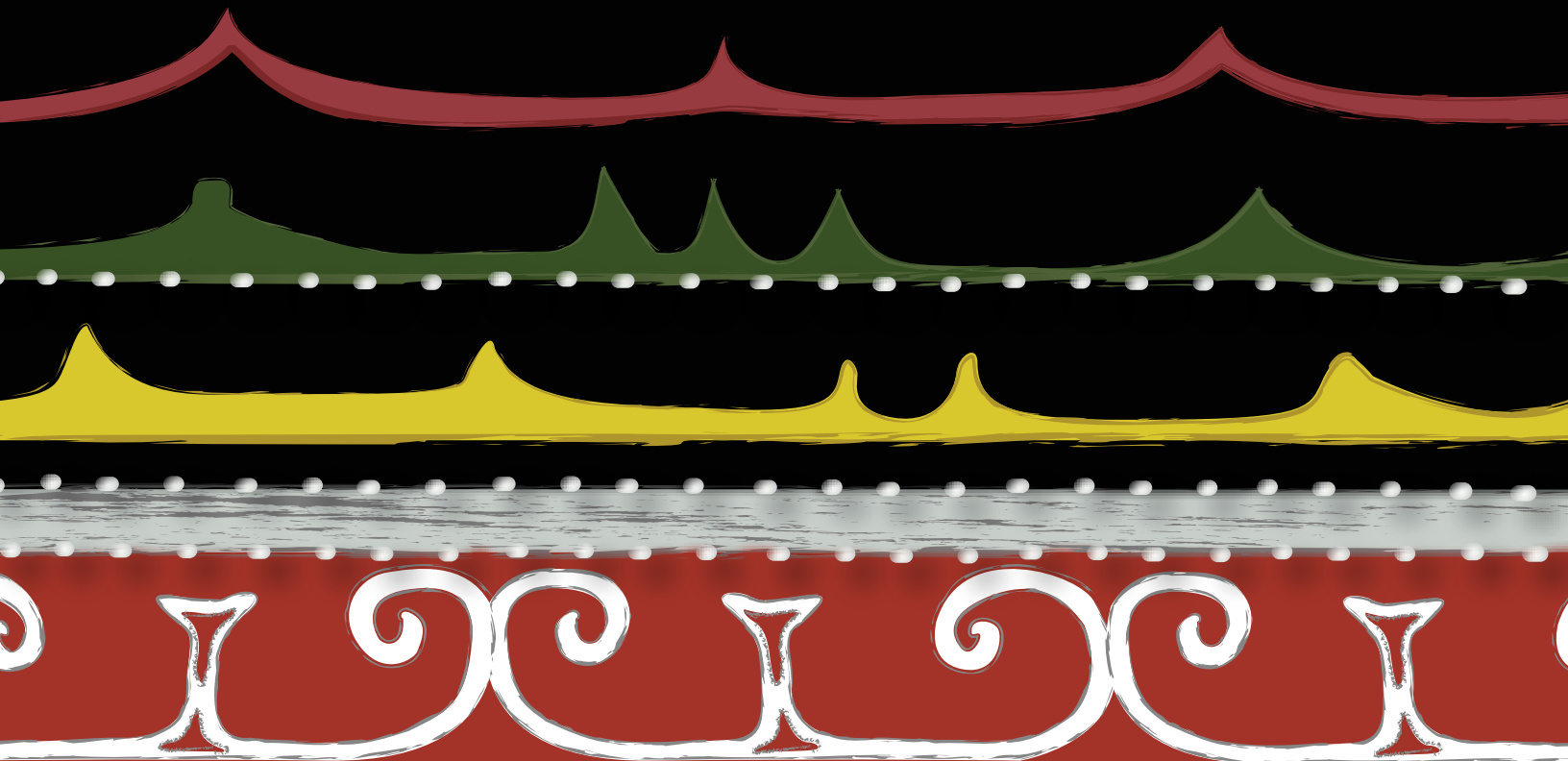




Mi'kmaw Wills & Estates:

A Guide For Nova Scotia Mi'kmaq Book Two: How to Settle an Estate

March 2012

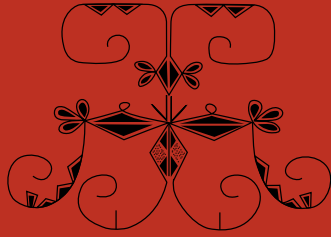


IMPORTANT

This publication contains general information and educational material about Wills and Estates to assist you in writing your own Will. We have avoided technical legal jargon in order to provide a practical plain language publication accessible to non-lawyers. It does not provide specific legal advice. You may have a very unique set of circumstances, and should you have specific legal questions about your Will or your Estate, we recommend that you speak to a lawyer.

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Introduction

If you're faced with wrapping up the affairs of a loved one who has died, you may feel overwhelmed by all the work involved, especially when you're grieving. But with the right legal and practical information, you can do it.

This guide will take you step by step through the process that you must complete if you are named an **Executor**. It will show you how to get organized, find the help you need, and make progress towards settling the **Estate**. For example, it will explain how to:

- Work with Aboriginal Affairs and Northern Development Canada (AANDC), lawyers, appraisers, and so forth;
- Claim the deceased's life insurance, pension(s), and other benefits;
- Handle an Estate when there is no **Will**;
- File final death taxes;
- Distribute the Estate.

Additionally, this guide will give you helpful advice about what to expect, what decisions you'll need to make, when to ask for help, and what questions to ask. Always remember that, as an Executor, you are in complete control of the process. Take seriously the responsibility that your loved one has entrusted you with, and do not rush. It is important that you take it one step at a time.

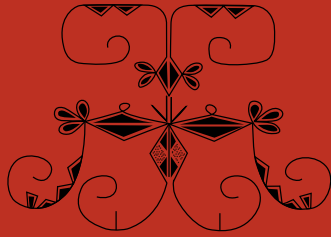
This guide does not offer legal advice; it is for general information only. As such, if you have a specific question regarding your circumstances we recommend that you speak with a lawyer.

Executor: The person named in a Will to carry out the Will's instructions or to administer the Estate. More than one Executor can be named in a Will.

Estate: Any property the deceased owned at the time of his or her death (e.g., home, car, bank accounts, household goods, investments, etc.). The deceased's debts also form part of his or her Estate.

Will: A legally binding document written by the deceased that describes how he or she wants his or her property to be distributed and debts paid after death. The document will also name an Executor, who will be responsible for carrying out the deceased's final wishes.





Part One

What is an Executor?

Have you been named an Executor of an Estate? Or have you been asked by AANDC to act as an Executor? The decision of whether or not to accept this role is a difficult one to make. This is especially true if you are not sure what an Executor is and what responsibilities come with the role.

An Executor is responsible for settling the Estate of a deceased person. The role may include the following duties:

- Interpreting and carrying out the terms of the Will;
- Providing notice of death to banks, employers, pension programs, etc.;
- Gathering and protecting **Assets**;
- Paying any and all debts;
- Filing the final personal and Estate tax returns;
- Determining all **Beneficiaries** and **Heirs**;
- Carrying out transfers of Assets;
- Selling Assets, if necessary, to cover debts;
- Distributing gifts according to the Will or according to the provisions in the *Indian Act* on **Intestacy**.

An Executor has a legal duty to act in the best interests of the Estate and all of its Beneficiaries and/or Heirs. As Executor, you may be held personally liable for **Negligent** acts while administering the Estate.

The Executor of an Estate of a **Status Indian** who is **Ordinarily Resident on Reserve** must be appointed by AANDC. Even if the Will names an Executor, this person must still be officially appointed by AANDC. It is important that you do not do anything that would lead people to think you are going to act as the Executor before AANDC has approved the Will and your appointment. If you accept the role of Executor and later change your mind, you can renounce your appointment by notifying AANDC in writing.

Assets: Everything a person owns, including Real and Personal property, such as land, vehicles, bank accounts, pensions, jewelry, art, crafts, household goods, etc.

Beneficiary: A person who is given a gift or who inherits under a Will. There can be more than one Beneficiary.

Heir: For the purposes of the *Indian Act*, an Heir is a person who is legally entitled to a share of the deceased's Estate when there is no Will.

Intestacy/Intestate: Means that a person has either died without making a Will or has made a Will that is not valid.

Negligent: A person's failure to exercise the degree of care in a situation that a reasonably cautious person would have exercised in the same circumstance.

Status Indian: A person who is registered, in accordance with the *Indian Act*, in the Indian registry system that is maintained by AANDC.

Ordinarily Resident on Reserve: This means that a person has a) never lived away from the reserve; or b) lived off the reserve for a period of time in order to attend school, to work, to receive medical attention, or to serve in the military; or c) lived off reserve for most of his or her life but moved to the reserve and was living on reserve at the time of death. AANDC has jurisdiction over the Estates of Status Indians who are Ordinarily Resident on Reserve.

Professional Assistance for Executors

If there are adequate financial resources in the Estate, you can hire professionals to help you fulfill your duties. The decision to hire a professional should not be made until you have completed an inventory of the Estate's Assets because the inventory will determine whether or not there are enough funds to hire a professional.

A. Legal Counsel

Most Wills give the Executor the authority to hire a lawyer to help them settle the Estate. However, even if the Will does not specifically give you this authority, you are still permitted to hire a lawyer. Any legal fees incurred are charged to the Estate and not to you personally. Some circumstances may arise during the administration of the Estate that require professional legal advice, including the following:

- Family disputes over the Will or the distribution of Assets;
- The deceased owns **Property** located off reserve;
- The deceased was the owner and operator of a business;
- The Estate is being sued.

For more information on "Hiring a Lawyer," see page 27.

B. Notary Public

As an Executor, you may require the services of a **Notary Public** to obtain certified copies of original documents, such as a Will or **Death Certificate**. A certified copy of a document is a photocopy of the original document that has been examined, stamped, and signed by a Notary Public. Some Notaries may charge a small fee for certifying copies.

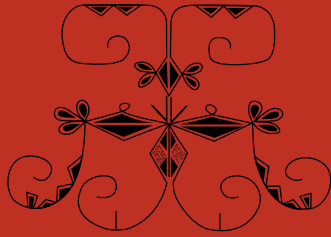
To find a Notary Public, look in the Yellow Pages under Notaries Public.



Property: Land, possessions, and other items over which a person has legal ownership. A person must have legal ownership of any items he or she wishes to leave to someone in his or her will. This means that he or she is recognized and is held responsible by law as the owner of the property. There are two forms of property: Real Property and Personal Property.

Notary Public: A person authorized by the government to notarize important documents as well as certify copies of an original document.

Death Certificate: An official document issued by the Nova Scotia Department of Vital Statistics that sets out specific information about the deceased (i.e., name, address, date of birth, etc.) and about his or her death (i.e., date of death, place of death, etc.).



Part Two

The Role of Aboriginal Affairs and Northern Development Canada

Administering an Estate under the *Indian Act*

The *Indian Act* establishes rules for making Wills and administering Estates that apply to all Status Indians who are Ordinarily Resident on Reserve. Thus, when someone who is considered a Status Indian dies, AANDC must be contacted immediately. In the past, AANDC would administer these Estates. However, over time, AANDC has taken a step back. They are now an “Administrator of Last Resort.” As a result, if a family member or a friend accepts the role of Executor, AANDC’s role is reduced to:

- Determining if it has jurisdiction over the Estate;
- Approving the deceased’s Will;
- Appointing the **Executor** or **Administrator** to administer the Estate;
- Resolving complaints from Beneficiaries and/or Heirs.

Each of AANDC’s roles will be discussed in detail below.

A. Determining Jurisdiction

To assume jurisdiction over an Estate, AANDC must first confirm that the deceased was a Status Indian. To do this, AANDC will confirm if the deceased was registered or entitled to be registered in the **Indian Registry**. If the deceased was registered or entitled to be registered in the Indian Registry they will be confirmed as a Status Indian.

Once the deceased is confirmed as a Status Indian, AANDC must then determine whether or not that person was Ordinarily Resident on Reserve at the time of death. To be considered Ordinarily Resident on Reserve, the individual must have met one of the following conditions:

- Lived on the reserve his or her whole life;
- Lived off reserve for a period of time to attend school, to work, to receive medical attention, or to serve in the military but had the intention of returning to the reserve;
- Lived off reserve for most of his or her life but later moved to the reserve and was living on reserve at the time of death.

Executor: The person named in a Will to carry out the Will’s instructions or to administer an Estate. More than one Executor can be named in a Will.

Administrator: A person appointed by AANDC to administer an Estate when there is no Will.

Indian Registry: A system that contains the names, addresses, dates of birth, and dates of death of all individuals who are entitled to be registered as an Indian under the *Indian Act*.

If AANDC finds that the deceased was a Status Indian Ordinarily Resident on Reserve, then it will have exclusive jurisdiction over the deceased's Estate. However, if AANDC finds that the deceased was not a Status Indian or was not Ordinarily Resident on Reserve, it will have no further role in settling the deceased's Estate. When this determination has been made, AANDC will send a letter to the Heirs of the deceased advising them that AANDC has no jurisdiction and that the Heirs must contact the **Provincial Court of Probate** to have the Estate settled.

Additionally, AANDC can, at its discretion, decide either to accept jurisdiction or transfer responsibility for the Estate over to the Provincial Court of Probate, or an Executor or family member can initiate the transfer of jurisdiction by applying to the Minister of Indian Affairs. This transfer could occur if the following circumstances were to arise:

- The Estate is going to be involved in court proceedings (e.g., a lawsuit);
- There is a challenge to the Will because of a family conflict;
- The deceased owned Property off reserve (e.g., land or businesses);
- The deceased's family has made a written request to transfer jurisdiction to the Provincial Court of Probate.

When the jurisdiction of an Estate is transferred to the Probate Court, the Court administers the deceased's Property located on reserve according to the *Indian Act*. However, any Property located off reserve is administered according to provincial laws.

B. Approving the Will

Once AANDC assumes jurisdiction, it will then determine whether or not the deceased had a Will. This is an easy task if the deceased told someone that he or she made a Will and where it is located. Any document that is signed by the deceased that expresses his or her intent with regards to giving away his or her Assets after death could be considered a Will. Once a Will has been located, the original signed document should be sent to the **Estates Officer** at AANDC. The Executor should also keep a certified copy on file.

C. Appointing an Executor

In the process of appointing the Executor of an Estate, AANDC will first determine whether or not the deceased's Will is valid and whether or not a person has

Provincial Court of Probate:

A provincial court that is responsible for all Wills and Estates matters in Nova Scotia. For example, it is responsible for determining the validity of a Will as well as approving an Executor's appointment.

Estates Officer: An Indian Affairs employee who is responsible for handling Wills and Estates matters.



been named as Executor in that Will. Once AANDC finds that the Will is valid, it will officially appoint the person named as the Executor of the Estate.

If there is no Will or no one named as Executor in the Will, or if the named Executor is unable or unwilling to do the job, then AANDC must search for someone to administer the Estate. AANDC will first contact the deceased's Beneficiaries and/or Heirs and provide them with the opportunity to apply for the role. The Heirs and/or Beneficiaries may also nominate someone else to take on the role. In determining the suitability of a possible Executor, the Beneficiaries and/or Heirs should consider the following factors:

- Whether or not the applicant will benefit from making sure the Estate is settled appropriately;
- The size of the applicant's interest in the Estate;
- Whether or not the applicant has been convicted of a criminal offence;
- The location of the applicant and the location of the Assets;
- Whether or not the applicant can read, write, and understand important documents;
- Whether or not there are any potential conflicts of interest.

Once the appointment of an Executor has been made, he or she will then be responsible for settling the Estate.

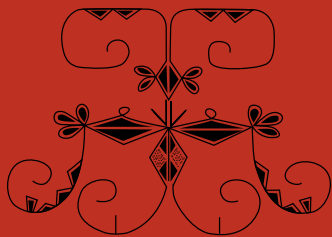
D. Resolving Complaints

AANDC can answer any questions or resolve any written complaints about the appointment of an Executor or the administration of an Estate. Complaints can include:

- A request to void the deceased's Will;
- A request to remove an Executor;
- A request for an accounting of the Estate's Assets.

Once a complaint is made, AANDC will determine whether or not it is relevant to the administration of the deceased's Estate. If the complaint is relevant and can be proven with evidence, AANDC will request that the person named in the complaint respond in writing. Once all parties have submitted their positions, AANDC will analyze all the facts and the evidence submitted and then make a decision.





Part Three

Gathering & Protecting Assets

As an Executor, it is your job to collect and take care of the deceased's Property, pay his or her debts, and distribute what's left to the Beneficiaries and/or Heirs. Although this seems straightforward, you will need to be organized to fulfill your legal obligations as an Executor.

Opening an Estate Account

An important first step in gathering and protecting the Assets of an Estate is to establish an **Estate Account** at a local bank of your choice. If you are the sole Executor, you should have sole signing authority on the Estate Account. However, if you are acting with another person as a **Co-Executor**, the Estate Account should bear both names. All financial matters and business concerning the settlement of the Estate (e.g., paying debt or depositing wages, pension benefits, insurance proceeds, proceeds of sale, etc.) will operate from this account.

As an Executor, you must make account to the Beneficiaries and/or Heirs by providing them with a full report on the administration of the Estate, including transactions involving the Estate Account. This report must include what the Estate has received and spent, what investments have been made, which debts have been paid, and so forth.

Taking Inventory & Locating Assets

As an Executor, you are responsible for completing an inventory of all the Assets owned by the deceased. This list will include all **Personal Property** and **Real Property** owned by the deceased at the time of his or her death. It is important that you conduct a thorough investigation of all Assets belonging to the deceased.

If any Assets are held jointly under a **Joint Tenancy** agreement, you will need to examine the Will and the tenancy agreement (e.g., bank forms or deeds) to determine if the deceased's share passes to the Estate or to the surviving joint holder. If the deceased's share passes to the surviving joint holder, then these Assets will not form part of your list because they are not part of the Estate. Instead, the Asset will transfer

Estate Account: An account held in the name of the deceased that is administered by an Executor or personal representative of the Estate.

Co-Executor: When there is more than one person named in a Will to carry out the Will's instructions or to administer an Estate, each person named is a Co-Executor.

Personal Property: A person's personal possessions, such as household goods, vehicles, bank accounts, jewelry, etc.

Real Property: An interest in land, a home, or a building.

Joint Tenancy: A form of ownership in which two or more people own the same piece of property. If one of the joint owners dies, the other owner(s) automatically receives the deceased person's share of the property.

to the surviving joint holder in accordance with the Joint Tenancy agreement. If you are aware of any Assets that are held jointly, you should obtain a copy of the agreement for your records.

The list also needs to include the approximate value of each Asset. For those Assets that are of high value, it is recommended that you hire a professional appraiser to help you accurately value the Assets.

Protecting Assets

As Executor, you are responsible for physically protecting all Assets.

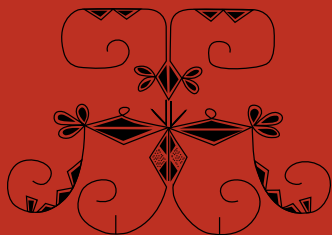
You will need to make sure that the smaller Assets are stored safely in, for example, fireproof safes or safety deposit boxes. Larger Assets, such as cars, boats, and houses, should be secured by changing the locks or installing alarms to prevent theft or damage, where appropriate.

You can protect liquid Assets, such as money kept in bank accounts, by contacting the bank as soon as possible and identifying yourself as the Executor. Ask what the bank requires from you in order to close the deceased's accounts, including any investment accounts or credit cards. You must close the accounts in order to prevent an unauthorized person from accessing them.



You can also protect an Asset by insuring it. Check the deceased's papers for any insurance policies that may have been taken out on Assets. If the Estate includes a home that will not be lived in while the Estate is being settled, the policy purchased should include a "Vacancy Rider" – this is a clause that insures the home in the event of theft or damage when it is left empty for a long period of time.

Having the Assets insured will guarantee that the Estate will receive compensation and that you will not be held liable should the Assets somehow be damaged, destroyed, or lost. All costs incurred from purchasing insurance will be covered by the Estate.



Part Four

Claiming Benefits

The deceased's Estate may be entitled to a number of benefits that are payable after death. In order to determine eligibility for certain **Death Benefits**, you should investigate the deceased's employment status and/or military background. Additionally, you will want to find out if the deceased held any pension plans, life insurance policies, or employee group benefits.

Pension Plans

A. Canada Pension Plan and Old Age Security Benefits

If the deceased was contributing to or collecting from the **Canada Pension Plan** (CPP), Old Age Security (OAS), or the OAS supplement, Service Canada should be notified of his or her death. The Death Benefit is a one-time payment available to the Estate to assist with funeral costs and/or an Estate settlement. It is your responsibility to stop the payments being made to the deceased and to apply for the Death Benefit on behalf of the Estate. You should request that the cheque be issued to the Estate.

For more information, contact Service Canada at 1-800-277-9914 or online at www.servicecanada.gc.ca.

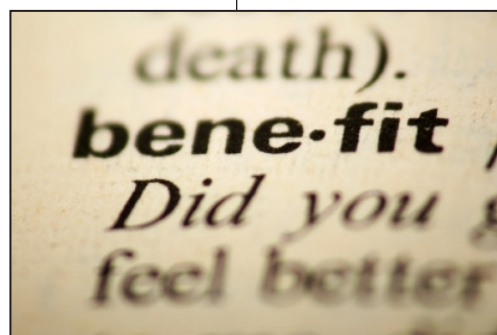
B. American Pension Plans

If the deceased was receiving pension benefits from the U.S., the U.S. Social Security office must be notified of his or her death. When contacting the U.S. Social Security office, you should have the deceased's Social Security number ready. As with CPP and OAS in Canada, the deceased's entitlement to regular benefits ends at the time of death.

For more information, contact the U.S. Social Security Office at 1-202-990-4530 or online at www.ssa.gov.

Death Benefits: A payment made by the government to, or on behalf of, the Estate of a deceased contributor.

Canada Pension Plan: A federal government program where contributors pay into a fund during their working years and are then provided a monthly taxable benefit by the government when they retire.



C. Employer Pension Plans

If the deceased was employed at the time of death, he or she may have held an employee pension plan. Contact the deceased's employer to determine if there was a pension plan, and make arrangements to get copies of the paperwork to confirm the Beneficiary designation. Some companies and/or unions will offer Death Benefits to the Estate or survivors of the deceased, so be sure to ask about these.

Military Benefits

A. Veterans Affairs Canada

Veterans Affairs Canada may provide disability benefits, pension benefits, Death Benefits, and/or **Survivor Benefits** to **Veterans**. If you know the deceased was a Veteran, you should immediately contact the Veterans Affairs District Office to determine whether or not the deceased qualified for any benefits. Before contacting Veterans Affairs Canada, you should acquire the deceased's **Military Service Number** or a record of military service.

For more information on applying for assistance or benefits, contact Veterans Affairs Canada by phone at 1-866-522-2122 or online at www.vac-acc.gc.ca.



Veteran's Monument in Millbrook First Nation Community

B. United States Department of Veterans Affairs

The U.S. Department of Veterans Affairs may provide assistance for burial expenses depending on whether the death was service related or not. For more information on Veterans Death Benefits in the U.S., contact the Department of Veterans Affairs at 1-802-296-5177 or online at www.va.gov.

Survivor Benefits: A monthly payment (i.e., pension) paid to the surviving spouse or common-law partner of a deceased contributor.

Veteran: Someone who has served in the Canadian Armed Forces, including the Air Force, the Navy, and the Royal Canadian Mounted Police. In the United States, a veteran is someone who was enrolled in active service as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the Public Health Service, Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration.

Military Service Number: A number assigned to a current or former serving member of the Canadian Armed Forces. It identifies a person as a member of the military and is used on most correspondence from the Department of National Defence or Veterans Affairs.

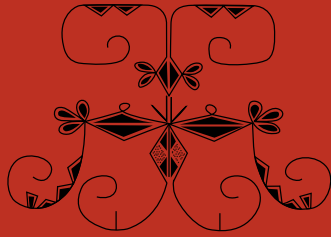
Unpaid Wages

You should determine if the deceased was employed at the time of his or her death. If so, it is your responsibility to contact the employer to determine if he or she was owed any unpaid wages, including travel and/or vacation pay.

Life Insurance

If the deceased had a life insurance policy, then you should contact the insurance company to see if that policy is still valid. If it is still valid, then you will need to request a copy of the policy to determine the Beneficiaries. If there is no Beneficiary listed, then the Estate becomes the named Beneficiary by default, and the proceeds are payable to the Estate. However, if the policy names a person (or persons) as Beneficiary, then the proceeds are payable directly to the person named and do not form part of the Estate.





Part Five

Locating & Paying Creditors

As an Executor, it is your responsibility to pay any and all debts owed by the Estate before making distributions to Beneficiaries or Heirs. Any debts that the deceased owes at the time of death and/or that accumulate after death will form part of the Estate. These debts may include utility bills, loans, funeral expenses, final death taxes, and costs associated with administering the Estate.

Most often, the deceased's Will contains a statement that instructs the Executor to pay all debts owing at the time of death. However, even if the Will does not state this, or if the deceased has died without a Will, it is still your responsibility to ensure that all debts are paid. Failure to do so could result in you being held personally liable to the **Creditors** who have not been paid.

Locating & Contacting Creditors

You must create a list of Creditors and contact them to determine the debts owed by the deceased. You can locate Creditors by collecting the deceased's mail. Additionally, the deceased may have been receiving bills online, so you may need to access his or her email accounts.

Another method for locating Creditors is to post a **Notice to Creditors** that publically advises them of the deceased's death. On request, AANDC will provide you with a Notice to Creditors to post in the Band Office, the Post Office, public meeting places, and in the classified section of a local newspaper (e.g., *Chronicle Herald* or *Mi'kmaq Maliseet Nations News*). The Creditors will then have eight weeks to provide details of the debt they are owed and a statement of their accounts.

When you have received a claim from a Creditor, you must determine if the claim is valid. A valid claim must contain the following:

- The source of debt (e.g., goods bought on credit, contract of loan, fee for service, etc.);
- The amount owed;

Creditor: A person or institution that is owed money.

Notice to Creditors: A public notice to the Creditors of an Estate. The Notice is usually posted in the public newspaper and requests that all interested parties present their claims of money owed by the deceased.



- The terms of payment;
- An accounting of money that has already been paid on the debt;
- A document that has been signed and dated by the deceased.

If the Creditor does not provide adequate proof, then you must use your discretion in deciding whether or not the debt is a legitimate claim that you are willing to pay. You should also find out if the deceased had life insurance on the debt, which would pay off the debt at the time of death.

Paying Creditors & Liquidating Assets

Generally, paying debts is done by using any money left in the Estate. However, sometimes there is not enough money to pay all of the debts owed by the deceased. If this is the case, then you will need to sell some of the deceased's Assets in order to cover the debts – this is called **Liquidating Assets**.

AANDC's guidelines on Estate procedures sets out the order in which Assets should be liquidated. Generally, Personal Property not specifically gifted in the Will should be liquidated first. A sale of Real Property should follow if there is still not enough money to cover all debts. Assets that are gifted to someone in the Will or that were bought on credit for which the deceased still owes money will be sold as a last resort.

When selling Assets, you can offer them for sale to the deceased's family or to the general public. You do not need to sell all the Assets, only enough to pay off the debts. Once you have created enough money to pay off the deceased's debts, you can keep the remaining Assets in the Estate to be distributed to the Beneficiaries/Heirs. If there is no money or Assets remaining in the Estate after all the debts have been paid, the Beneficiaries/Heirs will not receive anything from the Estate.

If there are more debts than there are Assets, the Estate is considered **Insolvent**. If you have an Estate that is Insolvent, you will need to file the appropriate forms with AANDC so that they can close the Estate file.

A. Seizure of Assets on Reserve

Section 89 of the *Indian Act* states that Property belonging to Status Indians situated on reserve generally cannot be seized or sold to satisfy a judgment for debt, unless the Creditor is another Indian or Indian Band. However, this does not mean that an Indian (or their Estate, including the Executor) cannot be sued for the unpaid debt.



Liquidating Assets: The process of turning property into cash by offering the property up for sale.

Insolvent: A situation where the amount of debt a person owes is more than they have in Assets.



Part Six

Tax Returns

As an Executor, your responsibilities under the *Income Tax Act* are to:

- Notify the Canada Revenue Agency (CRA) of the death,
- File all relevant income tax returns,
- Make sure all taxes owing are paid,
- Obtain a **Clearance Certificate**.

Even if the deceased lived on reserve, you will need to file an income tax return for him or her. First, you will need to collect information from the deceased's tax records. To do this, you will need to provide CRA with a copy of the deceased's Death Certificate, Social Insurance Number, and Will or other legal document showing that you have been appointed Executor of the Estate.

Next, you will need to determine whether or not the deceased filed tax returns for all years prior to the year of death. As Executor, you are responsible for filing any outstanding tax returns, including the deceased's "Previous Year Return," if one has not already been filed. Additionally, you are responsible for filing the deceased's "Final Return." The Final Return will cover the period from January 1st of the year of death to the deceased's date of death. The due date for filing the Final Return depends on the date of death:

- January 1 – October 31: return due April 30th of the following year.
- November 1 – December 31: return due six months after the date of death.

Along with the final return, you will have to file a "T3 Trust Income Tax and Information Return." This return is filed for any income earned by the Estate after the date of death. In addition, you must file a "Previous Year Return" if the deceased had not yet filed a return for the year before his or her death. The due date for filing this return is six months after the date of death.

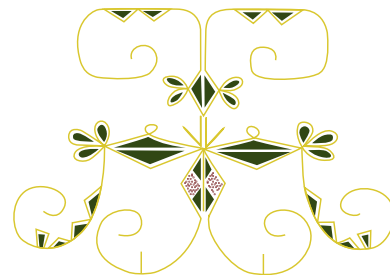
After you submit the Final Return and the Previous Year Return, you will receive a Notice of Assessment that outlines the taxes owed by the Estate. You must pay any taxes owing out of the Estate Account. Once the account is settled, CRA will provide you with a Clearance

Clearance Certificate: A document that certifies that all amounts the deceased owes to CRA have been paid or that CRA has accepted security for the payment.

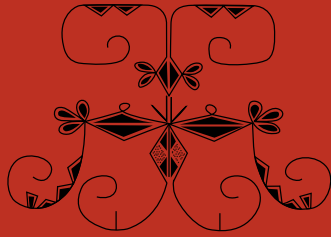


Certificate acknowledging that the outstanding taxes have been paid. When you have received this Clearance Certificate, you are ready to move on to the next step: preparing the proposal for distribution (see page 19).

For more information, contact CRA at 1-800-959-8281 or www.cra.gc.ca.



The art work used on the cover and throughout this guide is a very common design in Mi'kmaq art called the "double curve." The double curve is a pattern formed from two crescents back to back. Although this design has been used by the Mi'kmaq since the 1800's no recorded meaning of the design has ever been found.



Part Seven

Beneficiaries & Heirs

Prior to distributing the Assets of an Estate, you will need to determine who is entitled to inherit. Those who are entitled to inherit are known as Beneficiaries and Heirs. A Beneficiary is someone that the deceased has listed in the Will to receive a gift. In contrast, an Heir is someone who, when there is no Will, is legally entitled to benefit from an Estate according to the *Indian Act*.

Beneficiaries under a Will

A. Identifying a Beneficiary Named in a Will

If you are settling an Estate according to instructions contained in a Will and the instructions are vague about who the intended Beneficiary of a gift is, then you will need to speak to other Beneficiaries or family members to get a better understanding of the deceased's intentions. Ultimately, this process will require you to exercise your own good judgment. However, if you are unable to determine who the deceased intended to leave the gift to, the gift will fail and will fall into the **Residue** of the Estate. If a situation such as this arises, you may want to contact AANDC and seek advice on how you should proceed.

B. Deceased Beneficiary Named in a Will

The gift to a Beneficiary **Lapses** if the Beneficiary dies before the deceased does or before the Estate is distributed. If this happens, you'll need to check the Will to see if it contains an **Alternative Distribution** or further instructions about what to do with that Beneficiary's share of the Estate. In some cases, the shares that have been left to a deceased Beneficiary will need to be split **Per Stirpes**. This means that the deceased Beneficiary's share of the Estate will be divided among his or her surviving children (in some cases, this will be the grandchildren of the deceased). If any of the Beneficiary's children have died and left children (e.g., great-grandchildren of the deceased), then those children will receive equal shares of their parent's portion of the Estate.

In other cases, the shares that have been left to a deceased Beneficiary may be divided among the deceased's descendants **Per Capita**. This

Residue: The balance of the Estate once all specific gifts have been given and all debts have been paid.

Lapse: The termination of a gift given in a Will because the intended Beneficiary has died before the deceased.

Alternative Distribution: A clause in a Will that is designed to give an alternative way to distribute the Estate in the event that a specified event occurs (e.g., a Beneficiary dies before the Testator).

Per Stirpes: The division of a Beneficiary's share of the deceased's Estate among that Beneficiary's children, and so on and so forth. This occurs when a Beneficiary has died before the Testator but has left children of his or her own.

Per Capita: The division of a Beneficiary's share of the deceased's Estate among all immediate family members. Instead of only being divided among the Beneficiary's children, it is equally divided among the Testator's children, grandchildren, and great-grandchildren.

means that the Beneficiary's share is to be divided in equal shares among all of the deceased's (and not the Beneficiary's) children, grandchildren, and great-grandchildren who are alive at the time of the distribution of the Estate. For example, if there are ten descendants of the deceased alive at the time of death, the Beneficiary's portion of the Estate will be split equally among all of them.

If there are no provisions for Alternative Distribution in the Will, the general rule is that the Beneficiary's share falls back into the Residue of the Estate and is distributed in equal shares among the surviving Beneficiaries. However, if the deceased did not include a Residue clause in his or her Will, then that portion of the Estate will pass to the Heirs as set out under the Intestacy rules in the *Indian Act* (please see pages 18 & 19).

Heirs on Intestacy

A. Identifying Heirs

When a person dies Intestate, the *Indian Act* governs how his or her Estate is to be distributed. As the Executor, it is your responsibility to follow the process that the *Indian Act* sets out for determining who the Heirs are that are entitled to benefit from the Estate and how the distribution to the Heirs should be made.

If the deceased has died without a Will, the *Indian Act* sets out an "Order of Priority" for those who are entitled to inherit. Those who are considered amongst the highest priority are:

- The **Surviving Spouse** (i.e., husband or wife) or **Common Law Partner**;
- Biological children, including those born out of wedlock;
- Adopted children (**Legally Adopted** or **Custom Adoption**);
- Grandchildren and great-grandchildren.

It is important to note that stepchildren are not considered Heirs of the deceased and are not entitled to a share of the Estate.

If the deceased has no surviving immediate family members (as outlined above), then the next group of Heirs that are entitled to inherit from the Estate according to the Order of Priority are:

- The parents;
- Sisters and brothers;

Surviving Spouse: The person the deceased was married to at the time of death (i.e., husband or wife).

Common Law Partner: A person who has been living with the individual in a conjugal relationship for a period of at least one year. Common law spouses are not considered to be legally married.

Legally Adopted: This is when an adult becomes the parent of a child through a court process and according to the laws of the province in which the adoption takes place.

Custom Adoption: This is a privately arranged adoption between two Aboriginal families that takes place without the involvement of social workers, lawyers, or courts but that has been conducted in a way that has been practiced by our Mi'kmaq ancestors.

- Nieces and nephews;
- Grandparents;
- Uncles and aunts.

Although nieces and nephews as well as uncles and aunts are listed above, their rights to the Estate are limited. Specifically, they are not entitled to inherit any interest in reserve land that the deceased may have held. Instead, the land is distributed to the designated Band. If the deceased has died leaving no immediate family members or next-of-kin, the remaining Assets of the Estate may then be distributed to any distant relatives he or she may have.

i. Surviving Spouse or Common Law Partner

Under the *Indian Act*, the Survivor of the deceased is defined as either the Surviving Spouse (i.e., wife or husband) or Common Law Partner. The Survivor may claim and be entitled to a portion of the deceased's Estate.

If the deceased was married but separated from his or her spouse (i.e. they had not yet divorced), that spouse may still be entitled to a share of the deceased's Estate under the *Indian Act*. However, if there is a separation agreement or a marriage contract in place in which the ex-spouse has forfeited his or her right to bring a claim against the Estate, he or she is no longer be entitled to a distribution. If one or both of these agreements are in place, it is your responsibility to review them.

In order for a person to qualify as a Common Law Partner and to have rights to the deceased's Estate, he or she must have been living with the deceased in a conjugal (marriage-like) relationship for a period of at least one year immediately before the date of death. The Common Law Partner must give evidence of this relationship. AANDC will request **Statutory Declarations** and other forms of evidence from community members, family members, and friends in order to determine whether or not the Common Law Partner has rights to the Estate. If AANDC finds that the deceased and the Common Law Partner were living in a conjugal relationship for a period of one year or more, then the ex-spouse will lose his or her right to claim against the Estate. However, if AANDC finds that they were not living in a conjugal relationship, then the Common Law Partner is not considered a spouse under the *Indian Act*. If you are faced with a conflict between an ex-spouse and a Common Law Partner, you should contact AANDC for advice on how to proceed.



Statutory Declarations: A legal document that is prepared by a person that gives evidence, under oath, that they believe to be true.

ii. Adopted Children

A child who has been adopted is considered an Heir of the deceased, even though he or she may not be related “by blood.” If there is an Heir who has been adopted, it is your responsibility to confirm the adoption by contacting AANDC and having them conduct a search of the Indian Registry. The child’s adoption must have been recorded in the system for him or her to be eligible to receive an inheritance from the Estate. If the child is not registered but there is evidence that he or she was raised by the deceased (i.e., adoption via Indian Custom), then he or she should immediately make an application to AANDC to formalize the adoption. Even if the adoption was not recorded, the child may still be eligible to inherit from the Estate if the retroactive registration is approved. It is your responsibility to delay the distribution of the gifts until the matter is resolved. For more information on Indian Custom Adoptions, call AANDC’s Indian Registration at 1(819) 953-0960.

Special Circumstances

A. Missing Beneficiaries & Heirs

There may be a situation where you are unable to locate Beneficiaries or Heirs because they have lost touch with the deceased or have moved away. When this happens, you need to make an effort to locate them and notify them of their potential share in the deceased’s Estate. Notification can be done in a number of ways, including advertising in a National newspaper, writing letters, or posting notices in public places. If your best efforts to locate a Beneficiary or Heir fail, then his or her share of the Estate must be held in a **Trust** for seven years. If the Beneficiary/Heir has not reported to you upon the expiration of the seven-year period, he or she will be presumed dead. At that time, an application can be made to the Minister to have that Beneficiary’s share distributed according to the alternate instructions set out in the deceased’s Will or, if there is no Will, according to the *Indian Act*.

B. Minor Beneficiaries & Heirs

If a Beneficiary or an Heir is a **Minor**, there are special measures that must be taken to protect his or her share of the Estate until he or she is 19 years old. Personal and household effects may be transferred directly to the child’s **Guardian(s)**; however, larger Assets – such as large sums of cash, investments, vehicles, **Certificates of Possession** (CP), and any other Real Property – must be placed in a Trust.

Sometimes, the deceased will appoint a **Trustee** in the Will to manage



Trust: A Trust is an arrangement where property (including cash) is managed by a person(s) (i.e., a Trustee) for the benefit of another. The Trust is created by the deceased and must be managed according to the terms and conditions of the trust document, which in the case of Wills and Estates is the Will itself.

Minor: A person who is under 19 years of age.

Guardian: The person named in a Will or appointed by the courts to care for Minor children or Mentally Incompetent dependants of the deceased.

Certificate of Possession: A document prescribed under the *Indian Act* confirming that a status Indian is legally entitled to occupy and possess the specific piece of reserve land defined in the document.

Trustee: An individual or organization that holds title to Property and manages that Property on behalf of another person in accordance with the terms of the Trust arrangement (e.g., the Will).

his or her child's Property. However, if this is not the case or the deceased has died without a Will, AANDC will appoint a Trustee. In some cases, AANDC will request that the Guardian or a family member fulfill the role. The Trustee appointed will be given a set of rules to follow in order to protect the child's Property for his or her future well being. Once a Trustee has been appointed by AANDC, you can then transfer the child's share of the Estate into the Trust. Payments from the Trust will only be made to the Trustee when necessary for the proper maintenance, advancement, and other needs of the Minor. As the Executor, you will be required to work with the Trustee and AANDC to make sure the administration of the Trust is handled properly. Once the child has turned 19 years of age, he or she can receive any money remaining in the Trust.

You should be aware that a Guardian who cares for a child on a daily basis cannot receive Trust money on behalf of the child for their own use. The money held in Trust is meant to be protected to provide a foundation for the child's future.

C. Mentally Incompetent Beneficiaries & Heirs

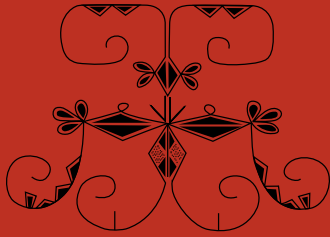
When a Beneficiary or Heir is a Status Indian who has been declared **Mentally Incompetent** (i.e., is incapable of managing his or her own affairs according to Nova Scotia's *Incompetent Persons Act*), there are certain steps that you are required to take in managing his or her share of the Estate.

Any personal or household effects may be transferred directly to the appointed Guardian; however, large sums of cash, investments, and properties must be transferred to the Minister of AANDC. The Minister of AANDC has exclusive jurisdiction over the Property of Mentally Incompetent Indians. As such, it is your responsibility to notify AANDC that the Estate you are settling involves a Mentally Incompetent Beneficiary. Once contacted, AANDC will request that you transfer the Beneficiary or Heir's share of the Estate to them.

Once you have transferred the money and Property to AANDC, they will then make arrangements to put the money and Property of the Beneficiary/Heir in Trust, which will be held for that Beneficiary/Heir's lifetime or until there are no funds remaining in Trust. Once the Trust is put in place, a Trustee is appointed. That Trustee will make payments to the Guardian as necessary for the maintenance, advancement, and general well being of the Beneficiary/Heir.

Mentally Incompetent: The *Indian Act* defines a Mentally Incompetent Indian as someone who has been declared mentally defective or incompetent for the purposes of any laws of the province in which that person lives. According to Nova Scotia's Incompetent Persons Act, this means someone who, because of a mental infirmity, cannot manage their own affairs. See Incompetent Persons Act, R.S.N.S. 1989, c. 218.





Part Eight

Distributing the Estate

Once you have paid all of the debts owed by the Estate and received the Certificate of Clearance, your next task is to distribute the Assets to the appropriate Beneficiaries/Heirs.

Preparing a Proposal for Distribution

Before you can begin distributing Assets to the Beneficiaries/Heirs, you should prepare a “Proposal for Distribution,” which you will then provide to all affected Beneficiaries/Heirs. Your proposal must contain the following information:

- The list of Assets to be distributed and their estimated/appraised values;
- The list of debts that have been paid and to whom;
- An explanation of what you will be guided by when making the distribution (i.e., the Will or the *Indian Act*);
- A calculation of what each Beneficiary/Heir will receive.

When distributing the Assets, make sure to request a receipt that is dated and signed by each Beneficiary/Heir acknowledging that they have received their gifts.

Distributing the Assets on Intestacy

The *Indian Act* contains rules about how an Estate will be divided among eligible Heirs if the deceased did not leave a Will or if the Will has been declared void by AANDC.

For smaller Estates not exceeding \$75,000, the Survivor is to receive everything that the deceased owned at the time of death.

However, if the **Net Value** of the Estate is more than \$75,000, then any Assets in the Estate beyond that value are distributed according to the following conditions:



Net Value: The value of an Estate's assets less deductions for outstanding debts as well as funeral and administrative expenses.

- If the deceased left one child, then one half of the remainder shall go to the Survivor; and,
- If the deceased left more than one child, one third of the remainder shall go to the Survivor.
- If a child of the deceased has died but has left children of his or her own (i.e., grandchildren of the deceased), then those grandchildren are entitled to receive the same portion that their parent would have received.

If the deceased died leaving no Survivor or children, then the Estate shall be divided equally between his or her mother and father.

If the deceased died leaving no Survivor, children, mother or father, then the Estate shall be divided among his or her brothers and sisters, in equal shares. When a sibling of the deceased has died but has left children of his or her own (i.e., nieces/nephews of the deceased), then those nieces or nephews are entitled to receive the same portion that their parent would have received.

Although the *Indian Act* states that the first \$75,000 is to be distributed to the Survivor, there are exceptions. If AANDC determines that the children of the deceased will not be adequately provided for after his or her death, then the Minister may redirect a portion or all of the Assets that the Survivor was going to receive to the deceased's children.

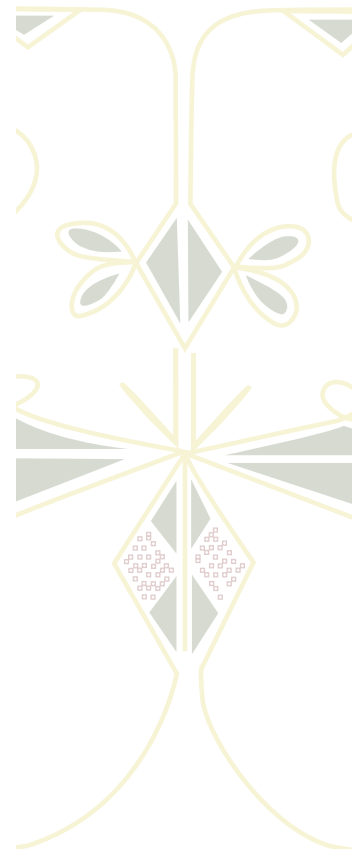
Distributing the Assets under the Will

When distributing Assets under a Will, you are to follow the instructions set out by the deceased. However, situations could arise that make following those instructions difficult.

A. Missing Gifts

When a Beneficiary is to receive a particular item under the deceased's Will but the Executor, despite his or her best efforts, is unable to locate it, then that gift fails. When a gift fails, the Beneficiary receives nothing.

For example, a person who is terminally ill may start giving away gifts prior to death and not change his or her Will to reflect this. In this case, the Will may still contain instructions to give a particular gift to a Beneficiary when he or she has already received it. Or the deceased



may gift an item in the Will that he or she no longer owns at the time of death. In both instances, the gift fails and the Beneficiary receives nothing.

Carrying out Transfers of Assets

A. Distributing Vehicles

Before you can distribute a vehicle, you must first contact the Registry of Motor Vehicles to cancel the deceased's driver's license and return the license plates attached to the vehicle. If the plates have not expired, then there will be a refund owing when they are returned. Any refunds received must be paid into the Estate Account.

To transfer a vehicle to a Beneficiary/Heir, you will need to provide the Registry of Motor Vehicles with a certified copy of the Will (showing that you have been appointed as the Executor) and the Death Certificate, a copy of the vehicle's registration permit, and the personal information of the Beneficiary/Heir to whom the vehicle is to be transferred.

For more information, contact Access Nova Scotia at 1-800-670-4357 or online at <http://www.gov.ns.ca/snsmr/access/default.asp>.

B. Certificate of Possession

The *Indian Act* contains rules that place limits on the distribution of a **Certificate of Possession (CP)**. When dealing with a CP, you must contact a Lands Officer at AANDC to seek approval for transferring the CP to any Beneficiaries/Heirs.

When a CP is held solely by the deceased or as **Tenancy in Common**, it can be gifted to another band member through the deceased's Will, if the gift complies with the provisions set out in the *Indian Act*. A CP cannot be transferred to a Beneficiary/Heir who is not a member of the deceased's band. If the Will does name a Beneficiary who is not a band member, then the land will be offered for sale to band members. However, as Executor, you do not have the authority to sell land located on reserve. AANDC or the deceased's band must sell the land and handle the transfer to the band member who purchases it. AANDC or the band will then transfer the proceeds of sale into the Estate Account, and the proceeds can then be transferred to the non-band member Beneficiary who was originally gifted the CP. If the land is not sold within six months, it will be given back to the band, and they will have full ownership. AANDC and the band may then negotiate a



Certificate of Possession: A document prescribed under the *Indian Act* confirming that a status Indian is legally entitled to occupy and possess the specific piece of reserve land defined in the document.

Tenancy in Common: A form of ownership in which two or more people hold ownership over the same piece of property. Each co-owner of the property can hold equal or unequal shares of the property. If one of the owners dies, his or her share of the property is passed on to a person of his or her choosing, independent of the other co-owner.

compensation agreement with the intended Beneficiary.

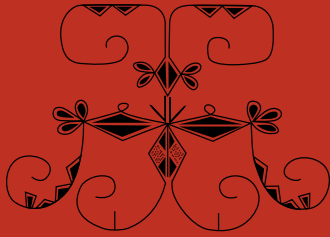
If the CP is held in a Joint Tenancy, it does not form part of the Estate and falls to the surviving joint tenant

C. Off-Reserve Property

If the deceased owns Property off reserve, then his or her Will should be transferred to the Provincial Court of Probate (i.e., transfer jurisdictions). The Provincial Court of Probate will then settle the off reserve Property according to provincial laws. However, any on-reserve Property will still be settled according to the *Indian Act*.

The Minister of Indian Affairs may recommend a transfer, but as Executor, you may need to contact AANDC to apply for this transfer.





Part Nine

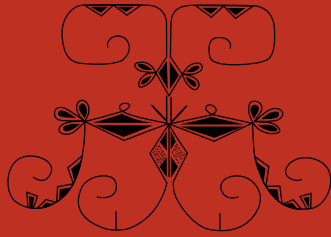
Closing the Estate

Once all the debts have been paid and all the Assets have been distributed, you must provide a “Statement of Account” to all Beneficiaries/Heirs. As Executor, it is your responsibility to write to all of them (or their legal representatives in the case of Minor children or Mentally Incompetent people) and provide them with a final report that includes the following information:

- A list of Assets at death and their value;
- Details of the sources and amounts of money received by the Estate during its administration (e.g., life insurance proceeds, CPP, Death Benefits, etc.);
- A list of all the debts owed by the Estate and to whom they were paid;
- A calculation of the balance available for distribution to Beneficiaries/Heirs after all the debts were paid;
- A copy of the “Proposal for Distribution,” which outlines who received portions of the Estate and what amount each received.

Once everyone has received a Statement of Account, you can close the file and note the date of closure. However, keep all of your documents in a safe place because anyone who is unhappy with how the Estate was handled has the right to bring an action against you.





Part Ten

Appeals

When you have closed an Estate, there may still be work for you to do as an Executor. There may be Beneficiaries, Heirs, or Creditors who are unhappy with the decisions that were made either by you, AANDC, or the Minister of AANDC. Anybody with a complaint has the right to submit an appeal to the Minister or to the Federal court.

A. Challenging Your Decisions as Executor

If Beneficiaries, Heirs, or Creditors are concerned with how you are settling the Estate, they may file a complaint with the Minister. The Minister will hear evidence from you, the complainant (i.e., the person making the complaint), and all interested parties. If it is found that you have acted improperly or have failed to act in a timely way (e.g., allowing Assets to lose value), the Minister may remove you as the Executor and appoint a new one. However, if the Minister finds that you have been acting properly, honestly, and with integrity or that the complainant's grounds for requesting your removal are unwarranted, then the Minister will allow you to continue in your duties as Executor.

B. Challenging a Will

A Beneficiary or Heir may challenge all or part of a Will and ask the Minister to declare it void. This may be done if there is evidence that:

- The deceased signed the Will under **Duress** or **Undue Influence**;
- The deceased didn't have **Testamentary Capacity** at the time he or she made the Will;
- The Will creates undue hardship for people for whom the deceased was responsible (i.e., his or her children);
- The Will violates the rules set out in the *Indian Act* concerning Property located on reserve;
- The whole Will or certain sections of it are vague or unclear;
- The terms of the Will are contrary to public interests (i.e., there are clauses that make inheritance conditional on marrying or not marrying a particular person, etc.).

An application to declare the Will void must be made in writing to the Minister. The applicant must provide evidence that supports the

Duress: The use of threats to compel a person to do something they don't want to do.

Undue Influence: The use of a person's power over another person to prevent that other person from making up his or her own mind or using his or her own free will.

Testamentary Capacity: The legal requirement that a person making a Will must have the ability to know and understand what it means to make a Will as well as know what Property they own and how they would like to give it away.

request. If a credible application with supporting reasons is submitted, then AANDC will contact all Beneficiaries/Heirs and give them an opportunity to respond. Once all responses are received, the Minister will review the matter and decide whether or not the Will should be declared void. If the whole Will is declared void by the Minister, then the administration of the Estate and the Assets will be treated as though the deceased had died Intestate (i.e., as set out under the *Indian Act*). However, if only a particular provision in the Will is declared void, then the gift will fail and fall into the Residue of the Estate. In this case, the rest of the Will remains valid.

C. Challenging a Ministerial Decision

Anyone who feels that the Minister has infringed on his or her rights or that the Minister has made a wrong decision in the exercise of his or her powers may ask the Federal court to review the decision. This appeal must be made within two months of the decision in dispute, and the monetary value of the dispute must be more than \$500.00.

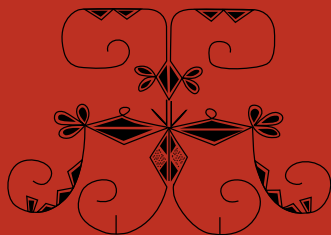
The appeal must be limited to an exercise of the Minister's power with respect to the following:

1. Any decision, order, direction, or finding regarding the Property of a deceased Indian;
2. The appointment or removal of an Executor;
3. The authorization of an Executor to carry out the terms of a Will;
4. The authorization of an Executor to administer an Estate of someone who has died Intestate;
5. The actions or inactions of the Executor or an Administrator in administering the Estate of an Indian who has died with a Will or Intestate;
6. The voiding of a Will or part of a Will of a deceased Indian.

A person who initiates an appeal is responsible for the legal costs involved if it goes to court. Thus, the appellant (the one making the appeal) should weigh the costs of taking the appeal to court against the potential benefit that may result from winning the case. A court hearing can be stressful, expensive, and time consuming, and it may yield relatively little benefit in the end when compared to the potential costs to the appellant.

As previously mentioned, there will be circumstances where you will need to hire a lawyer. The lawyer should be someone who has knowledge of and experience with dealing with the Wills of Status Indians Ordinarily Resident on Reserve.





Part Eleven

Hiring a Lawyer

When initially meeting with a lawyer, be sure to ask if you will be charged for the visit because some lawyers may charge you a fee. During the initial visit, you may want to ask the lawyer the following questions:

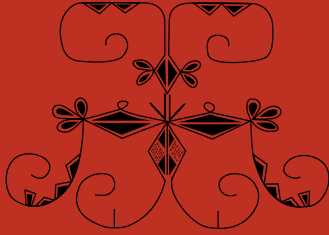
- How long have you been practicing in the area of Wills & Estates law?
- What are the procedures involved in administering an Estate, and how long will it take to complete it?
- What are the complications that might arise in administering this particular Estate?
- Do you bill at an hourly rate or on a flat fee?
- Will I be charged for disbursements – e.g., faxing, phone calls, photocopying, postage fees, etc.?

You should request a retainer letter stating what legal services the lawyer agrees to provide to you and the fee for those services. If circumstances change and the fee increases, then your lawyer should advise you immediately and should obtain instructions from you before doing any other work on your behalf.

When you go to see a lawyer for the first visit, you should bring all of the documentation and information that you have collected in order to administer the Estate. You should be prepared for a lot of questions. If you do not have information on something the lawyer requests from you, then make a note of it and tell him or her that you will collect it and bring it to the next meeting. If you do not understand what is being asked of you, then make sure you tell the lawyer.

For more information on how to hire a lawyer, contact the Nova Scotia Barristers' Society at (902) 422-1491 or visit them online at <http://www.nsbs.ns.ca/why.html>.





For More Information

Aboriginal Affairs and Northern Development Canada

10 Wellington, North Tower
Gatineau, Quebec

Postal Address:

Ottawa, Ontario K1A 0H4

Toll-Free: 1-800-567-9604

Website: <http://www.aadnc-aandc.gc.ca/eng/1100100010002>

Band Governance & Estates of Lands and Trust Services

P.O. Box 160
40 Havelock St.
Amherst, Nova Scotia B4H 3Z3

Toll-Free: 1-800-567-9604

Tel: 1- 902-661-6200

Legal Information Society of Nova Scotia
5523 B Young Street
Halifax, NS

Toll-Free: 1-800-665-9779

Tel: 1-902-454-2198

Website: <http://www.legalinfo.org/>

The Confederacy of Mainland Mi'kmaq

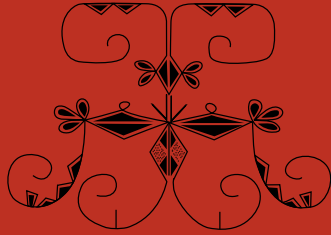
PO Box 1590
Truro, NS B2N 5V3

Toll-Free: 1-877-892-2424

Tel: 1-902-895-6385

Website: www.cmmns.com





Bibliography

Canada. Dept. of Aboriginal Affairs and Northern Development Canada. *Decedent Estates Program: Why Make a Will*. September 15, 2010. Website. October 2011. <<http://www.aadnc-aandc.gc.ca/eng/1100100032534>>

Canada. Dept. of Aboriginal Affairs and Northern Development Canada. *Decedent Estates Program: Settling a Family Member's Estate*. September 15, 2010. Website. October 2011. <<http://www.aadnc-aandc.gc.ca/eng/1100100032526>>

Canada. Dept. of Aboriginal Affairs and Northern Development Canada. *Decedent Indian Estates Procedures Manual*. Ottawa: AANDC, January 2008. Print.

Canada. Dept. of Aboriginal Affairs and Northern Development Canada. *Estate Administration for First Nations: Facilitator's Guide*. Ottawa: AANDC, January 1997. Print.

Estate Actions Act, R.S.N.S. 1989, c.152.

Francis, Bernie et al. *Mi'kmaq Resource Guide*. 4th Ed. Nova Scotia: Atlantic Policy Congress of First Nation Chiefs Secretariat, 2007. Print.

Guardianship Act, R.S.C., c.189, s.1

Indian Act, R.S.C., 1985, C.105, s.45-52

Indian Estate Regulations, R.S.C., 1978, c.954

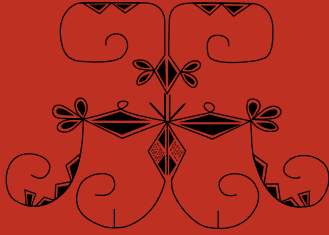
"Petroglyphs: Designs & Symbols," Nova Scotia Museum of Cultural History, 2002. Website. March 2011. <http://museum.gov.ns.ca/imagesns/petroglyphs/P_symbols.html>

Moore, Janet, Brad Regehr. *Will Preparation Workbook: A Guide for First Nations People*. Canada: Swampy Cree Tribal Council Inc., 2006. Print.

Probate Act, SNS 2000, c 31

Tataryn, Joy. *How to Make a Will and Settle an Estate: A Guide for First Nations People Living On Reserve*. British Columbia: Legal Services Society, 2006. Print.

Wills Act, R.S., c.505, s.1



About the Authors



Angeline Gillis, B.A. LL.B., was born in Sydney, Nova Scotia and was raised in East Bay, Nova Scotia. Although a member of the Eskasoni First Nation, Angeline and her siblings were raised off reserve by her parents, Fred Gillis and Donna Stevens. She is the granddaughter of the late Andrew J. Stevens, a former Keptin of the Sante' Mawi'omi.

Angeline earned her undergraduate degree from Dalhousie University in 2005 and her LL.B from the Schulich School of Law (formerly Dalhousie Law School) in 2009. After completing her articling with Boyne Clarke Barristers and Solicitors, Angeline was called to the Bar in June 2010, having performed her affirmation in both English and Mi'kmaq. She then went on to become a Senior Will & Estate Planner with Scotia Private Client Group. Angeline has worked in various areas of law; however, her primary focus has been in Wills, Estates and Trusts.

Angeline began practicing with The Confederacy of Mainland Mi'kmaq in October 2011 as a Wills & Estates Legal Advisor. In addition to her work with The Confederacy, Angeline also maintains her own practice as a Barrister & Solicitor. In her free time, Angeline sits as the Vice President and is a coach for the Sackville Storm Minor Basketball Association. She is also a member of the Canadian Bar Association and Halifax's Estate Planning Counsel.



Shelly Martin, B.A. (Hons), M.A., LL.B., was born in Halifax, Nova Scotia and raised in nearby Mount Uniacke. A member of the Millbrook First Nation, she was raised off reserve by her parents, grandparents, and many aunts, uncles and cousins.

After completing undergraduate and graduate degrees in history, Shelly enrolled at the Schulich School of Law (formerly Dalhousie Law School) in 2003. After articling with Boyne Clarke Barristers and Solicitors, Shelly was called to the Bar in October 2007, the first Mi'kmaq to swear her oath in English and Mi'kmaq under the new *Legal Professions Act*. Shelly began practicing with The Confederacy of Mainland Mi'kmaq in 2007. In addition to her work as Chair of the Justice Committee for the Halifax Aboriginal People's Network, Shelly sits on the Advisory Council of the Indigenous Blacks and Mi'kmaq Initiative at the Schulich School of Law and is a member of the board of the Halifax and Region Military Family Resource Centre. She currently resides in Fall River with her son, James, and her daughter, Meadow.



MI'KMAQ WILLS & ESTATES



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