

The New *Estate Administration Act*

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New Estate Administration Act for Legal Support Staff

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INTRODUCTION

A new *Estate Administration Act (EAA)*¹ was passed by the Alberta Legislature in spring 2014. The Act and changes to the Surrogate Rules will come into force on June 1, 2015. Once in force, the Act and new rules will apply to existing administrations, applications or grants in Alberta.

Practitioners may be interested in reviewing the *Estate Administration Act, SA 2014, c.E-12.5* at <http://www.qp.alberta.ca/Laws Online.cfm>. Readers should be sure to consult the most recent version of the legislation. Housekeeping changes were made to the *Estate Administration Act* in fall 2014 in Bill 8, the *Justice Statutes Amendment Act* prior to the coming into force of the Act.

Additional background can be found in the relevant Hansard speeches on Bill 4 from the spring 2014 sitting of the Alberta Legislature, via <http://www.assembly.ab.ca>.

The new Act is the result of substantial research and consultation. Over several years Alberta Justice and Solicitor General worked jointly with the Alberta Law Reform Institute to develop proposed reforms to the estate administration laws in Alberta. In May 2010, Justice and Solicitor General and the Alberta Law Reform Institute jointly sponsored a survey with individuals and organizations on the need for reform. In September 2011, the Alberta Law Reform Institute released *Report for Discussion 22, Estate Administration 2011* followed by *Estate Administration 2013, Final Report 102* in September of 2013. In spring 2013, Justice and Solicitor General conducted consultations with practitioners, other experts in estate administration and the public through presentations, on line consultations and round tables utilizing a discussion guide.

The new *Estate Administration Act* reflects the recommendations of the Alberta Law Reform Institute as well as recommendations that arose from the consultation process.

This Paper is for information purposes only and is not legal advice.

¹ *Estate Administration Act*, SA 2014, c.E-12.5

SECTION I: GENERAL PRINCIPLES

Alberta Justice and Solicitor General applied six general principles to guide succession law reform.² These principles are consistent with current estate planning practices, case law and represented adult legislation in Alberta.

In addition to the six general principles, estate administration reform included two further principles.

2.1 The law should make it clear that the role of the Personal Representative is to carry out the final testamentary intent of the deceased.

This principle acknowledges that a Personal Representative is a fiduciary with the primary obligation of a duty of loyalty. As a fiduciary the Personal Representative must act in good faith for the benefit of others and exercise their powers diligently. In this role the Personal Representative is guided by the wishes of the deceased as reflected in their will. At all times the final testamentary intent of the deceased must be carried out.

2.2 The law should reduce delay and cost for Personal Representatives, beneficiaries and their advisors.

This principle recognizes that the law should facilitate timely, efficient and effective transfer of property to beneficiaries. The law should be clear to Personal Representatives that they are required to distribute the estate as soon as practicable. As well, probate is not required for all estates. Whether or not probate is required will depend on the specific circumstances of the estate. The law should continue to support this practice.

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- ² 1. A person can do what they want with their property and their decision will be respected. Interfering with testamentary freedom - a person's right to decide what to do with their property upon death - must be justified. This principle refers to testamentary freedom, the freedom to do what you want with your property and other assets. This can be inside or outside the context of an estate. This principle is also based on the belief that your decision regarding your property and assets should not be changed unless there is a good reason to do so. However, freedom is not absolute in Alberta and Canada. There are limits but those limits must be reasonable and justified. This approach is consistent with current estate planning, case law and represented adult legislation in Alberta.
2. Testamentary freedom is subject to the settlement of a deceased person's and their estate's legal obligations. The limits of testamentary freedom also come into play with this principle. As a person's legal obligations do not die with them, paying off any debts that they may have left behind takes priority over any other wishes.
3. Where there is no will, it is presumed the deceased person wanted their family to have their property. This speaks to the belief that a deceased person - in the absence of a will or other document - would want their family to have all their property and assets. This approach is standard practice in Commonwealth countries.
4. At a minimum, family members dependent on a person are entitled to adequate support from the estate after the death. This principle advocates that any family member dependent on a person at the time of death should continue to be supported from any assets left behind.
5. Succession laws must be consistent with the *Canadian Charter of Rights and Freedoms* and other prevailing social values and realities. It must also harmonize with other Alberta laws and statutes. This principle says the consolidation and updating of laws dealing with what happens to a deceased person's property and assets should be consistent with laws that deal with such matters when a person is alive. They should also be consistent with what Alberta society would consider fair and reasonable.
6. The laws and statutes should be user friendly, clear and practical. This principle simply states that, wherever possible, succession law should be easy to understand and to work with - whether you are a lawyer, advisor or lay person. It also recognizes that the law should not be oversimplified as this can lead to less clarity and more legal action.

SECTION II: SIGNIFICANT CHANGES IN THE LAW

- The definition of a Personal Representative has changed. A Personal Representative includes an executor, administrator and judicial trustee as well as a Personal Representative named in a will whether or not a grant is issued.
- Four duties of the Personal Representative are stated in the Act. These duties specify the fiduciary role of the Personal Representative in plain language and require the Personal Representative to distribute the estate as soon as possible. In addition, a professional Personal Representative is required to exercise a greater degree of skill than a layperson.
- Four core tasks of the Personal Representative are set out in the Act. A Schedule in the Act provides details of the core tasks. Many of the provisions in the Schedule in the Act are familiar, as they also appear in Schedule 1, Table on Legal and Personal Representative Compensation in the Surrogate Rules. However, some of the provisions in the Schedule under the Act are new such as identifying the nature and value of online accounts; creating and maintaining records, and, regularly communicating with beneficiaries.
- A Personal Representative named in the will who does not apply for a grant must provide notices to beneficiaries; family members; a spouse or the Public Trustee, where applicable.
- An application may be brought to the Court if a Personal Representative fails to perform a duty or core task, or provide notice.
- A new single provision provides that the Personal Representative stands in the shoes of the deceased and has all the same powers as the deceased but only to administer the estate subject to the will and the Act. The provisions of the *Devolution of Real Property Act*³ requiring the Personal Representative to obtain consents from adult beneficiaries or to obtain court orders prior to dealing with real property no longer apply. As well, the limitations on the power of the Personal Representative to grant an option to purchase, lease or mortgage real property no longer apply.
- Statutory marshalling rules replace the common law marshalling rules when the property in an estate is insufficient to pay all the debts and provide the designated gifts to the beneficiaries.
- All provisions relating to the trusteeship of a minors' estate have been moved to the *Minors' Property Act*.⁴

³ *Devolution of Real Property Act*, RSA 2000, c.D-12

⁴ *Minors' Property Act*, RSA 2000, c.M-18.1