

Surrogate Rules Amendments

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SURROGATE RULES AMENDMENTS

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INTRODUCTION

This paper is a brief survey of amendments to the *Surrogate Rules (Rules)* made by the *Surrogate Rules (Estate Administration Act) Amendment Regulation*.¹ As the name of the amending regulation suggests, it makes consequential amendments to the Rules for the purpose of synchronizing them with the *Estate Administration Act (EAA)*,² which repeals and replaces the *Administration of Estates Act (AEA)*.³ However, the amending regulation also makes some housekeeping amendments to the *Surrogate Rules* that are unrelated to differences between the EAA and the AEA.

This paper is divided into three main parts, followed by an appendix. The first part discusses the only really substantive change that has been made to the *Surrogate Rules* as a result of the enactment of the EAA. This is the introduction of a new rule and forms implementing EAA section 10, which require personal representatives named in a will (**executors**) who act in the administration of an estate without applying for a grant to provide notice to certain interested persons. The second part summarizes amendments that are not particularly substantive but are directly related to differences between the EAA and the AEA. The final part touches on housekeeping amendments that are not directly related to differences between the EAA and AEA.

The appendix sets out relevant portions of the text of rules and forms that have been added or amended by the amending regulation. At the time this paper was written, a consolidation of the Rules showing the new or amended rules and forms has not been published. Thus, the appendix is an unofficial DIY version of the rules and forms affected by the amending regulation. The appendix selectively uses “tracked changes” to illustrate differences between the old and new wording of various rules and forms.

PART 1 – NOTICES BY EXECUTORS ACTING WITHOUT A GRANT

EAA section 10(1) potentially requires an executor who acts in the administration of an estate without applying for a grant to provide “in accordance with the Rules” four types of notice:

- to beneficiaries of the deceased (s. 10(1)(a));

¹ Alta. Reg. 44/2015.

² S.A. 2014, c. E-12.5.

³ R.S.A. 2000, c. A-2.

- to persons who would be required to be served under section 11(1) on an application for a grant (s. 10(1)(b));
- to a spouse of the deceased who would be required to be served under section 11(2) on an application for a grant (s. 10(1)(c));
- to persons who would be required to be served under section 12 on an application for a grant (s. 10(1)(d)).

EAA section 10(2) specifies some of the required content for a notice to beneficiaries under section 10(1)(a), but it also contemplates that the Rules may specify other required content for that notice. EAA section 10 does not say anything about the required content of the other notices required by section 10(1), leaving this to the Rules. This means that the Rules need to deal with the following matters relating to the notices required by EAA section 10:

- for section 10(1)(a) notice to beneficiaries, any required content in addition to what is required by EAA section 10(2);
- for the other notices, all of their required content;
- the form of all the notices;
- how the notices are to be “provided”.

The Rules deal with these matters in new rule 9.1 and a new series of “NGA”⁴ forms: NGA 1 through NGA 4.

Common Elements of Notice Requirements

Rules and Forms Affected

Rule(s): 9.1

Form(s): NGA 1 to NGA 4

Each clause of EAA section 10(1) has a matching subrule and form:

| EAA s. 10(1)... | Rule 9.1... | Form NGA... |
|-----------------|-------------|-------------|
| (a) | (1) | 1 |
| (b) | (2) | 2 |
| (c) | (3) | 3 |
| (d) | (4) | 4 |

⁴ “NGA” presumably stands for “No Grant Application”.

There are some commonalities amongst the notice requirements. First, all of the subrules require at least the following information to be provided in the various notices:⁵

- deceased's name, place of residence and date of death;
- executor's name and contact information;
- date of the deceased's will.

Each subrule then goes on to prescribe additional information to be included in the notice to which it relates.

Second, use of the prescribed forms is optional. This follows from the fact that each subrule states that the required notice "may", rather than "must", be in the relevant NGA form. Thus, a notice under one of the subrules need not be in the relevant prescribed form, so long as it contains at least the required information specified in the subrule. On the other hand, using the appropriate prescribed form reduces the risk of inadvertently omitting required information from a notice and promotes consistency.

Third, rule 9.1 takes a pragmatic, even relaxed, approach to how and when an EAA section 10 notice is to be provided. Regarding how notice is provided, rule 9.1(5) states that it must be "given in a manner that is likely to bring it to the attention of the intended recipient." As for when notice is to be given, rule 9.1 says nothing at all about when an executor acting without a grant must give the notice required by EAA section 10. The relaxed approach of rule 9.1 to the method and timing of giving notice is consistent with the EAA's own approach to these notices. The EAA does not impose any specific penalty for an executor's failure to give notice under section 10. The only specific consequence of failure or refusal to give a notice under EAA section 10 is that it could ground an application for relief under EAA section 8.

⁵ See subrules 9.1(1)(a)-(c); 9.1(2)(a)-(c); 9.1(3)(a)-(c); 9.1(4)(c).