

## TABLE 1

### Core Legal Services

1. Receiving instructions from the personal representatives.
2. Giving the personal representatives information and advice on all matters in connection with the administration of the estate, including the following:
  - (a) the basis for the lawyer's fees for the different categories of legal services;
  - (b) the basis for the personal representatives' compensation and preparation of the proposed compensation schedule;
  - (c) providing a copy of this Schedule to the personal representatives.
3. Reviewing the will or the provisions of the *Intestate Succession Act* with the personal representative.
4. Receiving information from personal representatives about the following:
  - (a) the deceased;
  - (b) the beneficiaries;
  - (c) the estate property;
  - (d) the deceased's debts;
  - (e) minors.
5. Obtaining details of all the property and debts of the deceased for the purposes of an application to the court, including the following:
  - (a) the full nature and value of the property of the deceased as at the date of death including the value of all land and buildings and a summary of outstanding mortgages, leases and any other encumbrances;
  - (b) any pensions, annuities, death benefits and any other benefits;
  - (c) any debts owed by the deceased as at the date of death;
  - (d) preparing all required documents for grant applications;
  - (e) preparing notices to all beneficiaries;
  - (f) arranging for surviving spouse to receive notices under the Dependents Relief Act and Matrimonial Property Act, if necessary;
  - (g) arranging for dependants to receive notices under the Family Relief Act, if necessary;
  - (h) attending on signing of application for grant, filing with the court, payment of fees and dealing with the clerk;
  - (i) advising the Public Trustee, if necessary;
  - (j) receiving the grant.
6. Preparing documents to advertise for claimants, arranging for advertising and obtaining affidavit of publication.
7. Preparing declarations of transmission and powers of attorney for stocks and bonds transferable under the Alberta grant.
8. Preparing transmission and transfer documents for land transferable under the Alberta grant.
9. Preparing all other documents required to transmit and transfer property transferable under the Alberta grant.
10. Advising the personal representatives on any trusts required by the will.
11. Advising the personal representatives to prepare and file tax returns.

12. Confirming receipt of clearance certificate from Revenue Canada.
13. Submitting personal representatives' financial statements for approval to the beneficiaries on an informal basis.
14. Preparing releases and obtaining and filing them with the court if so instructed by the personal representatives.
15. Generally advising the personal representatives on all matters referred to in this Table.

**TABLE 2**  
**Non-Core Legal Services**

1. Acting as conveyancing lawyer on any sale of land.
2. Acting as lawyer on the sale of other property or businesses.
3. Preparing personal representatives' financial statements for submission to residuary beneficiaries.
4. Preparing all documents and acting for the personal representatives in any court proceedings involving the estate, including but not limited to the following:
  - (a) formal proof of a will;
  - (b) formal passing of accounts;
  - (c) all other contentious matters.
5. Negotiating with any taxing authorities in Alberta or elsewhere with respect to the assessment and payment of any taxes or duties levied against the deceased, the estate or the beneficiaries and preparing all documents in connection with the negotiations.
6. Arranging to obtain a resealed or ancillary grant in another jurisdiction.
7. Preparing all documents and obtaining a resealed or ancillary grant in Alberta.
8. Preparing all documents and obtaining a grant of double probate.
9. Preparing all documents and obtaining a grant of trusteeship of minors' estates.
10. Dealing with any claims by claimants.
11. Setting up any trusts required by the will and arranging for the reimbursement of the trustees for services rendered to the trusts.
12. Identifying property not forming part of the estate but passing by survivorship or passing directly to a named beneficiary outside the will, including
  - (a) preparing documentation to transfer land and other property held in joint tenancy to the surviving tenants;
  - (b) preparing document to pass property to designated beneficiaries outside the will.
13. Arranging for any other legal services not included in Table 1.
14. Generally advising the personal representative on all matters referred to in this Table.

## Schedule to Estate Administration Act - Core Tasks

- 1 Identifying the estate assets and liabilities** may include, but is not limited to,
  - (a) arranging with a bank, trust company or other financial institution for a list of the contents of a safety deposit box,
  - (b) determining the full nature and value of property and debts of the deceased person as on the date of death and compiling a list, including the value of all land and buildings, a summary of outstanding mortgages, leases and other encumbrances, and online accounts, and
  - (c) applying for any pensions, annuities, death benefits, life insurance or other benefits payable to the estate.
- 2 Administering and managing the estate** may include, but is not limited to,
  - (a) creating and maintaining records,
  - (b) regularly communicating with beneficiaries concerning the administration and management of the estate,
  - (c) examining existing insurance policies, advising insurance companies of the death and placing additional insurance, if necessary,
  - (d) protecting or securing the safety of the estate property,
  - (e) providing for the protection and supervision of vacant land and buildings,
  - (f) arranging for the proper management of the estate property, including continuing business operations, taking control of property and selling property,
  - (g) retaining a lawyer to advise about the administration of the estate,
  - (h) applying for a grant in accordance with this Act or applying to bring any matter or question before the Court if appropriate or necessary for the administration of the estate,
  - (i) commencing or defending a claim on behalf of the estate,
  - (j) preparing and providing financial statements, and
  - (k) performing any other duties required by law.
- 3 Satisfying debts and obligations of the estate** may include, but is not limited to,
  - (a) determining the income tax or other tax liability of the deceased person and of the estate, filing the necessary returns, paying any tax owing and obtaining income tax or other tax certificates before distributing the estate property,
  - (b) arranging for the payment of debts and expenses owed by the deceased person and the estate,
  - (c) determining whether to advertise for claimants, checking all claims and making payments as funds become available, and
  - (d) taking the steps necessary to finalize the amount payable if the legitimacy or amount of a debt is in issue.
- 4 Distributing and accounting for the administration of the estate** may include, but is not limited to,
  - (a) determining the names and addresses of those beneficially entitled to the estate property and notifying them of their interests,
  - (b) informing any joint tenancy beneficiaries of the death of the deceased person,
  - (c) informing any designated beneficiaries of their interests under life insurance or other property passing outside the will,
  - (d) administering any continuing testamentary trusts or trusts for minors,
  - (e) preparing the personal representative's financial statements, a proposed compensation schedule and a proposed final distribution schedule, and
  - (f) distributing the estate property in accordance with the will or intestate succession provisions.

# Alberta Surrogate Rules

## Part 2

### Lawyers' Compensation

1. A lawyer may charge fees for the following categories of legal services in the administration of estates:
  - (a) core legal services;
  - (b) non-core legal services.
2. A lawyer may charge fees for legal services that involve carrying out personal representatives' duties.
3. (a) The lawyer and the personal representatives must agree to the categories of service that the lawyer will perform and to an arrangement or amount for each category of fees, disbursements, and other charges.
  - (b) The fees agreed to must cover, up to the time of distribution of the estate,
    - (i) all the core legal services or non-core legal services,
    - (ii) any personal representatives' duties required to be performed by the lawyer, and
    - (iii) any other services required to be performed by the lawyer.
4. When a lawyer is also appointed as the personal representative under a grant, the lawyer may charge additional fees for any core and non-core legal services performed by the lawyer as a lawyer.
5. The following factors are relevant when determining the fees charged by or allowed to a lawyer:
  - (a) the complexity of the work involved and whether any difficult or novel questions were raised;
  - (b) the amount of skill, labour, responsibility and specialized knowledge required;
  - (c) the lawyer's experience in estate administration;
  - (d) the number and importance of documents prepared or perused;
  - (e) whether the lawyer performed services away from the lawyer's usual place of business or in unusual circumstances;
  - (f) the value of the estate;
  - (g) the amount of work performed in connection with jointly held or designated assets;
  - (h) the results obtained;
  - (i) the time expended;
  - (j) whether or not the lawyer and the personal representative concluded an agreement and whether the agreement is reasonable in all the circumstances.
6. Reasonable costs incurred by a lawyer as disbursements and other charges in performing services in any category are allowed in addition to any fees charged.
7. (a) A lawyer must present a written statement of fees, disbursements and other charges to the personal representative, showing the details of the services performed, together with a copy of this Part.
  - (b) If the personal representative is required to give the beneficiaries of an estate an accounting in which legal fees are shown, the personal representative must give them a copy of this Part.
8. (a) The lawyer of the personal representative may have the lawyer's account reviewed by the taxing officer under rules 627 to 658 of the *Alberta Rules of Court* (Alta. Reg. 390/68).
  - (b) The taxing officer of the court may review fees, disbursements and other charges and may increase or decrease any of them.

## The Process

The primary responsibilities of the Personal Representative of a deceased person are to take control of the property of the deceased, pay any outstanding debts (including taxes) and distribute the property to the person or persons who are entitled to receive it.

In this Estate, an application for a Grant of Probate will be necessary because there are large account balances in the Estate. The Grant of Probate will confirm that the Will is the last valid Will of the Deceased and will confirm your authority to deal with all the property and debts of the Deceased.

Although each estate is unique, there are a number of standard steps that must be taken when a grant is required.

1. **Gathering Information:** the application for a grant and the administration of an estate require extensive information about the Deceased, the family, the Personal Representative, the Will and the witnesses to the Will (if there is one), the beneficiaries, and the Deceased's property. We can usually get most of this information from the Personal Representative. However, sometimes we have to communicate with financial institutions which are governed by privacy policies that restrict their ability to disclose client information. We may therefore have to ask you for an Authorization re Release of Information.
2. **Preparing the Surrogate Court Application:** The Surrogate Rules prescribe the forms that must be prepared for an Application for a grant of Probate. The requirements of the law and the Court with respect to the content of the Application are very technical and require a thorough understanding of numerous legal principles, so this is not just a matter of "filling in some paperwork".
3. **Submitting the Application to Surrogate Court:** When all the information has been obtained and the forms prepared, we will arrange for you to review and sign the Application. We will then submit the Application to the Surrogate Court. We will also serve the notices required under the Surrogate Rules on the beneficiaries and others entitled to a notice.
4. **Processing by the Surrogate Court:** The Surrogate Court clerks review the Application before it is submitted to a judge. This review is very technical. If the clerks disagree with the way we have prepared the Application, they will "bounce" it. If we agree with the clerk's comments, we make the suggested corrections. Sometimes the clerks misinterpret the legal requirements, particularly where the facts of the situation are out of the ordinary; in those cases, we respond to the rejection notice with written submissions that go to the judge. The judge issues the Grant when he or she is satisfied with the Application. It can take up to a month from the time of submission to the issuance of the Grant. This process is sometimes frustrating for both applicants and their lawyers, but unless there is an urgent need for immediate action, there isn't anything that can be done about it.
5. **Obtaining the Order:** When the Application has been accepted and the Grant is ready to be issued, the Surrogate Court notifies us that it is ready and advises us of the amount required for Surrogate fee and certified copies. The Surrogate fee is on a sliding scale, with a maximum of \$525.00 on an estate of more than \$250,000.00.
6. **Administering the Estate:** Once you have the Grant, you can take possession of, liquidate and/or transfer the property of the Deceased, deal with creditors and taxes, and distribute the property pursuant to the Will. We will assist you with this process. The normal expectation is that it can take up to a year to administer an estate.

7. **Taxes:** as Personal Representative, you are responsible for filing the Deceased's tax returns. This includes all tax returns that the Deceased may not have filed before dying, as well as the final tax return and, if necessary, an estate ("T3") return. Once all the tax returns have been filed and assessed by CRA, and the taxes paid, you can get a clearance certificate from CRA acknowledging that you have completed your responsibilities as Personal Representative and are no longer personally responsible for the Deceased's taxes.
8. **Distributing the Estate:** Gifts of specific amounts of money or specific properties can be paid out or transferred when you are sure that you have complete information about the Estate's debts and tax exposure. The final step in the administration is distributing the residue of the Estate. To close out the Estate, we may prepare (with your assistance) a Distribution Spreadsheet showing
  - ❖ all money coming into and out of the Estate,
  - ❖ any holdback,
  - ❖ any compensation claimed, and
  - ❖ the amount you propose to pay to each beneficiary.

If there are residuary beneficiaries who are not Personal Representatives, we will send the Distribution Spreadsheet, along with release forms to the beneficiaries to sign. When all the beneficiaries have signed and returned their releases, you or we will distribute the Estate. If any beneficiaries refuse to sign releases, we will prepare a court application to ask a judge to approve distribution of the estate. There is an extra cost to the Estate if a court application is required.

### Your role as Personal Representative

As Personal Representative, you step into the shoes, legally, of the Deceased. Your authority is set out in the *Estate Administration Act* as follows:

*20(1) Subject to the will, if any, and this Act or any other enactment, a personal representative has the following authority in regard to the property included in the estate of the deceased person:*

- (a) to take possession and control of the property;*
- (b) to do anything in relation to the property that the deceased person could do if he or she were alive and of full legal capacity;*
- (c) to do all things concerning the property that are necessary to give effect to any authority or powers vested in the personal representative.*

*(2) Any action taken, decision made, consent given or thing done by a personal representative with respect to a matter within the personal representative's authority has the same effect for all purposes as if the deceased person had taken the action, made the decision, given the consent or done the thing while he or she was alive and of full legal capacity.*

Section 5(1) of the *Estate Administration Act* sets the standard for judging your performance as Personal Representative:

*5(1) A personal representative must*

- (a) perform the role of personal representative*

- (i) *honestly and in good faith,*
  - (ii) *in accordance with the testator's intentions and with the will, if a valid will exists,*  
*and*
  - (iii) *with the care, diligence and skill that a person of ordinary prudence would*  
*exercise in comparable circumstances where a fiduciary relationship exists,*  
*and*
- (b) *distribute the estate as soon as practicable.*

As a Personal Representative, you are a fiduciary because you administer the Estate for the benefit of the beneficiaries and others with claims against the Estate, such as creditors and the tax authorities.

Since you are a fiduciary, you must act only in the interests of the Estate beneficiaries and others with claims, and not for your own benefit. You must carry out your duties with complete neutrality and utmost good faith.

You must act with complete transparency. The residuary beneficiaries of the Estate are entitled to complete disclosure of everything you do in the administration of the Estate.

You are required to act with *ordinary prudence*. If you act negligently or illegally, the Court can hold you personally responsible for losses of the Estate or the beneficiaries.

You are entitled to seek expert assistance, such as legal, appraisal, accounting, investment and tax advice. However, you cannot delegate decision-making responsibility, with two exceptions:

- if the Will specifically allows delegation
- if you comply with section 5 of the *Trustee Act* regarding investment decisions

You are required to act with reasonable diligence so you can distribute the Estate as soon as practicable.

You have to determine and pay debts and taxes of the Estate. You can contest claims you disagree with, but if you distribute the Estate without dealing with debts you are aware of, you can be held personally responsible.

You must account for everything you do as Personal Representative on behalf of the Estate. You do this by producing a detailed accounting of all financial transactions.

Turning Point Law lawyers and staff can give you sound legal advice and practical guidance to help you administer the Estate properly. We can also help you fulfill your accounting duties.

Finally, section 7(1) of the *Estate Administration Act* outlines your core duties as follows:

*7(1) The core tasks of a personal representative when administering an estate are*

- a) to identify the estate assets and liabilities,*
- b) to administer and manage the estate,*
- c) to satisfy the debts and obligations of the estate, and*
- d) to distribute and account for the administration of the estate.*

The *Estate Administration Act* also contains a schedule that outlines the Personal Representative's core duties in more detail, which is attached to this letter.