenue receipts, unless unusual circumstances warrant a higher fee.

CARE AND MANAGEMENT

- 20.** Fees for care and management apply only to property being administered in trust estates where there is no outright distribution of the estate property at date of death. This may be varied by agreement among the affected beneficiaries or heirs, or by the court.
- 21.** Fees are charged against capital.
- 22.** Fees should not exceed $\frac{6}{10}$ of 1% per annum on the average market value of the estate property, unless circumstances warrant a higher fee.

Suggested Fee Guidelines for Executors

23. CAPITAL

| | |
|-----------------------------------|--------------|
| On the first \$250,000 of capital | 3% – 5% |
| On the next \$250,000 of capital | 2% – 4% |
| On the balance | ½ of 1% – 3% |

REVENUE

| | |
|---------------------|---------|
| On revenue receipts | 4% – 6% |
|---------------------|---------|

CARE AND MANAGEMENT

| | |
|-----------------------------------|-------------------|
| On the first \$250,000 of capital | 3/10 – 6/10 of 1% |
| On the next \$250,000 of capital | 2/10 – 5/10 of 1% |
| On the balance | 1/10 – 4/10 of 1% |