

Applications for a Grant: Priority to Apply and Notices Provided

Prepared For: Legal Education Society of Alberta
New Estate Administration Act

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I. INTRODUCTION

Alberta wills and estates law has undergone significant changes in the last three years. On February 1, 2012, the *Wills and Succession Act* (WSA) came into force, yet the administration of an estate was still governed by the *Administration of Estates Act* (AEA) and the *Surrogate Rules* (SR). Both the AEA and the *Surrogate Rules* required amendments to reflect the new WSA. These changes have resulted in the new *Estate Administration Act* (EAA) and amendments to the *Surrogate Rules*.

The EAA and the amendments to the *Surrogate Rules* come into force on June 1, 2015 and will provide a new regime for the administration of deceased estates. Together these changes will equip Albertans with a roadmap and user friendly forms when administering a deceased estate.

This paper will highlight the most significant changes and will focus on the priorities when applying for a grant and the notice requirements under the new legislation.

II. APPLICATIONS FOR A GRANT

The priorities to apply for a grant and the notice provisions are now contained in the EAA. This is a significant change. To guide you through the changes, the following charts provide a comparison of the *Administration of the Estates Act (AEA)* with the *Estate Administration Act*.

TYPES OF APPLICATIONS	
<p><i>Administration of Estates Act (AEA)</i></p> <p><i>Surrogate Rules (SR)</i></p> <p>Prior to June 1, 2015</p>	<p><i>Estate Administration Act (EAA)</i></p> <p><i>Surrogate Rules (SR)</i></p> <p>In force June 1, 2015</p>
<p>1. Application for a grant of probate or administration with will annexed*</p>	<p>1. Application for a grant if the will exists*</p>
<p>Who has priority to apply?</p>	<p>Who has priority apply?</p>
<p>a. Personal Representative (PR) named in the will</p> <ul style="list-style-type: none"> • SR 11(1)(a) 	<p>a. Personal Representative (PR) named in the will</p> <ul style="list-style-type: none"> • EAA s. 13(1)(a)(i) <p>Except: if the will names the spouse as PR & beneficiary and the testator and spouse divorced on or after Feb 1, 2012, the gift to the spouse fails and the appointment as PR is revoked, regardless of when the will was made (unless the court in interpreting the will finds the testator had a contrary intention).</p> <ul style="list-style-type: none"> • WSA s. 25 <p>Except: if the will names the Adult Interdependent Partner (AIP) as PR & beneficiary and the testator and AIP have lived separate and apart for</p>

*Unless the court orders otherwise.

	<p>more than one year or become former AIPs under s. 10 of the <i>Adult Interdependent Relationship Act</i> (AIRA) on or after Feb 1, 2012, the gift fails and the appointment as PR is revoked (unless the court in interpreting the will finds the testator had a contrary intention).¹</p> <ul style="list-style-type: none"> • WSA s. 25
<p>b. Person appointed by the person expressly authorized in a will to appoint a PR</p> <ul style="list-style-type: none"> • SR 11(1) (a.1) 	<p>b. PR appointed by the person expressly authorized in the will to appoint a PR</p> <ul style="list-style-type: none"> • EAA s. 13(1)(a)(ii)
<p>c. Residuary beneficiary named in a will</p> <ul style="list-style-type: none"> • SR 11(1)(b) 	<p>c. Residuary beneficiary named in the will</p> <ul style="list-style-type: none"> • EAA s. 13(1)(a)(iii)
<p>d. Life tenant of the residue in a will</p> <ul style="list-style-type: none"> • SR 11(1)(b) 	<p>d. Life tenant of the residue in the will</p> <ul style="list-style-type: none"> • EAA s. 13(1)(a)(iv)
<p>e. Heir on intestacy, excluding the Crown, if the residue is not completely disposed of in a will</p> <ul style="list-style-type: none"> • SR 11(1)(d) 	<p>e. Beneficiary under an intestacy if the residue is not completely disposed of in the will</p> <ul style="list-style-type: none"> • EAA s. 13(1)(a)(v)
<p>f. Beneficiary receiving a specific gift in a will</p> <ul style="list-style-type: none"> • SR 11(1)(e) 	<p>f. Beneficiary receiving a specific gift in the will</p> <ul style="list-style-type: none"> • EAA s. 13(1)(a)(vi)

¹ See Appendix 1 and Appendix 2