

The Probate Court for Nova Scotia

Questions and Answers

The Probate Act



Before you start

This guide gives general information about administering the estate of a deceased person. It does not explain the law. Court staff can give general information about how the court works, and court rules and procedures. Court staff cannot give legal advice. Speak to a lawyer for legal advice about your situation.

Probate Reform

As of October 1, 2001, Nova Scotia has a new probate system. There is a new act, with new regulations and new forms. The changes are meant to improve and modernize a system in place since 1842, when the original act of 1758 was first changed.

We tried to streamline the system and make it easier to use by

- moving procedural rules from the act to regulations
- adopting fill-in-the-blank forms
- creating self-help kits for routine estate applications
- computerizing file management at probate courts and registries throughout the province

Where to find the Probate Act and legal resources

The Probate Act is available in print from Service Nova Scotia (424-7580) and online at <http://www.gov.ns.ca/legislature/legc>.

Regulations and forms are available

- in print or on disk through the *Royal Gazette* (a subscription service)
- through the Registry of Regulations (for their usual fee)
- online at <http://www.gov.ns.ca/just/regulations/>

Additional information guides are available online at www.gov.ns.ca/just/repselmain.htm and at the Probate Court administration office:

- *Dealing with an Estate at Probate Court*
- *Checklist – Grant of Probate*

- *Checklist - Grant of Administration*
- *Checklist - Grant of Administration with Will Annexed*
- *Checklist - Passing the Accounts of an Estate in Probate Court*
- *How to Prepare the Final Account of the Personal Representative*

Many of the terms used in this guide are defined in the guide *Dealing with an Estate at Probate Court*.

For additional legal information or to consult a lawyer

- Lawyer Referral Service (Legal Information Society of Nova Scotia) 455-3135 in Metro and toll free 1-800-665-9779 in the rest of the Province for referral to a lawyer
- Dial a Law 420-1888 (not toll free if long distance) for general legal information
- www.legalinfo.org or 454-2198 for the Legal Information Society of Nova Scotia
- find a lawyer in the yellow pages of the phone book

Here are questions and answers that address some of the changes.

1. Does the new Probate Act apply to me?

If you apply for a grant of probate or administration on or after October 1, 2001, then the estate will be administered under the new act and system. Under the new system, the law relating to the inheritance of land has changed. However, the old system of land devolution still applies in some cases.

The old system will apply if the will for which you seek a grant is dated before October 1, 2001, or if there is no will and the deceased died before October 1, 2001.

The new system will apply if the will is dated October 1, 2001, or later, or there is no will and the deceased died on or after October 1, 2001. Under the new system, the land owned by the deceased is owned by the executor under the will or the administrator of the estate, in trust for the persons who are beneficially entitled to the land. The executor or administrator must deed the land to those entitled to it.

2. I am the executor/administrator for an estate opened under the old Probate Act before October 1, 2001. May the estate “opt in” to the new system?

No, it may not. The new act prohibits switching between the two systems (Section 106A (2)).

3. I made a will before October 1, 2001. Must I make a new one as a result of the new system?

No, you don't have to, but you may well want to. You should always review your will whenever your life or our laws change.

4. I understand the new Probate Act allows a witness to my will to sign an affidavit at any time after I have signed it, to swear that they saw me sign my will.

Yes, a witness may sign an affidavit just as soon as you have signed your will. An affidavit is a statement in writing that they swear that what they have written is true. They must sign it in the presence of a lawyer, a notary public, a Registrar or Deputy Registrar of the Probate Court, or by someone else who is selected by the Registrar of Probate. A commissioner of oaths cannot take the affidavit of the witness to a will.

5. My father died without a will and I live outside the province. Can I be appointed as administrator of the estate by the Probate Court ?

Yes, if you meet these requirements:

- Your father's spouse or other children, if any, must first renounce their right to be the administrator. We have forms that they must sign to do this.
- You must also get the written consent of the Public Trustee. We have a form for this, too.
- You may need to post security before the court allows you to be the administrator. (See question 9.)

6. I have been asked to be the administrator of a relative's estate, but I want to ask someone else to take on this role. Who may do the job?

The Probate Act allows you to nominate another person to be the administrator of the estate. You must have agreement from all other relatives who are also entitled to be the administrator, and the consent of the Public Trustee to the nomination. A form must be completed and signed for this. You may want to ask the Public Trustee to be the administrator because they are not required to post security.

7. My sister and I want to co-administer the estate of our deceased mother who died without a will. Our father died before she did. My sister lives outside Nova Scotia. Is this possible?

Yes, but you will need to get the Public Trustee to sign a renunciation form before your sister may be appointed by the court. You will also need to submit renunciations signed by your mother's other children, should there be any.

8. What if a child under the age of 19 is appointed the executor in a will?

A person cannot be an executor until they are an adult. In Nova Scotia, the age is 19. This is called the age of majority. Anyone less than 19 is called an infant. If the will provides for an alternate executor, the court can issue a temporary grant to that alternate executor. The child can apply for a grant once they turn 19.

If the will doesn't provide for an alternate executor, the Probate Act allows for the guardian of that child, or some other person, to apply for a temporary grant of administration with the will annexed. The child can apply for a grant once they turn 19.

9. When will an executor have to post security (be bonded) in order to obtain a grant of probate from the Court?

If the will is dated on or after October 1, 2001, then an executor who lives outside Nova Scotia will have to post security (be bonded) unless

- the deceased's will contains a direction removing this requirement OR
- there is a co-executor who lives in Nova Scotia OR

- all the beneficiaries named in the will are mentally competent adults and give their written consent to do away with the need for security

If the will predates October 1, 2001, then the executor who lives outside the province will not be required to post security (be bonded).

10. Does an administrator have to post security (be bonded) in order to get a grant of administration?

Yes, administrators must post security (be bonded) unless the administrator is the sole beneficiary of the estate.

11. How has the system of posting security (becoming bonded) for the responsibilities of a personal representative become more flexible?

If an estate is valued at \$100,000 or less, the personal representative will usually be required to find only one person willing to enter into a personal bond. If the value of an estate is greater than \$100,000, two people will normally be required as personal sureties. They may pledge in different amounts as long as the total surety value equals 1.5 times the value of the estate.

A personal representative may also obtain two or more different types of security thereby limiting the liability of any one surety. Registrars of Probate now accept bankers' letters of credit, as well as corporate guarantee bonds and personal sureties.

12. If security is required, how is the amount of the security calculated?

Security must be equal to 1.5 times the value of the estate. The value of the estate is calculated by adding the gross value of the deceased's personal property and the net value of the deceased's land located in Nova Scotia. Here, net value means the gross land value less the balance of mortgages and encumbrances registered at the Land Registration Office. For the purpose of calculating the value of the estate, mobile homes are considered part of the deceased's land.

13. I am the administrator of an estate. May my wife or I, or both of us, act as a personal surety for the estate? May my sibling(s) take on this role?

No, neither an administrator nor their spouse may be a surety for an estate. But the siblings of the administrator and other relatives may be sureties, as may others who are not related to you.

14. I understand that a personal representative is required to file an inventory of the estate assets within three months of the date the grant is issued by the Probate Court. What happens if they fail to do this?

The Registrar of Probate will send out a notice to the personal representative telling them to file the inventory. They will be given 30 days to do so. If they don't file within that time, then the Registrar may sign an order requiring that an inventory be filed immediately. If it is still not done, then anyone can apply to have that personal representative removed for failing to comply with an order of the court.

15. Will a personal representative have to file appraisals of estate assets with the Probate Court?

No, not unless a person with an interest in the estate requires one. In that case, they must make their request known to the personal representative. If there is a dispute about this between the personal representative and a person with an interest in the estate, then one of them may apply to the Probate Court to have appraisers appointed.

16. What does it mean to "close an estate"? Does every estate have to be closed in Probate Court?

To "close an estate" means to make an application to the Probate Court for approval of the accounts and the administration of the estate. Generally speaking, estates must be closed. The only exemption is in situations where all the unpaid beneficiaries under a will are adult and competent and all sureties (if any) agree in writing that an accounting is not required. In those cases, the personal representative must file the completed consent forms with the court and the court does not issue an order passing the accounts.

17. As the personal representative of an estate, can I “close an estate” without having a hearing?

Yes. A personal representative can do so by applying to the Probate Court to have their accounts passed by the Registrar without a hearing, as long as no one who has an interest in the estate files a Notice of Objection. After reviewing the accounts the Registrar will issue an order passing the accounts. This “closes the estate.”

18. What if the personal representative refuses to have the accounts passed by the court?

A person who has an interest in the estate may apply to the Probate Court for an order that requires the personal representative to have the estate accounts passed by the court. Usually, you must wait until 18 months after probate or administration was granted before you can apply.

19. Can a caveat be filed at the Probate Court under the Probate Act?

No. There is no caveat process in Nova Scotia and the Probate Act does not introduce one. Caveats will not be accepted for filing at the Probate Court. Other processes are available to claimants, creditors, and other interested persons who wish to object to the administration of an estate.

20. I am a common law spouse and have registered a domestic partner declaration with the Registrar of Vital Statistics. My spouse died without a will. May I apply to the Probate Court for a grant of administration?

Yes, if your domestic partnership is registered with the province, then you are treated as a spouse under the Probate Act. You have the same rights and obligations as a legally married spouse. This allows you to apply to the Probate Court to become the personal representative of your domestic partner’s estate.

21. My same-sex common-law partner died without a will. We had registered a domestic partner declaration with the Registrar of Vital Statistics. May I apply to the Probate Court for a grant of administration?

Yes, you would be considered spouses with the same rights and obligations as legally married spouses, under the Probate Act. You may apply to the Probate Court to become the personal representative of your domestic partner’s estate.

22. What does “designated a residence” mean in section 68 of the Probate Act ?

A designated residence is protected from being considered an “asset” for those who need provincial assistance for the cost of their nursing home care. The Social Assistance Act allows Nova Scotians owning homes to make a written statement that says they have lived in their home for at least two years and gives the civic address and description of the property from the property deed.

Section 68 extends this protection beyond death to the estate of a deceased who had designated a residence.

23. What is the effect of section 68 on the “designated residence” after death of its owner?

If you die owning the designated home, the terms of the will or the Intestate Succession Act provisions (if you die without a will) determine what happens to the home that has been “designated.” Under the Probate Act, your personal representative cannot convey, sell, or mortgage the home solely for the purpose of repaying assistance for nursing home care given to you by the province.

LOCATIONS OF PROBATE COURTS AND REGISTRIES

AMHERST JUSTICE CENTRE
Probate Court and Registry
16 Church Street
Amherst, N.S. B4H 3A6
Phone: 667-2256
Fax: 667-1108

ANTIGONISH JUSTICE CENTRE

Probate Court and Registry
11 James Street
Antigonish, N.S. B2G 1R6
Phone: 863-7396
Fax: 863-7479

BRIDGEWATER JUSTICE CENTRE

Probate Court and Registry
Location: 270 Logan Road
Bridgewater, N.S.
Mailing address: 80 Pleasant St.
Bridgewater, N.S. B4V 1N1
Phone: 527-5440
Fax: 527-5442

DIGBY/ANNAPOLIS JUSTICE CENTRE

Probate Court and Registry
Court House, 119 Queen St.
P.O. Box 1089
Digby, N.S. B0V 1A0
Phone: 245-7134
Fax : 245-6722

Probate Court and Registry
377 St. George Street
P.O. Box 129
Annapolis Royal, N.S. B0S 1A0
Phone: 532-5462
Fax: 532-7225

KENTVILLE JUSTICE CENTRE

Probate Court and Registry
87 Cornwallis Street
Kentville, N.S. B4N 2E5
Phone: 679-5339
Fax: 679-6178

HALIFAX JUSTICE CENTRE

Probate Court and Registry
Law Courts
1815 Upper Water Street
Halifax, N.S. B3J 1S7
Phone: 424-7422
Fax: 424-0524

PICTOU/NEW GLASGOW JUSTICE CENTRE

Probate Court and Registry
69 Water Street
P.O. Box 1750
Pictou, N.S. B0K 1H0
Phone: 485-4351
Fax: 485-6737

PORT HAWKESBURY JUSTICE CENTRE

Probate Court and Registry
15 Kennedy Street
Port Hawkesbury, N.S. B9A 2Y1
Phone: 625-4219
Fax: 625-4084

SYDNEY JUSTICE CENTRE

Probate Court and Registry
Suite 6, Harbour Place
136 Charlotte Street
Sydney, N.S. B1P 1C3
Phone: 563-3545
Fax: 563-5701

TRURO JUSTICE CENTRE

Probate Court and Registry
1 Church Street
Truro, N.S. B2N 3Z5
Phone: 893-5870
Fax: 893-6114

YARMOUTH JUSTICE CENTRE

Probate Court and Registry
403 Main Street, Court House
Yarmouth, N.S. B5A 1G3
Phone: 742-5469
Fax: 742-0678

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