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Effective Legal Support: Estate Administration

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Non-Contentious Estate Matters: Tips for Completing Forms

Effective Legal Support: Estate Administration

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NON-CONTENTIOUS ESTATE MATTERS: TIPS FOR COMPLETING FORMS

THE LAW WHEN APPLYING FOR A GRANT

The purpose of this paper is not to provide legal advice, as that is what the estate lawyer provides. The majority of the information that will assist you in using the NC Forms, both the applicable law and procedures to follow when completing an application for a Grant, are found in:

(a) ***Wills and Succession Act,*** SA 2010, c W-12.2 – hereinafter referred to as ***WSA***;

(b) ***Estate Administration Act***, SA 2014, c E-12.5 – hereinafter referred to as ***EAA***;

(c) **Alberta *Surrogate Rules of Court*** – hereinafter referred to as '**the Rules**';

(d) **Adult Interdependent Relationships Act**, SA 2002, c A-4.5 – hereinafter referred to as the ***AIR Act***; and

(e) ***Public Trustee Act***, SA 2004, c P-44.1.

The three (3) most common 'standard' applications in an Estate using the Non-Contentious (NC) Forms for an application, include:

(a) Grant of Probate;

(b) Grant of Administration; and

(c) Grant of Administration with Will annexed.

A **Grant of Probate** is the application you would use if the deceased **died testate** (leaving a valid Will), which names a Personal Representative (also referred to as 'Executor' or 'Executrix') who wishes to act, and names clear beneficiaries for the deceased's estate.

A **Grant of Administration** is the application you would use if the deceased **died intestate**, (leaving no Will). The purpose of this Grant is to name a Personal Representative (also referred to as an 'Administrator') that will act on behalf of the estate, and which distributes the intestate estate in accordance with Part 3 of the *WSA*.

A **Grant of Administration with Will annexed** is an application that would be used when the deceased left a valid Will, but:

(i) the Will failed to name a Personal Representative; or

(ii) the Will named a Personal Representative who predeceased the Testator/Testatrix; or whom is unable or unwilling to act; or

(iii) the Will failed to provide adequate provisions to distribute the entirety of the deceased's residue of the estate (i.e. if one of the Beneficiaries named predeceased, and there was no alternate Beneficiary named).

Each estate is unique as it may involve:

(a) The type of assets that fall into, or form part of, the estate;

(b) The size of the overall estate;

(c) The complexity in determining the deceased's intent as it relates to a joint asset or joint account. Whether such joint asset or account was meant to pass by way of survivorship, or determining if there is a trust (which is a legal concept called a resulting trust) attached at the transfer into joint names;

(d) When the assets in the estate are insufficient to pay the deceased's debts;

(e) Different types of beneficiaries and family dynamics;

(f) Different circumstances which may require additional forms and/or procedures.

Generally speaking (there are many exceptions that can apply), assets or debts that were owned or owed by the deceased in his or her sole name are assets that form part of the estate. The exceptions are Registered Retirement Savings Plan (RRSP), Tax Free Savings Accounts (TFSA), life insurance policies, and, in some cases, jointly owned or jointly registered assets and debts. RRSP, TFSA, and life insurance policies allow the owner to designate a beneficiary directly at the source if they wish (meaning on the investment account or policy itself). Where there is a surviving beneficiary already designated, those funds are generally paid directly to those named beneficiaries and the funds do not form part of the estate. Because they are not part of the estate, then these assets are not governed by the Will. Jointly registered assets are trickier, in that sometimes they are registered jointly to facilitate the transfer of assets upon the passing of the owner, or to assist an elderly parent with managing their bills and their investments. In those situations, it could be argued that those accounts are not true joint funds and thus should fall into the estate for distribution accordingly. On the other hand, true joint assets with a right of survivorship would by-pass the estate and those funds would not be considered part of the estate. Instead, those assets (or debts) would pass directly to the other surviving owner(s), and not inside the estate for distribution.