When Someone Dies Without a Will

This publication is for those who want to know what to do when a loved one dies without a will. It guides you through practical things you'll need to take care of, like arranging the funeral. It also explains who should get the deceased's things, and the legal steps you'll need to take to deal with their assets.

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People's Law School
Work out life's legal problems

www.peopleslawschool.ca

About this Publication

Acknowledgements

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About People's Law School

People's Law School is a non-profit society in British Columbia, dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.

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Introduction

This publication is for those who want to know what to do when a loved one dies without a will. It guides you through practical things you'll need to take care of, like arranging the funeral. It also explains who should get the deceased's things, and the legal steps you'll need to take to deal with their assets.

At People's Law School, we believe accurate, plain English information can help people take action to work out their legal problems. This publication explains in a general way the law that applies in British Columbia, Canada. **It is not intended as legal advice**. For help with a specific legal problem, contact a legal professional. Some sources of legal help are highlighted in the Who Can Help section.

We've tried to use clear language throughout. See the Glossary section for definitions of key legal terms, which are also bolded in the text.

The information is current to July 2020.

Tip Visit peopleslawschool.ca for more in-depth coverage of your legal rights and what to do when someone dies without a will.

Initial Steps to Take After the Death

When a loved one dies, it often catches us off guard, even if it was expected. During this difficult time, we deal with our grief along with some responsibilities. These include arranging the funeral and inquiring about survivor benefits.

Step 1. Immediately after your loved one dies

There are some things that need to get done immediately after the death. These include removing the body, dealing with organ and tissue donation, contacting family members, and registering the death.

> **Tip** Visit peopleslawschool.ca for more in-depth guidance of each of the above steps.

Step 2. Arrange the funeral

There are many decisions to make when arranging the funeral, usually very quickly. For example:

- Where and when will the funeral be?
- Will the deceased be buried or cremated?
- Will there be a death announcement published in the paper or online?

To pay the funeral expenses, you can take the invoices to the bank where the deceased kept an account. The bank will typically release funds so long as there's enough money in the account.

The law says who's responsible for arranging the funeral

If your loved one didn't have a will, the deceased's spouse is responsible for arranging the funeral and paying the funeral expenses from the deceased's **estate**. If there's no spouse or they're not willing to take on the job, BC law sets out a priority order. Next up are the deceased's adult children, then adult grandchildren, then a parent, and so on.

What if the responsibility passes to people of equal rank (such as adult children)? The law says they can decide among themselves who should do it. If they can't agree, priority descends in order of age.

> **Tip** Visit peopleslawschool.ca for detailed guidance on making funeral arrangements.

Step 3. Seek bereavement support

Grieving is an important process that requires more time than people often acknowledge or allow. Support during times of bereavement can help bring healing, renewal, and hope for the future.

Family and friends can be a great source of comfort. Expressing your feelings with them can help you in the grieving process.

The **BC Bereavement Helpline** is a free and confidential service that helps people in BC cope with grief. See the Who Can Help section for contact information.

Step 4. Notify others of the death

Contact organizations and government departments to notify them of the death or cancel services. For example:

- notify financial institutions where the deceased held accounts
- notify the Canada Revenue Agency
- cancel any credit cards
- cancel any subscriptions or club memberships
- cancel any Old Age Security or Canada Pension Plan benefits received by the deceased
- cancel the deceased's passport and driver's licence
- cancel any subscriptions and redirect mail to a safe location

Step 5. Apply for any survivor's pensions and benefits

If the deceased contributed to a government or private pension, their spouse and dependents may be entitled to a survivor's pension or a death benefit. Take steps to apply for any survivor's pensions or benefits that may be available. For example:

- **Canada Pension Plan (CPP) survivor's pension**. If the deceased contributed to the CPP, a pension is paid to their surviving spouse or common-law partner. The survivor is responsible for applying for their monthly pension.
- **CPP children's benefits**. A children's benefit may be paid, depending on the contributions the deceased made. Surviving children under 18 or between ages 18 and 25 who are full-time students may receive this benefit. The child, or their parent or guardian, are responsible for applying for this monthly benefit.
- **CPP death benefit**. The CPP death benefit is a one-time, lump-sum payment paid to the estate or a survivor of a deceased CPP contributor.
- **Employment pension**. If the deceased was employed, a survivor's pension or death benefit may be available.

Tip With public and private pensions, the estate or the survivor is entitled to keep any cheques issued the month the deceased passed away.

There may be more benefits available to assist survivors, depending on how the deceased died:

- **Workers' compensation benefits**. If your loved one was killed on the job, workers' compensation benefits may be available through WorkSafeBC.
- **ICBC benefits**. If your loved one died in a car accident, benefits are available from ICBC. Regardless of who was responsible for the accident, certain funeral expenses and survivor benefits are payable.
- **Victims of crime assistance**. If your loved one was a crime victim, assistance may be available to survivors from the Crime Victim Assistance Program. Call 1-866-660-3888 or contact cvap@gov.bc.ca.

Step 6. If the deceased had young children

If the deceased had minor children, someone may need to apply to court to become the guardian. With a will, a person can appoint a guardian to look after any young children after they die. Parents are usually guardians, but not always.

What if someone dies without appointing a guardian for their children under 19?

- If there's a surviving guardian, they'll become the child's guardian. A surviving parent who isn't the child's guardian must apply to the court to become guardian.
- If there's no surviving guardian, the **Public Guardian and Trustee** will become the **estate guardian**. This means they're responsible for managing the child's money and legal affairs.

  At the same time, the Ministry of Children & Family Development will become the child's **personal guardian**. This is the person who has physical custody of the child and must care for them. The ministry remains guardian until someone else becomes the guardian. In the meantime, the ministry may place the child in foster care or to live with a relative or friend. The new guardian may be appointed in a court order or may have applied to adopt the child. The court decides what arrangements are in the child's best interests.

The deceased's minor children may be entitled to money. See pages 7-8 below to learn about special arrangements that may need to be made.

Step 7. Update your own legal affairs

If you've lost your partner, you may need financial advice or help re-organizing your banking arrangements. Talk to your bank or credit union.

In time, you may wish to review your own **will** (if your loved one's death means it's out of date). Or if you don't have a will, you may want to think about preparing one. You may also want to review any power of attorney, advance directive, or representation agreement you have.

Dealing with Assets: What You Should Know

When a loved one dies, they leave behind their **assets** and debts. These need to be dealt with.

You may have heard about needing to deal with a deceased's person's "estate." But what exactly does this mean? A person's **estate** is the property they own upon their death (such as real estate, bank accounts, vehicles and belongings). But there are some exceptions.

Some kinds of assets pass directly upon death

"A dear friend of mine asked if I could help out with simple tasks like groceries and paying bills. She chose to add me to her everyday bank account as a joint holder. This made handling the money easier. But she was also really grateful for my help. She wanted me to have the money in this bank account when she passed away. When she died, the money in the account passed to me."

– Sara, Powell River

Not all things owned by the deceased form part of their estate. When an asset "passes outside the estate" it means it's not included in the pool of assets to be distributed to the heirs who are entitled to the deceased's estate.

Generally speaking, when assets are owned jointly and one of the owners dies, their share of the asset becomes the exclusive property of the other joint owner. Two or more people can own assets jointly, such as a joint bank account. Another common example is a home held by two spouses in **joint tenancy**.

There are some situations where jointly-held property will need to be returned to the estate. For example, it's not uncommon for parents (while they're still alive) to give an interest to their adult child, say in a bank account or in real estate. Often the adult child didn't have to pay for their share of the interest. It's best to speak to a lawyer if you feel this situation may apply.

Tip If you had a joint bank account with the deceased, you can withdraw the whole amount from the account at any time. If you face any difficulties, speak to the bank manager. The bank should let you transfer the account to your name alone if you show them the **death certificate**.

There are certain assets where the holder can choose (or designate) a beneficiary to receive proceeds when they pass away. Common examples are life insurance policies or retirement benefit plans. If you're a **designated beneficiary**, contact the bank or trust company to learn how to claim what's owed to you. They should directly transfer the proceeds to you. This money passes outside of the estate.

The law says who gets the deceased's estate

Apart from the exceptions noted above, most kinds of assets fall within a deceased person's **estate**. Usually, a person's will says who should get their estate. But what if someone in BC dies without a will? The law says the estate will be divided according to the mix of relatives left behind.

The first step is to determine whether the deceased had a spouse

"My grandparents never married. When Grandpa got sick, he had to move out of the house they'd shared for 40 years and into a care home. There was never an intention to separate: they were in it for the long haul. Grandpa died without a will. Nan was still considered to be his spouse under the law."

– Justin, Victoria

Under estates law in BC, people are considered **spouses** if they were:

- married (and not separated) when the deceased passed away, or
- in a "marriage-like relationship" for at least two years prior to death, unless one of them ended the relationship.

"Marriage-like relationships" include common-law unions. In these arrangements, the two people:

- needn't have been living together
- must have been in a marriage-like relationship for two years (though not necessarily the two years immediately before the deceased's death)

If you're not sure whether someone is the deceased's spouse, or if you think the deceased might have been separated, it's best to talk to a lawyer. It makes a big difference to how the estate should be distributed.

If the deceased had a spouse

"My husband Dave died without a will. We didn't have any kids together. Dave's only child Eve passed away years ago. Her son's name was Silas. Dave hadn't seen his grandson since Eve died, for complicated reasons.

My lawyer told me that grandchildren get a share of the estate if their parent, who has died, was a child of the deceased. So, I got the first $150,000 of Dave's estate, and then split the remainder with Silas."

– Nada, Surrey

Under the law, when the deceased dies leaving a:

- **Spouse and no children**. The entire estate goes to the spouse.
- **Spouse and children with that spouse**. The spouse gets the first $300,000 of the estate and half of the remainder. The other half is divided equally among the children.
- **Spouse and children from a prior relationship**. The spouse gets the first $150,000 of the estate and half of the remainder. The other half is divided equally among the children.

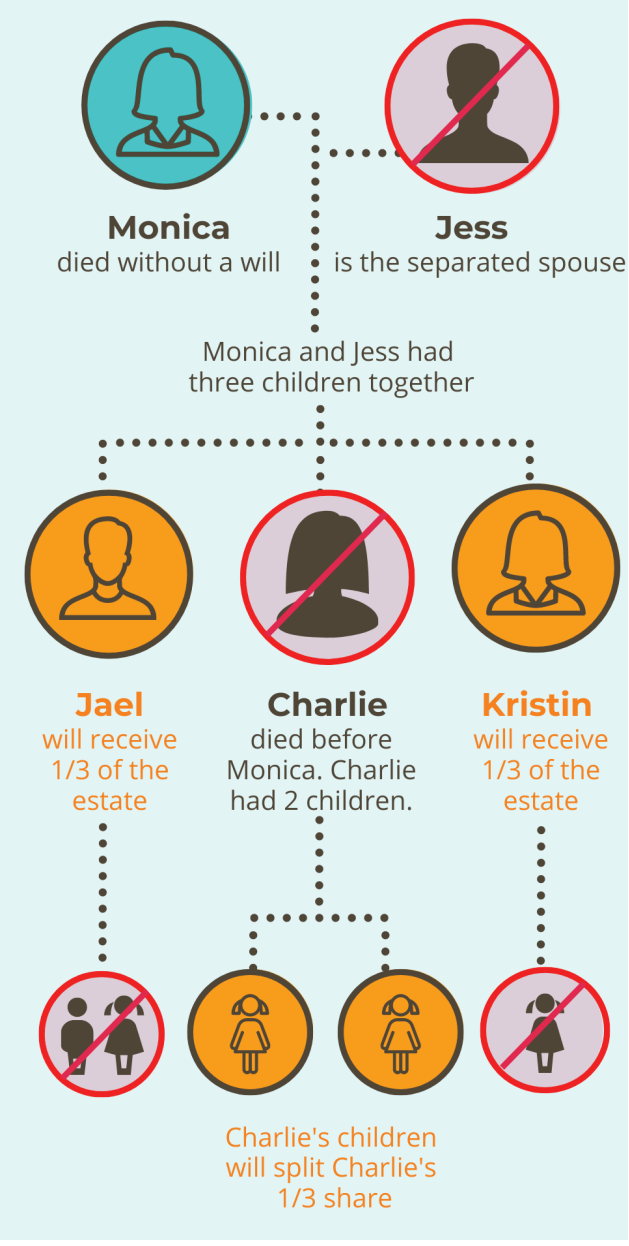
It's possible to have more than one spouse under BC estates law. In this case, they split the **spouse's share** equally (unless they agree or a court decides differently).

Tip If your spouse died without a will, the law says you have the right to acquire the **spousal home**. The deceased must have owned the home, and you must have ordinarily lived in it together. The home will be counted towards your share of the estate. In some circumstances, you may have to pay occupancy costs. It's best to speak to a lawyer about your particular circumstances.

If the deceased didn't have a spouse

If the deceased had **no spouse**, then the estate is divided among their children, grandchildren, or any descendants. A **descendant** means a surviving person of the generation nearest to the deceased.

In the example below, Monica died without a will. Her separated spouse receives nothing. Two of her adult children are still alive, so they each get a one-third share. Monica's daughter Charlie died before her, so Charlie's kids split the remaining one-third of the estate.



If the deceased had **no spouse and no descendants**, then the estate goes to their parents. If their parents aren't alive, it's divided equally among their brothers and sisters.

There are other rules to figure out which **next-of-kin** may receive the estate if the deceased had no surviving spouse, descendants, parents, or siblings.

If the deceased has no next-of-kin, the estate goes to the provincial government.

The court may need to appoint someone to deal with the estate

When someone makes a will, they get to choose an **executor**. This is the person who manages their affairs after they die. If someone dies without a will, the person who does this job is called the **administrator**. Someone usually has to apply to court to get the legal authority to deal with the estate.

The people who can apply to administer the estate are listed under the law in order of priority. The spouse of the deceased is the first person who can apply, or they can nominate someone else to apply.

Tip For more on what settling the estate involves, see page 8 below. To learn who can apply for a **grant of administration**, see page 13 below.

A minor's share must be paid to the Public Guardian and Trustee

If someone dies without a will, a child under 19 might inherit a share of the estate. The law in BC says the minor's share must be paid to the Public Guardian and Trustee of BC. This public body will hold the minor's share in the estate until they're 19. In the meantime, the child's parent or guardian can apply to the Public Guardian and Trustee to release funds for basic expenses like food, clothing, and education. When the minor turns 19, they can demand all their money — no matter how much it is.

Tip By preparing a will, a person can create a **trust** for any gifts left to minor children or others who might be under 19 when the will-maker dies. A trustee, chosen by the will-maker, can manage the minor's share for the minor's benefit until they turn 19 (or a later age if desired).

Settling the Estate

Dealing with your loved one's property and debts can be a time-consuming and intimidating process. We've broken it down into nine main steps.

Step 1. Locate the will

If you're reading this, you probably believe that your loved one did *not* have a will. But that doesn't mean you should give up on trying to find one. The original will may be in the deceased's home, in a safety deposit box, or at the office of the lawyer or notary public who helped prepare it.

Tip If it turns out no will exists, you may need to apply to court for a **grant of administration** in order to deal with their property. When you make the application, you'll need to swear that no will was found. The law requires that you search in all places that could reasonably be considered a place where a testamentary document might be found. If you do find a will and discover you're the executor, see peopleslawschool.ca for guidance on being an executor.

Search the wills registry

If you strike out looking for the will in the usual places, you can search the wills registry. You can find the registry online by searching for "wills registry BC." The search certificate may indicate the location of the original will. You can search the registry by submitting a completed application form and fee to the Vital Statistics Agency. You'll be provided with a certificate of wills search.

Tip A search certificate doesn't always show the whole picture. If a search result comes back empty, that doesn't always mean the deceased didn't have a will. It's possible they didn't file a notice. Or they may have moved the will, or cancelled it.

Don't ignore documents that don't look like a legal will

You should talk to a lawyer if the deceased left a letter, electronic message, or other note that says who they wanted to leave their things to, or to be their executor. The court can recognize a document as a will even if it doesn't meet the formal legal requirements of one.

Step 2. Get a copy of the death certificate

You'll need a death certificate to apply for benefits and to settle the affairs of the deceased. The funeral home will ask you how many "original" death certificates you require. You can order them directly from BC Vital Statistics. Each original costs $27. For most estates, two original death certificates should suffice. You can have additional "certified true copies" prepared by a notary public or a lawyer if needed.

Step 3. Protect the assets

When there's no executor, the administrator is responsible for protecting the deceased's assets. This helps ensure the assets aren't destroyed or devalued before they can be distributed to loved ones. If there's no executor, those close to the deceased can help protect the assets.

Safeguard the deceased's property until the estate is ready to be distributed. For example:

- If no one is living in the deceased's home, make sure it's secured. Turn appliances off. Make sure any pets are looked after. Most home insurance is cancelled automatically if the home is vacant for more than 30 days. If the home is to remain vacant, notify

the insurer and arrange vacancy coverage. You should also tell the police that the home is vacant.

- Make sure any vehicle owned by the deceased is locked in a safe place.
- Confirm there's valid insurance on the home and any vehicles. (Check the expiry dates.)
- Safeguard any wallet, purse, or briefcase owned by the deceased.
- Secure the deceased's key pieces of identification, such as their social insurance card, medical card, driver's licence, and passport.
- Search for credit cards, cash, jewelry, securities, and other valuables. Arrange for their safekeeping.
- If the deceased owned a business, arrange for its ongoing management.

Step 4. Communicate with potential heirs

Once the funeral is over, potential **heirs** (called "intestate successors" under the law) are often anxious to know what's happening next and when they'll receive their inheritance.

Hold a meeting with family members and anyone who's entitled to a share of the estate. Although this isn't mandatory, it allows you to:

- discuss your intention to apply as administrator, if a court application is needed
- set expectations around timelines for administering the estate and distributing the assets
- discuss your different duties and liabilities as administrator
- request approval for compensation, if you intend on charging a fee
- gather personal information from those entitled to a share of the estate (for example, their full name, address, and social insurance number)
- discuss how the personal assets will be divided (such as household effects of no value)

Step 5. List the assets and liabilities

Making an inventory of the estate is one of your prime tasks. An inventory should list the estate assets and **liabilities**. Letters requesting this information will need to include a copy of the death certificate.

Tip Without a will, you may have difficulty getting some of the information you need. If this happens, you might need to apply for a **grant of administration**. You can file most of the application documents. At the same time, you can apply for authorization to obtain estate information (this is form P18). If the court grants your request, third parties must give you information relating to the deceased's assets. For more on how to make an administration application, see page 12 below.

Among the steps to take to identify the assets are:

- **Bank accounts**. Contact the deceased's bank or credit union. Gather information on account balances, loans outstanding, and investments held at the date of death. You may want to lump all the money into one account for the estate.
- **Life insurance**. Begin claims on life insurance policies (including group insurance or other plans).
- **Wages and benefits**. Contact the deceased's employer. Find out if they're owed any income. See if the spouse or family are entitled to any benefits.
- **Government benefits**. Contact **Canada Pension Plan** and **Old Age Security** to cancel pension benefits. Figure out whether any surviving spouse or children are eligible for survivor or continuing benefits.
- **Investments**. Locate all original investment certificates, stocks, or bonds. Get the market value of each on the date of death.

- **Real estate**. List all real estate the deceased owned alone or with others. List any mortgages. Have appraisals done, as of the date of death, on any properties that were not jointly owned.
- **Personal possessions**. List any other assets. This may include cars, boats, household goods, jewelry, electronic equipment, coin or art collections, and other personal effects. Estimate values. Where you're not sure, get an appraisal.

In listing the liabilities of the deceased, include:

- the funeral expenses
- any amounts owing relating to their home, including utilities, rent, or strata fees
- any professional fees (such as legal fees)
- if an application for a grant of administration is made, the **probate fees**
- municipal and income taxes owing
- all other claims as of the date of death

Tip You only have to tell the probate registry about liabilities that existed on the date of death. But when making an inventory, you should list estate expenses that arose *after* death. This will give you an overall picture of what the estate owns and owes.

Protect yourself from liability

As the administrator, you could personally be on the hook if you don't pay the deceased's debts — including unpaid taxes — before you distribute the estate.

To find out who the deceased owed money to, look in their records for evidence of mortgages, loans, and accounts with outstanding charges.

Depending on the circumstances, you may want to advertise for possible creditors. Advertising for creditors involves placing a notice in the *BC Gazette*, a government publication. A creditor will have 30 days after publication of the notice to come forward with a claim against the estate. After 30 days, you won't be liable for any claims from creditors if you distribute the estate.

Tip As administrator, you must notify a surviving spouse that they may have a right to the **spousal home**. If you sell or transfer the home without providing proper notice, you may be liable for the spouse's loss. Get legal advice if you're not sure about your obligations here.

Step 6. If necessary, make a court application

Depending on the circumstances, you may need to apply for a **grant of administration**. If so, you must submit paperwork to the court.

If everything's in order, the court will issue a grant of administration. You can then show this document to banks and others who hold assets of the estate (such as the **land title office**), confirming you have the authority to act for the estate.

Tip You may not have to ask the court for the authority to deal with an estate if it's worth less than $25,000. This threshold is a rough rule-of-thumb. It's up to the institutions that hold the assets whether they'll transfer them to you without a grant of administration. Check with them and see.

To understand whether you need to apply for a grant of administration, and how to do so, see page 12 below.

Step 7. Deal with debts and taxes

Once you have the grant of administration, you'll be able to transfer the estate assets into your name as administrator. You can then settle the deceased's debts and any expenses you've incurred as administrator.

Tip What if the estate doesn't have enough money to pay all outstanding debts? Don't pay any of the estate debts without legal advice. You don't want to become personally liable for the debts!

Prepare and file income tax returns

As administrator, you must file income tax returns for the deceased and possibly for the estate:

- File a tax return for the deceased for the year of death.
- If the deceased hadn't filed a return for any year before the year they died and tax is payable, file their tax return for those missing years.
- If the estate earns any income before you distribute it (such as interest or rental income on estate property), file a tax return for the estate for each year after the date of death.
- If the deceased had assets or income in another country, you may need to file a foreign income tax return.

After the income tax is reported, assessed and paid, apply for a clearance certificate. For your own protection, you should have this certificate before you begin to distribute the estate.

For more information, see the Canada Revenue Agency publication *Preparing Returns for Deceased Persons*, available on their website.

Step 8. Account to the heirs

You're responsible to account for the estate assets. Keep records (such as any receipts, records and forms) of all income received and any expenses paid.

Before you distribute the estate, you must give the **heirs** an accounting of your administration of the estate. This is a final statement of assets, debts, income, expenses and distribution. And the heirs must agree with it.

In the accounting, state any fee you're charging. (Don't decide too quickly not to charge a fee — administering an estate is hard work!) The maximum amount of fees you can charge is limited by law. If the estate is large, the fees that are allowed can be significant. Also note that the fees are taxable.

Tip The heirs must approve your statement of accounts (which includes any proposed fee). Ask them to sign a release. With this document, they agree not to make any claims against you as administrator. Once all heirs have done this, they can receive their distribution from the estate.

If the heirs refuse to approve the accounts, you'll need to have them reviewed by the court so that your administration is approved. This process is called the "passing of accounts."

Step 9. Distribute the estate

Once you ensure that all debts, expenses and taxes have been paid, that all claims against the estate have been satisfied, and that your accounts have been approved, you can distribute the remainder of the estate.

If you applied for a grant, the law says you can't distribute the estate until 210 days after it was issued. You do this to make sure that no one is going to make a claim against the estate, such as a creditor.

If after 210 days no claim is made against the estate, you may distribute. (Note that you can distribute sooner if all of the heirs consent to earlier distribution). Pay attention to these rules. You might have to pay out of your own pocket if the assets go to the wrong people.

Applying for a Grant of Administration

A **grant of administration** is similar to probate. It's a document issued by the court, giving the person named as **administrator** the legal authority to settle the estate.

You might need to apply for a grant of administration

When someone dies, their property must be dealt with. Ideally, the person named in the deceased's will as **executor** can do this. But not everyone chooses to make a will. If your loved one didn't have a will, someone may need to apply to court for a **grant of administration without will annexed**. This document will give you the authority to deal with the deceased's estate assets.

Tip What if the deceased died with a will, but the person named as executor doesn't want to do the job, or isn't able to do it? Someone may need to apply for a grant of administration *with* will annexed.

You can deal with some assets without a grant of administration

If the estate assets are worth less than $25,000, you typically don't have to apply for a grant of administration. It's up to the institutions that hold the assets whether they'll transfer them to you without a grant. Check with them and see.

A grant isn't required for assets that pass outside of the estate

A grant of administration is only required for **estate** assets. Not all things owned by the deceased form part of the estate. This means you can transfer them to someone without a grant (though you'll still need a copy of the death certificate). Typical examples include assets held in joint tenancy or assets with a designated beneficiary. For an explanation of these types of assets, see page 5 above.

Many couples hold all their assets in joint ownership or with beneficiary designations to avoid needing to deal with the probate registry.

If the deceased owned real estate

As the administrator, you'll need to transfer the land to someone else (such as transferring it to an **heir** or selling it). If the deceased owned land *other than* in joint tenancy, you'll need to apply for a grant of administration. This is true even if the deceased's interest in the land is less than the $25,000 threshold.

Tip If you're wondering whether the deceased held land in joint tenancy, you can look at the state of title certificate. This is a document issued by the land title office that says who owns the land. Under the law, the transfer document and title must state that the land is held in joint tenancy; otherwise the ownership becomes a **tenancy-in-common**.

What applying for administration involves

Basically, paperwork. Various documents are filed with a **probate registry**. Registries are the official record keepers for the Supreme Court of BC. There are registries across BC, so you should be able to find one near you.

If everything's in order, the court issues a **grant of administration**. The **administrator** named in this document has the legal authority to settle the deceased's estate. This can include paying debts, selling assets, and distributing property. The administrator can show the grant to anyone who holds assets of the estate (such as banks).

The law says who can apply

"My sister Rose died without a will. Under the law, I get $100,000, our other surviving sister Mary gets $100,000, and our brother Brian's kids split the remaining $100,000. Brian had already passed away — he had four adult children (my nieces and nephews). I want to apply to administer the estate and Mary's on board. But Brian's kids don't want me as administrator — they want to keep it in their family. Mary and I hold the "**majority interest in the estate**" (together, more than 50%). We have more say than the others, even though they outnumber us, so I have first priority as administrator."

– Marlowe, Vancouver

The people who can apply for a grant of administration are listed under the law in order of priority. You can only apply if no one above you wants the job.

The law sets out who can apply for a **grant of administration *without* will annexed**. From the top:

- The spouse of the deceased or someone nominated by them.
- An adult child of the deceased, with the consent of the majority of the deceased's children.
- A person nominated by a child of the deceased. That person must have the consent of the majority of the deceased's children.
- An adult child of the deceased *without* the consent of the majority of the deceased's children.
- If there are no adult children, any other **heir** (that is, someone who's entitled to a share of the estate) may apply. Priority goes to an heir who's the consensus pick of the heirs that have a "majority interest in the estate." Next, priority goes to someone nominated by those heirs. Otherwise, any heir can apply.
- Anyone else. This may include a friend of the deceased, or a professional such as a lawyer or accountant. The Public Guardian and Trustee might also apply to administer the estate, if no one else is willing to do it.

Tip If you're thinking of applying for administration, check that everyone who has equal or higher priority than you is okay with you throwing your hat in. It's a good idea to get their written agreement to your application. If your loved one died after March 31, 2014 (when new law was introduced), these consents aren't required by law. But it's good practice to file them with your court application.

Remember, just because you can apply to be administrator, doesn't mean you have to do it. It's a serious responsibility, and can be a lot of work. If you have doubts, consider talking to the other people who may be able to apply. Read up on what's involved. A lawyer can also give you a better idea about the process.

When you sign the documents

You'll need to sign some of the application forms in front of a lawyer, notary public, or a commissioner for taking affidavits. All court registries have such a commissioner, and some community groups do as well.

When you sign a document in front of them, it means you're swearing that the information in the document is true.

Fees to be paid to the court

To file the administration application, you must pay a **court filing fee** of $200.

You may also have to pay the court **probate fees**. Probate fees are generally based on the gross value of the estate assets. (That is, the value of the estate assets before debts.) For more on probate fees, see Step 4 on page 16 below.

Tip If the estate has a value of less than $25,000, there are no court or probate fees.

You may have to pay a bond to the court

If you're applying for a grant of administration, you may have to deposit money with the court. This is called a bond. The bond ensures you're doing your work honestly and competently.

The court may tell you to pay a bond if there's an **heir** who is:

- A child under 19.
- An adult who is mentally incapable, and doesn't have a nominee. This is someone who's responsible for the adult's legal and financial affairs, such as an attorney under a power of attorney.

If required, you'll need to pay the bond before the court will issue you a grant of administration. Bonding companies may ask you to pay a bonding premium and other fees. These can be charged to the estate when you do your final accounting.

How long the process takes

The time frame for the probate registry to review and approve administration applications can vary considerably. Generally the process takes two to three months, but it will depend on the volume of applications and staffing levels at the probate registry.

If your administration application is rejected

If your application is rejected, the probate registry will tell you the reason. You can then correct the problem and re-apply.

Tips for making a successful application

If your application is rejected, you can correct the problems and re-apply. But this will cause delays. Here are some practical tips to make a successful application. These will give you a better chance of getting that grant of administration the first time around.

1. **Double-check your documents before you file**. It might sound obvious, but take the time to check for typos or mistakes. It's one of the main reasons that forms are rejected. Make sure exhibits are properly marked and signed.
2. **Don't leave any questions blank**. If there's nothing to list under one of the fields on a form, write "nil" or "none." Blank spaces may suggest that information is missing.
3. **Pay attention to timing**. The law says you can only file your application with the probate registry **21 days after** you've given notice to everyone required.
4. **Pay close attention to form P2**. Many people run into trouble when completing the **submission for estate grant** (form P2). There's more on form P2 on page 15 and a tip on where to find more information about filling out the forms.
5. **Give notice to the Public Guardian and Trustee, if needed**. If you need to give notice to the Public Guardian and Trustee, then they must formally comment on your application. The written comments will be sent to you and you must file them with the court. The probate registry cannot issue you a grant until they receive the comments.

Make the Application for Administration

Step 1. Notify others that you intend to apply

"Mom died without a will. She and Dad divorced a while ago and she never found another partner. She had three kids, including me. When I applied for administration, I was confused about whether to give notice to my auntie Celia, mom's sister. My lawyer explained that only me and my siblings were entitled to the estate under the law. So I didn't have to send Aunt Celia notice."

– Dion, Pender Island

You must notify certain people that you intend to apply for a grant of administration. To do so, complete the court **form P1, notice of proposed application**. Mail or deliver the completed form P1 to:

- each person who's entitled to a share in the estate (or would have been if the spouse hadn't received a share),
- if the deceased left debts behind, each creditor whose claim exceeds $10,000,
- anyone who's served a **citation** on you,
- if the deceased was a Nisga'a citizen, the Nisga'a Lisims government,
- if the deceased was a member of a treaty first nation, the treaty first nation, and
- the Public Guardian and Trustee, if *any* of the people you need to notify is a minor or mentally incapable adult.

Tip You must deliver this notice at least 21 days before submitting the application to court. This gives people the chance to dispute your application. If you're mailing the notice, use ordinary mail. Don't use a courier or registered mail, or your application may be rejected.

Step 2. Prepare the application

You must file paperwork with a probate registry.

Tip You can download the probate forms from the BC government website. Search for "Supreme Court BC probate forms." If a form doesn't open on your computer, try saving it directly to your computer. Once you've saved it, open it with Adobe Acrobat.

A typical administration application (where there's no will) includes these documents:

- **A submission for estate grant, in form P2**. This form gives details about your application for administration.
- **An affidavit of the applicant, in form P5**. This form identifies you and your relationship to the deceased. You must swear that you made a diligent search for the will. The law requires you to search in all places that could reasonably be considered a place where a testamentary document may be found.
- **Affidavits of delivery, in form P9**. Together, these confirm that notice of the application was delivered to everyone required.
- **An affidavit of assets and liabilities, in form P10 or P11**. This form sets out all the deceased's assets and liabilities that pass to you as administrator.
- **Two copies of a certificate of wills search**, and any accompanying wills searches. You can get these by doing a search of the wills registry.

Additional documents may be required. Examples include forms to deal with dispensing with notice and other unusual applications.

Tip Visit peopleslawschool.ca for more on filling out probate forms. We answer some common questions asked about each of the forms listed above.

Step 3. File the administration application

File the application in a probate registry of the Supreme Court of BC. You can find a Supreme Court probate registry close to you. You may need to pay a court filing fee (currently $200).

To find the closest probate registry, contact Service BC Contact Centre:

Lower Mainland: 604-660-2421
Toll-free: 1-800-663-7867

Step 4. Pay any probate fees

Once the application is reviewed, the probate registry will let you know the probate fees you need to pay. These must be paid before the court will issue you a grant of administration.

The probate fees are based on the gross value of estate assets that were located in British Columbia when the deceased died. If the deceased was ordinarily resident in British Columbia immediately before they died, you'll also need to pay probate fees on intangible (non-physical) assets located outside of the province, such as bank accounts or investments.

Fees are payable on the following basis.

Estate value	Probate fees
$0 to $25,000	0
$25,000 to $50,000	$6 for every $1,000 (or part of $1,000)
$50,000 or more	$14 for every $1,000 (or part of $1,000)

For example, if the gross value of the estate assets is $125,000, the probate fees will be $1,200:

$6 x 25 (for every $1,000 between $25,000 to $50,000) = $150

$14 x 75 (for every $1,000 between $50,000 to $125,000) = $1,050

= $1,200

Step 5. Proceed with administering the estate

Once a grant of administration is issued, you can proceed with the remaining steps in administering the estate. See our information on settling an estate on page 8 above.

Common Questions

What if I need to give notice to someone under age 19?

If a person you need to give notice to is a minor, you must give notice:

- if the minor lives with their parents, to those parents
- if a parent or guardian is financially responsible for them, to that parent or guardian (if the minor doesn't live with their parents)
- if none of the above applies, to the minor at their home address

You must *also* give notice to the Public Guardian and Trustee, on behalf of the minor.

What if I need to give notice to an adult who is (or may be) "mentally incompetent"?

You must give notice to *all* of the following:

- The adult's nominee, if they have one. This is someone who's responsible for the adult's legal and financial affairs, such as an attorney under a power of attorney.
- The Public Guardian and Trustee (on the adult's behalf).
- The adult themselves, unless the adult has a **committee of estate**.

Do I have to get confirmation from the people I've delivered notice to?

You generally don't need confirmation that notice has been received. (The exception is if you deliver the notice electronically, such as by email or fax. In this case, you must receive written confirmation that notice has been received.)

As well, you must wait **21 days** after you delivered the required notices before you can file the application for administration with the probate registry. This gives each person receiving notice the chance to file a **notice of dispute** if they oppose your application.

The deceased went by more than one name over their lifetime. Do I need to include these?

You should put the legal name of the deceased on form P2. As well, include any other names they may have used to hold an interest in real estate.

You'll need to apply for a search of a wills notice. The search results will show whether the deceased ever registered any wills with Vital Statistics. You'll need to submit **two copies** of the search results and any wills notices to the probate registry.

Search for wills notices under all names of the deceased:

- indicated on your form P2
- used to hold real estate
- if there's a will, any names used in the will or other testamentary documents

The probate registry will expect you to do searches using all of the deceased's names. Failing to do this is one of the top reasons why applications are rejected.

The deceased had assets located outside of BC. Do I need to list these assets on the form P10?

Usually, you must disclose all of the deceased's assets that will pass to you as administrator of the estate. (If the deceased didn't ordinarily live in BC, and you're completing a form P11, you only need to disclose assets that are within BC.)

What value do I use for the deceased's assets?

The form P10 requires you to list all of the deceased's assets and the value of each. Wherever possible, you should provide the market value of each asset. The asset should be valued as at the **date of death** (not as at the time you submit the probate application).

What if I discover more assets after I've already submitted the application?

If the information you provided on the form P10 was incorrect or incomplete, you must let the registry know by filing form P14. If you discover additional assets, you may need to pay additional probate fees.

Who Can Help

Access Pro Bono

Volunteer lawyers provide free legal advice to qualifying people who cannot obtain legal aid or afford a lawyer.

Lower Mainland: 604-878-7400
Toll-free: 1-877-762-6664
Web: accessprobono.ca

BC Bereavement Helpline

A non-profit society that helps people in BC cope with grief.

Toll-free: 1-877-779-2223
Email: contact@bcbh.ca
Web: bcbh.ca

Canada Revenue Agency
The publication *Preparing Returns for Deceased Persons* provides information and forms for those filing tax returns for a deceased person.

Toll-free: 1-800-959-8281
Web: canada.ca/en/revenue-agency.html

Clicklaw
Online resource offering one-stop access to legal information, education, and help for British Columbians from trusted organizations. Select the topic "Wills & Estates."

Web: clicklaw.bc.ca

Lawyer Referral Service
Service offering referrals to lawyers who can provide a half-hour consultation for free.

Lower Mainland: 604-687-3221
Toll-free: 1-800-663-1919
Email: lawyerreferral@accessprobono.ca

Public Guardian and Trustee of BC
This public body may agree to administer an estate when someone dies without a will.

700 - 808 West Hastings Street
Vancouver, BC V6C 3L3
Lower Mainland: 604-660-4444
Web: trustee.bc.ca

Self-Counsel Press
Publisher of do-it-yourself guides on legal topics, including the *British Columbia Probate Kit*, which includes the forms required for probate or administration and a step-by-step explanation of the process.

Web: self-counsel.com

Society of Notaries Public of BC
Offers a list of notaries in the province. A notary public can help certify legal documents.

Web: snpbc.ca

Glossary

Administrator: A person appointed by the court to deal with an estate where an executor is unable or unwilling to act, or there is no valid will.

Assets: Anything a person owns that has value. Assets can include things such as money, land, investments, and personal belongings such as jewelry and furniture.

Canada Pension Plan: A pension plan run by the federal government that pays benefits to workers or their families once the worker retires, is disabled, or dies. The amount of the benefits depends on how much someone contributed to the plan.

Death certificate: A certified extract of the registration of death. Survivors need to provide a death certificate to apply for benefits and to settle the legal and business affairs of the deceased.

Citation: A document demanding a response. In the context of probate and administration, a person interested in the estate may serve a citation to require the person served to apply for a grant of probate in relation to a deceased's will or other testamentary document.

Committee of estate: A person or body appointed by the court to make legal and financial decisions for someone who is mentally incapable and cannot manage their own affairs.

Deceased: A person who has died.

Descendant: A surviving person of the generation nearest to the deceased.

Designated beneficiary: A person named to receive money or property such as in a will, benefit plan or insurance policy.

Estate: The property and belongings a person owns upon their death — with some exceptions such as jointly-owned property.

Executor: The person named in a will to carry out its instructions and settle the will-maker's affairs after they die.

Grant of administration: A document issued by the court in an administration application certifying that the person named in the document has the authority to deal with the estate.

Heir: A person entitled to a share of the deceased's estate when there's no will. Under the law, an heir is called an intestate successor.

Joint tenancy: A way that property can be owned where each owner has the same interest in and an equal right to use the property. Usually, when one joint tenant dies, their share automatically passes to the other joint tenants.

Land title office: A physical office location in various cities across BC where you can register and search official property records using BC's land registration system.

Liabilities: Money a person owes. For example, a credit card balance, a car loan, or a mortgage.

Next-of-kin: A person's closest living blood relative or relatives.

Notice of dispute: A notice filed with the Supreme Court of BC to oppose a grant of probate or administration being issued by the probate registry. The registry may not issue a grant while a notice is in effect.

Old Age Security: A pension plan run by the federal government that pays benefits to Canadians age 65 and older.

Probate: A legal procedure to confirm that a will is valid and can be acted on. It allows financial institutions and others to rely on the will as being the last will made by the deceased.

Probate fees: Fees to be paid to the court based on the value of the estate. Probate fees must be paid before an estate grant will be issued.

Probate registry: The official record keepers of probate and administration applications for the Supreme Court of BC.

Public Guardian and Trustee: A public body established by law to protect the interests of British Columbians who lack legal capacity to protect their own interests.

Spousal home: The home the deceased and their spouse ordinarily lived in together. The deceased must have owned or co-owned the home.

Spouse: Under estates law in BC, people are considered spouses if they were married when the deceased passed away or in a "marriage-like relationship" for at least two years prior to death. Married people cease to be spouses if they were separated when the deceased passed away, and non-married spouses cease to be spouses if one of them ended the relationship.

Tenants-in-common: A way property can be owned where each owner holds a separate and distinct interest in the property. When a tenant-in-common dies, their share of the property is included in their estate.

Trust: A form of possession of property in which a person (the trustee) holds property for the benefit of another person (the beneficiary).

Will: A legal document that gives instructions about who should receive the property of the will-maker after they die, and on what conditions.

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	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
The information presented increased my understanding of the legal topic	○	○	○	○	○
I am confident that the information provided is reliable	○	○	○	○	○
The information helped me identify the next steps to take with my legal issue	○	○	○	○	○
I would recommend this publication to others	○	○	○	○	○

We welcome your feedback or suggestions _____

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