



Mi'kmaw Wills & Estates:

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

Revised January 2017



IMPORTANT

This guide contains general information and educational material for Nova Scotia Mi'kmaq who want to write their own Will. This publication is a general, plain-language guide to rules, documents and processes for writing a Will if you are a Status Indian and you live on reserve or Crown lands in Nova Scotia. While every effort has been made to ensure accuracy, this guide is neither a complete technical description nor an official interpretation of the subjects it discusses. This publication does not provide legal advice; if you have specific legal questions you should contact a lawyer.

The Legal Information Society of Nova Scotia offers a Lawyer Referral Service. This service provides an individual with an initial consultation of up to 30 minutes for a fee of \$20 plus tax. Please note that the lawyer will not do legal work for you during the initial 30-minute consultation. The lawyer is there to review your legal questions and talk about the options you may have, and how much it may cost to have the legal work done.

For more information about hiring a lawyer, please see Part Eleven: *Hiring a Lawyer* on page 29 of this guide.

Lawyer Referral Service: (800) 665-9779 (toll free) or (902) 455-3135 (Halifax area).

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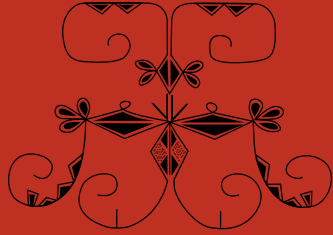
Book Two: How to Settle an Estate
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List of Acronyms

BCR	Band Council Resolution
CP	Certificate of Possession
CPP	Canada Pension Plan
CRA	Canada Revenue Agency
<i>FHRMIRA</i>	<i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>
PFR	Provisional Federal Rules
INAC	Indigenous and Northern Affairs Canada
MRP	Matrimonial Real Property
NSSC	Nova Scotia Supreme Court
OAS	Old Age Security
RMV	Registry of Motor Vehicles
RRSP	Registered Retirement Savings Plans
TFSA	Tax Free Savings Accounts
US	United States of America



Introduction

If you are 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 are 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**. This guide will explain how to:

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

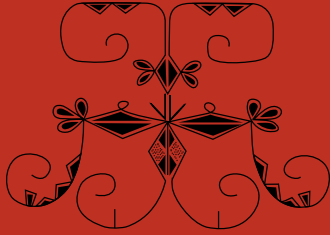
Additionally, this guide will give you helpful advice about what to expect, what decisions you will need to make, when to ask for help, and what questions to ask. Always remember that, as an Executor, you are in complete control of the process. Take seriously the responsibility that your loved one has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

Executor: The person or corporation named in a Will to carry out the instructions in a Will or to administer the Estate. More than one Executor can be named in a Will (Executrix is sometimes used to describe a female Executor). Throughout this guide Executor will also include the feminine.

Estate: Any property the deceased owned at the time of death (home, car, bank accounts, household goods, investments). Debts also form part of the Estate.

Will: A signed written or typed document stating how a person wants his or her property to be distributed and debts paid after they die. The Will also names 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 the **Minister** to act as an Executor or administrator? The decision of whether or not to accept this role is a difficult one, especially if you are not sure what an Executor is and what responsibilities they have.

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

- Interpreting and carrying out the terms of the Will;
- Notifying banks, employers, pension programs, etc. of the death;
- Gathering and protecting **Assets**;
- Paying any and all debts;
- Selling Assets, if necessary, to cover debts;
- Filing the final personal and Estate tax returns;
- Determining all **Beneficiaries** and **Heirs**;
- Carrying out transfers of Assets;
- Distributing gifts according to the Will or according to the provisions in the *Indian Act*¹ on **Intestacy** or the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, (*FHRMIRA*).²

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

The Minister must appoint the Executor for a **Status Indian**, who is **Ordinarily a Resident on Reserve**.³ Even if the Will names an Executor, this person must be officially appointed by INAC. It is important that you do not do anything that would lead people to think you are going to act as the Executor before the Minister has approved the Will and your appointment. If you accept the role of Executor and later change your mind, you can give up your appointment by notifying INAC in writing.

Minister: means the Minister of Indigenous and Northern Affairs Canada.

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

Beneficiary: A person or organization named in a Will, insurance policy or at law to receive a gift or money after a person dies. There can be more than one beneficiary in the Will or policy.

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: When a person fails to exercise the degree of care in a situation where a reasonable person would have exercised care in the same circumstance.

Status Indian: A person who is registered as an Indian, in accordance with the *Indian Act* (Canada).

Ordinarily a Resident on Reserve: Occurs when a person habitually makes the reserve their home. A person who is forced to spend time in a hospital or prison; or leaves the reserve in order to attend school, work, to go hunting or to serve in the military; or lived off-reserve for most of their life, but moved to the reserve and was living on the reserve at the time of death may still be "Ordinarily a Resident on Reserve".

Professional Assistance for Executors

If there are adequate financial resources in the Estate, you can hire professionals to help you. The decision to hire a professional should not be made until you have completed an inventory of the Estate's Assets. An inventory can 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. The legal fees will be charged to the Estate and not to you personally. Circumstances that may arise during the administration of an Estate that require professional legal advice, include:

- 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 29.

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**. Some Notaries may charge a small fee for certifying copies.

To find a Notary Public contact a lawyer or visit the yellow pages online at: <http://www.yellowpages.ca/business/NS/00911000.html>.

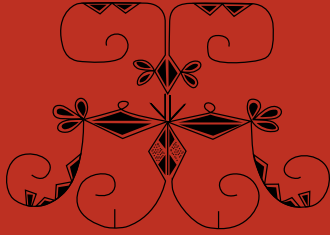


Property: Land, possessions and other items a person has legal ownership of. There are two forms of property: Real Property and Personal Property.

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

Certified Copy: A photocopy of a document that contains a statement made by a professional affirming that they have seen the original document, the information on the copy matches the original, and the photocopy has not been altered in any way.

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



Part Two

The Role of Indigenous and Northern Affairs 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 a Resident on Reserve. Thus, when someone who is or is entitled to be a Status Indian dies, INAC must be contacted immediately.⁴ Once INAC has been notified of the death, the Department must:

- Determine jurisdiction over the Estate;
- Approve the deceased's Will;
- Appoint the **Executor** or **Administrator** to administer the Estate;
- Resolve any complaints from Beneficiaries and Heirs.

A. Determining Jurisdiction

To assume jurisdiction over an Estate, INAC must first confirm that the deceased was a Status Indian.⁵ To do this, INAC will confirm if the deceased was or was entitled to be registered in the **Indian Registry**. If the deceased was or was 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, INAC will determine whether or not that person was Ordinarily a Resident on Reserve at the time of death.⁶ To be considered Ordinarily a 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.⁷

Administrator: A person appointed by INAC 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 INAC finds that the deceased was a Status Indian who was Ordinarily a Resident on Reserve, then the Minister will have exclusive jurisdiction over the deceased's Estate.⁸ However, if INAC finds that the deceased was not a Status Indian or was not Ordinarily a Resident on Reserve, it will have no further role in settling the Estate. INAC will advise Beneficiaries and Heirs to contact the **Provincial Court of Probate** to have the Estate settled.⁹

Additionally, INAC can, at its discretion, decide either to accept jurisdiction or transfer responsibility for the Estate over to the Provincial Court of Probate,¹⁰ or an Executor or family member can initiate the transfer of jurisdiction by applying to the Minister. A transfer could occur in the following circumstances:

- The Estate is going to be involved in court proceedings (a lawsuit);¹¹
- The Estate involves Property or businesses off reserve;¹²
- The Estate has Assets such as a business or investments which requires special expertise;¹³
- The Estate has a high level of conflict that has arisen amongst the Beneficiaries and Heirs;¹⁴
- The deceased's family has made a written request to transfer jurisdiction to the Provincial Court of Probate.¹⁵

When the jurisdiction of an Estate is transferred to the Provincial Court of Probate, the Court administers the deceased's Property located on reserve according to the *Indian Act*.¹⁶ However, any Property located off reserve is administered according to provincial laws.

B. Approving the Will

Once INAC assumes jurisdiction, it will then determine whether or not the deceased left 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 gives away his or her Assets after death could be considered a Will under the *Indian Act*.¹⁷ Once a Will has been located, the original signed document should be sent to the **Estates Officer** at INAC. The Executor should also keep a Certified Copy of the Will on file.

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.



C. Appointing an Executor

INAC considers Estates administration a private family matter. When an Executor is named in a Will, and he or she is able and willing to act, the named Executor shall be appointed upon approval of the Will.¹⁸

In cases where there is no Will, a Will does not name an Executor or, if named, the Executor is unable or unwilling to act INAC will find someone to administer the Estate. First, INAC will offer the role of Executor to the Beneficiaries and Heirs.¹⁹ Beneficiaries and Heirs may also nominate someone to take on the role. In determining the suitability of a possible Executor, the Beneficiaries and Heirs may 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 the applicant is trustworthy;
- 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

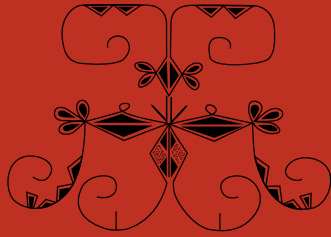
After an Executor has been appointed, INAC's role is limited to providing information and resolving any written complaint about the appointment of an Executor or the administration of the Estate. Complaints can include:

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



Void: Not valid or legally binding.



Part Three

Gathering and 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 is left to the Beneficiaries and 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. 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 (paying debt or depositing wages, pension benefits, insurance proceeds, proceeds of sale) should operate from this account.

As an Executor, you are accountable to the Beneficiaries and Heirs and must provide 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 and 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 at the time of his or her death. It is important that you conduct a thorough investigation of all Assets belonging to the deceased. The inventory list should also 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 value the Assets.

If the deceased holds Assets with other people, you will need to find out if the Asset is held as a **Tenancy in Common** or as a **Joint Tenancy**. You should examine the Will and the tenancy agreement (bank forms or deeds) to determine if the deceased's share passes to the Estate or to the surviving joint holder. Assets held in Joint Tenancy passes to the surviving owner and are not included on the Estate's Inventory. If you are aware of any Assets that are held jointly, you should obtain a copy of any ownership agreements.

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: Assets other than Real Property that physically exist and are easily moved and not permanently attached to a dwelling or structure.

Real Property: Land, buildings attached to the land, as well as permanent fixtures or improvements to land.

Tenancy in Common: When two or more people own an interest in the same property. Each co-owner has a distinct and separate interest in the property. If one of the co-owners dies, his or her share of the property can be added to his or her Estate.

Joint Tenancy: When two or more people own the same property. If one of the owners dies, their interest in the property is automatically given to the other named owners.

Protecting Assets

As Executor, you are responsible for physically protecting all Assets. You will need to make sure that smaller Assets are stored safely (fireproof safes or safety deposit boxes). Where appropriate, larger Assets such as cars, boats, and houses should be secured by changing the locks or installing alarms to prevent theft or damage.

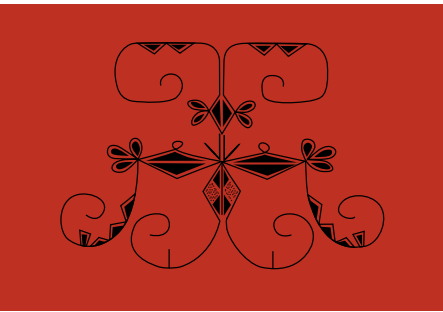
You can protect liquid Assets, such as money kept in bank accounts, by contacting the bank as soon as possible and identifying yourself as the Executor. Ask what the bank requires from you in order to close the deceased's accounts, including any investment accounts or credit cards. You must close these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

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



Vacancy Rider: 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.



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 check the deceased's employment status and military background, if any. 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. 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. The Death Benefit is a one-time payment available to the Estate to assist with funeral and Estate settlement costs. 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.

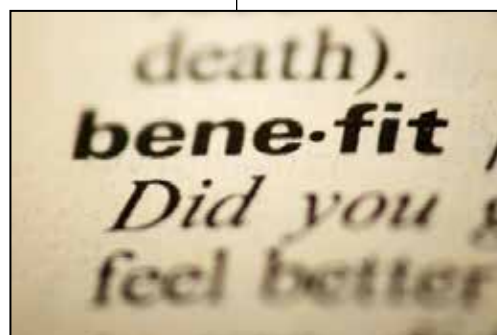
B. American Pension Plans

If the deceased was receiving pension benefits from the United States of America (US), the US Social Security office should be notified of his or her death. When contacting the US 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 US Social Security Office at 1-207- 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 an employee pension plan. You will have to contact the deceased's employer to determine if there was a pension plan, and confirm the Beneficiary designation in the plan. Some companies or unions will offer Death Benefits to the Estate or survivors of the deceased, be sure to ask about these as well.

Military Benefits

A. Veterans Affairs Canada

Veterans Affairs Canada may provide disability benefits, pension benefits, Death Benefits, and **Survivor Benefits** to **Veterans**. If you believe the deceased was a Veteran, you should contact the Veterans Affairs District Office to determine whether or not the deceased qualified for any benefits. Before contacting Veterans Affairs Canada, you should have 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.



B. United States Department of Veterans Affairs

If the deceased served in the US military they may be entitled to US death benefits. The US 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 US, contact the Department of Veterans Affairs at 1-802-296-5177 or online at www.va.gov.

Survivor Benefits: A monthly payment (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, Navy, and the Royal Canadian Mounted Police. In the US, 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.

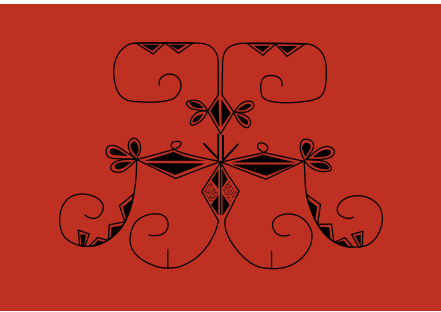
Unpaid Wages

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

Life Insurance

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





Part Five

Locating and Paying Creditors

As an Executor, it is your responsibility to pay all debts owed by the Estate before giving Assets to Beneficiaries or Heirs. Any debts that the deceased owes at the time of death and 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.

A Will should contain 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, you must ensure that all debts are paid. If you fail to pay debts first you could be held **Personally Liable** to **Creditors** who were not paid.

Locating and Contacting Creditors

You should create a list of Creditors and contact them to determine the debts owed by the deceased. One way to locate Creditors is 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, INAC 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 (*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.²⁰

Personally Liable: Money that is owed by someone else that you could be ordered to pay for out of your pocket.

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.



You should not pay Creditors unless there is a valid claim made against the Estate. 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 the debt (loan, fee for service, goods on credit);
- The amount owed;
- The terms of payment;
- An accounting of money already paid on the debt; and
- A document that has been signed and dated by the deceased.

If the Creditor does not provide adequate proof, you must use your discretion in deciding whether or not the debt is a legitimate claim the Estate should 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 and Liquidating Assets

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

INAC has set out an Order of Sale for Liquidating Assets. As a rule, off reserve Property should be sold before Property owned on reserve.²¹ Then, Personal Property not specifically gifted in the Will should be liquidated followed by the sale of Real Property. Assets that are gifted in the Will, or were bought on credit where money is still owed, should be sold last.²²

When selling Assets, you can offer them for sale to the deceased's family or the general public. Once you have enough money to pay off the Estate debt, the remaining Assets are put in the Estate to be distributed. If there are more debts than there are Assets, the Estate is considered **Insolvent**. If an Estate is Insolvent, you will need to file the appropriate forms with INAC so that they can close the Estate file.

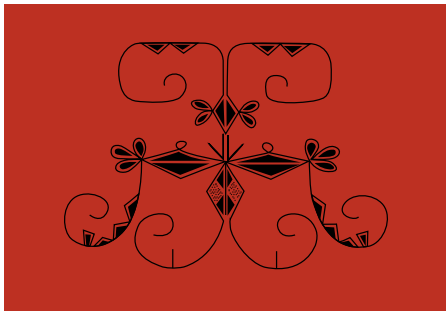
A. Seizure of Assets on Reserve

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*²³ are to:

- Notify the Canada Revenue Agency (CRA) of the death;
- File all relevant income tax returns;
- Make sure all taxes owing are paid; and
- 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 the 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 find out if 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. You are also 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:

Date of Death	"Final Return" due date
January 1 – October 31	April 30th of the following year
November 1 – December 31	Six months after the date of death

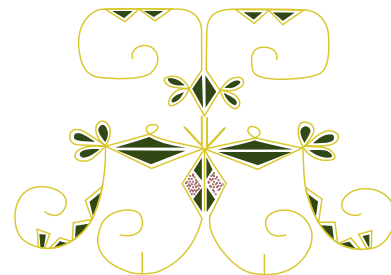
Along with the final return, you will have to file a T3 Trust Income Tax and Information Return. This return is filed for any income earned by the Estate after the date of death.

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.

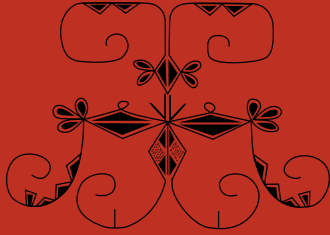


After you submit the Final Return and the Previous Year Return, you will receive a Notice of Assessment that outlines the taxes owed by the Estate. You must pay the taxes owed out of the Estate Account. Once the taxes are settled, the CRA will provide you with a Clearance Certificate indicating all outstanding taxes have been paid. When you have received the Clearance Certificate, you are ready to move on to the next step: preparing the proposal for distribution (see page 21).

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 and 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* or *FHRMIRA*.

Beneficiaries under a Will

A. Identifying a Beneficiary Named in a Will

If you are settling an Estate and the instructions are vague about who is to receive a gift, then speak to the Beneficiaries or family members to clarify the deceased's intentions. Ultimately, this process will require you to exercise your own good judgment. However, if you are unable to determine whom 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 INAC and seek advice on how you should proceed.

B. Deceased Beneficiary Named in a Will

Gifts to a Beneficiary **Lapse** if the Beneficiary dies before the deceased or before the Estate is distributed. If this happens, you will 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 Beneficiary's share of the Estate will be divided among his or her surviving children. If any of the Beneficiary's children have died and left children, then those children will receive equal shares of their parent's portion of the Estate.

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 (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.



In other cases, the shares left to a Beneficiary may be divided among the deceased's descendants *Per Capita*. This means the Beneficiary's share is divided in equal shares among all of the deceased's children, grandchildren, and great-grandchildren who are alive at the time of the Estate distribution (and not the Beneficiary's). For example, if the deceased had ten descendants alive at the time of death, the Beneficiary's portion of the Estate is split equally among all ten.

If there are no provisions for Alternative Distribution in the Will, the general rule is that the Beneficiary's share goes into the Residue of the Estate. 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 under the Intestacy rules in the *Indian Act*.

Heirs on Intestacy

A. Identifying Heirs

When a person dies Intestate, the *Indian Act*²⁴ governs how the Estate will be distributed. As the Executor, it is your responsibility to follow the process set out in the *Indian Act* for determining who is an Heir and how Assets are to be distributed among the Heirs.

If the deceased has died without a Will, the *Indian Act* sets out an Order of Priority for those who are entitled to inherit.²⁵ Those who are considered amongst the highest priority are:

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

INAC Custom Adoption Requirements

- 1) The Custom Adoption is entered into voluntarily.
- 2) The band has a recognized custom for transferring the primary care and responsibility of a child to another.
- 3) Elders from the community can confirm the custom.
- 4) The band whose custom is being used supports the custom adoption by Band Council Resolution (BCR).

If there is a Surviving Spouse or Common Law Partner, as an Executor you should be aware of *FHRMIRA* as this legislation gives rights to Surviving Spouses and Common Law Partners. How *FHRMIRA* affects your responsibilities will be expanded upon in Part Eight - Distributing Assets located on page 21 of this guide.

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.

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

Survivors Choice under *FHRMIRA*

- *FHRMIRA* only applies to the family home and other matrimonial interests. A Surviving Spouse or Common Law Partner can chose to divide MRP under *FHRMIRA*, as well as inherit other assets, such as personal items, from a Will or under the *Indian Act*. (*FHRMIRA*, s 37)

Common Law Partner: A person who has been living with an individual in a conjugal relationship for a period of at least one year. Common law spouses are not considered 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: is the practice of transferring the on-going primary care and responsibility for an Aboriginal child from a current parent or caregiver to a new caregiver according to the traditions, practices and customs of the band. The *Indian Act* (Canada) recognizes this type of adoption, providing certain criteria are met.

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, then the next group of Heirs entitled to inherit from the Estate are identified according to the Order of Priority:

- Parents of the deceased;
- Brothers and sisters;
- Nieces and nephews;
- Grandparents; then
- Aunts and uncles of the deceased.

Although nieces and nephews, as well as uncles and aunts, are listed above, their rights to the Estate are limited. 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.

NOTE: *FHRMIRA* only applies to bands that have not passed MRP laws.

It is important to know if your band has MRP laws. INAC maintains a list of bands that have MRP laws online at:

<http://www.aadnc-aandc.gc.ca/eng/1408981855429/1408981949311>

(i) Surviving Spouse or Common Law Partner

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

If the deceased was married but separated from his or her spouse (they had not yet divorced), that spouse may still be entitled to a share of the deceased's Estate under the *Indian Act* or *FHRMIRA*. However, if there is a separation agreement or a marriage contract in place where the ex-spouse has forfeited his or her right to bring a claim against the Estate, he or she is no longer 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 marriage-like relationship for a period of one year immediately before the date of death.²⁶

FHRMIRA

Survivors Choice (s 37)

A Surviving Spouse or Common Law Partner can choose to have the MRP Assets and interests dealt with under *FHRMIRA*, regardless of what is in a Will or the Indian Act.

Entitlement of Survivor (s 34)

The Surviving Spouse or Common Law Partner (including non-band-members) may apply to receive half the value of the deceased's interest in the family home and other matrimonial interests and rights on reserve lands.

Occupation After Death (s 14)

A Surviving Spouse or Common Law Partner (including non-band members) has an automatic right to occupy the family home for up to 180 days, which can be extended by court order.

(ii) Adopted Children

A **Child** who has been adopted is considered an Heir of the Estate and you must confirm the adoption with INAC before the Heir can receive an inheritance from the Estate. If the Child is not registered but there is evidence that the deceased raised him or her then they should immediately contact INAC or the Nova Scotia Supreme Court (NSSC)²⁷ to formalize the adoption with retroactive registration. It is your responsibility to delay the distribution of the Estate until the matter is resolved.

For more information on Indian Custom Adoptions, call INAC's Indian Registration at 1(819) 953-0960.

Special Circumstances

A. *Missing Beneficiaries and Heirs*

There may be a situation where you are unable to locate Beneficiaries or Heirs because they lost touch with the deceased or have moved away. When this happens, you have to make an effort to find and notify them of their potential inheritance. Notification can be done in a number of ways, including advertising in a National newspaper, writing letters, and 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 or Heir does not report to you by the end of the seven-year period, he or she will be presumed dead. At that time, an application can be made to the Minster to have that Beneficiary's or Heir's share distributed according to the alternate instructions set out in the Will or, if there is no Will, according to the *Indian Act*.

B. *Minor Beneficiaries and Heirs*

If a Beneficiary or an Heir is a **Minor**, special measures must be taken to protect the Minor's 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**; however, larger Assets – such as large sums of money, investments, vehicles, **Certificates of Possession** (CP), and any other Real Property – must be placed in a Trust.

Child: Includes a legally adopted child and a child adopted in accordance with Mi'kmaw custom.

Custom Adoption

[Ankwe'aq (Ankweyaq)]

Some First Nation people have raised children as their own, who are not their own by birth, and who have not been formally adopted under provincial laws (for example, a niece or nephew).

Trust: A Trust is an arrangement where property (including cash) is managed by a person (a Trustee) for the benefit of another. The Trust is created by the deceased and managed according to the terms and conditions of the trust document, which 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.

Sometimes the deceased will appoint a **Trustee** in the Will to manage his or her Child's Property. However, if a Trustee is not named or the deceased dies without a Will, INAC will appoint a Trustee.²⁸ In some cases, INAC 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 Property for the Child's future well-being. Once a Trustee has been appointed by INAC, you can transfer the Child's share of the Estate into the Trust. As the Executor, you will be required to work with the Trustee and INAC to make sure the Trust is handled properly. Payments from the Trust should only be made to the Trustee when necessary for the proper maintenance, advancement, and other needs of the Minor. Once the Child turns 19 years of age they are eligible to receive any money remaining in the Trust according to the Trust documents.

Money held in Trust for a Child is to be protected for the Child's future. You should be aware that a Guardian, who cares for a Child on a daily basis, cannot request Trust money on the Child's behalf for the Guardian's own personal use.

C. Mentally Incompetent Beneficiaries and Heirs

A person, who has been declared **Mentally Incompetent** according to the provincial legislation, is incapable of managing his or her own affairs.²⁹ When a Beneficiary or Heir is a Status Indian who has been declared Mentally Incompetent, certain steps must be taken when managing his or her share of the Estate.

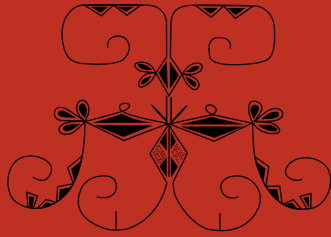
Any personal or household effects may be transferred directly to the appointed Guardian; however, large sums of cash, investments, and properties must be transferred to the Minister. The Minister has exclusive jurisdiction over the Property of Mentally Incompetent Indians.³⁰ It is your responsibility to notify INAC that the Estate you are settling involves a Mentally Incompetent Beneficiary. Once contacted, INAC will ask you to transfer the Beneficiary or Heir's share of the Estate to INAC.

Once you have transferred the money and Property to INAC, arrangements will be made to put the money and Property in Trust. The Trust will be held for that Beneficiary or 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 or Heir.

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

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.





Part Eight

Distributing the Estate

Before you can distribute the Assets to the Beneficiaries or Heirs, you must make sure you have:

- 1) Paid all of the debts owed by the Estate,
- 2) Received the Certificate of Clearance, and
- 3) Fulfilled the requirements in section 38 of *FHRMIRA*.

Preparing a Proposal for Distribution

Before you can begin distributing Assets you should prepare a Proposal for Distribution, which you will give to all affected Beneficiaries and Heirs.

Your Proposal for Distribution must contain the following information:

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

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

Distributing the Assets on Intestacy

The *Indian Act*³¹ contains rules about how an Estate will be divided among eligible Heirs if the deceased did not have a Will or if the Will has been declared Void by INAC.

For smaller Estates, not exceeding \$75,000.00 the Surviving Spouse will receive everything that the deceased owned at the time of death.³²

Distribution of Estate (*FHRMIRA*, s 38)

An Executor must NOT distribute Assets of an Estate until one of the following has been done:

- The Survivor consents in writing to the proposed distribution.
- 10 months after the date of death, including any extension period granted by the court, and no s 36(1) application has been made.
- An application made under s 36(1) is finished.

However, if the **Net Value** of the Estate is more than \$75,000.00 then any Assets in the Estate beyond that value are distributed according to the following conditions:

- If the deceased left one Child, then one half of the remainder shall go to the Survivor and the other half to the Child;³³ and,
- If the deceased left more than one Child, one third of the remainder shall go to the Survivor and each Child shall receive an equal share of the remainder.³⁴
- If a Child of the deceased has died but has left children of his or her own (grandchildren of the deceased), then those grandchildren are entitled to receive the same portion that their parent would have received.³⁵

If the deceased died leaving no Survivor or children, then the Estate shall be divided equally between his or her mother and father.³⁶

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 (nieces or nephews of the deceased), then those nieces or nephews are entitled to receive the same portion that their parent would have received.³⁷

Although the Indian Act states that the first \$75,000.00 is to be distributed to the Survivor, there are exceptions. If INAC 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.³⁸

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



FHRMIRA and Band MRP Laws

In addition to the *Indian Act* and a Will, *FHRMIRA*, may affect how Assets are distributed. The Provisional Federal Rules (PFR) under *FHRMIRA* are intended to be temporary, but a Band can remain under the law indefinitely.

It is important to know if your band has MRP laws. INAC maintains a list of bands that have MRP laws online at: <http://www.aadnc-aandc.gc.ca/eng/1408981855429/1408981949311>

A First Nation can write MRP laws at any time. Once a First Nation has passed MRP laws, the Band's law and not *FHRMIRA* will apply to the matrimonial property located on the reserve. A band can legislate different provisions for the division of MRP on reserve lands.

Since the coming into force of *FHRMIRA* on December 16, 2014, a

Survivors Choice under *FHRMIRA*

- A Surviving Spouse or Common Law Partner (including non-band members) has an automatic right to occupy the family home for up to 180 days. (*FHRMIRA*, s 14)
- The Surviving Spouse or Common Law Partner (including non-band members) may apply to receive half the value of the deceased's interest in the family home and other matrimonial interests and rights on reserve lands. (*FHRMIRA*, s 34)

Surviving Spouse or Common Law Partner (whether or not they are a member of the First Nation) can apply to the NSSC to have the family home on reserve and MRP divided according to *FHRMIRA*.³⁹

Now, a Surviving Spouse or Common Law Partner can choose between inheriting an amount for the family home and other matrimonial interests under *FHRMIRA*, the *Indian Act* or by a Will.



If a Surviving Spouse or Common Law Partner chooses to receive a payment for the family home and other matrimonial property under *FHRMIRA*, the Survivor can no longer benefit from a Will or the *Indian Act* in relation to these items.⁴⁰

Any matrimonial interests not transferred to the Survivor will be placed in the Residue of the Estate and divided among the remaining Heirs. However, the Surviving Spouse or Common Law Partner can still inherit personal property gifted to them in a Will or provided for under the *Indian Act*.

A Survivor has 10-months from the date of death to make an application to a court to determine the amount payable to the Survivor⁴¹ (or the Survivor's entitlement to the transfer of)⁴² any interests or rights held by the deceased in the family home⁴³ and any structures and lands.⁴⁴

Variation of Amount (*FHRMIRA*, s 35)

An Executor can apply to a court to change the amount owed to the Survivor when:

- The spouses or partners had already resolved the issue by agreement or court order;

OR

- The amount to be paid would be unjust (children of the deceased would not be adequately provided for).

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. Carrying out Transfers of Assets

(i) Distributing Vehicles

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

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

(ii) Certificates of Possession

The *Indian Act* contains rules that place limits on the distribution of a CP. When dealing with a CP, you must contact a Lands Officer at INAC to seek approval for transferring the CP to any Beneficiaries or Heirs. A CP that is owned solely by the deceased or as a Tenancy in Common can be gifted to another band member in a Will, if the gift complies with the provisions set out in the *Indian Act*.

The *Indian Act* sets out the rules and limits for giving a CP in a Will.

- A CP cannot be transferred to a non-band member.⁴⁵
- If a CP is left to a non-band member, the property will be offered for sale to the highest bidder among band members.⁴⁶
- Once the Minister approves the sale, the money received will be given to the non-band member Beneficiary of the CP.⁴⁷
- If the CP is not sold within six months, the Minister may give the CP back to the band, at no cost; and decide whether or not to compensate the non-band member for the CP.⁴⁸

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



CP of Reserve Lands under FHRMIRA

- A Surviving Spouse or Common Law Partner (including non-band members) has an automatic right to occupy the family home for up to 180 days. (*FHRMIRA*, s 14)
- The Surviving Spouse or Common Law Partner (including non-band members) may apply to receive half the value of the deceased's interest in the family home and other matrimonial interests and rights on reserve lands. (*FHRMIRA*, s 34)
- Ownership of a CP or interest in reserve lands can only be transferred to band members. (*FHRMIRA*, s 36(1)(b)(iii))

B. Off Reserve Real Property

If the deceased owns Property off reserve, you may have to apply to transfer all or a portion of the Estate to the Provincial Court of Probate. The Provincial Court of Probate will then settle the off reserve Property according to provincial laws. However, any on-reserve Property will be settled according to the *Indian Act*.

You may apply for a grant of probate for only the portion of the Estate that is Real Property located off reserve. The type of grant you receive from the court will depend on the circumstances of the Estate. If the deceased owned a large amount of Property off reserve or owned a business located off reserve, the Minister may recommend a complete transfer of the Estate to the Provincial Court of Probate.⁴⁹

Before you receive a grant of Probate you will need to file an application with the Provincial Court of Probate where the Property is located. In order to file an application you will need the following:

- A Certified Copy of the Will;
- A Declaration or other official document issued by the Minister appointing you as Executor of the Estate; and
- The full amount of any Estate taxes owed on the value of the portion of the Estate you are seeking a grant of Probate for.

The Provincial Court of Probate will not accept an application unless the Estate taxes are paid. Depending on the circumstances of the Estate, you may be able to reclaim the taxes at a later date.

C. Missing Gifts

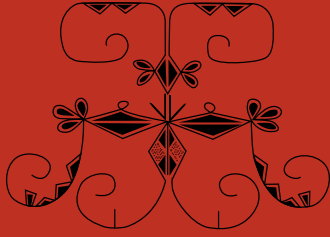
When a Beneficiary is to receive a gift under the Will, but the Executor, despite his or her best efforts, is unable to locate it then the gift will fail. When a gift fails, the Beneficiary receives nothing.

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.



Part Nine

Closing the Estate



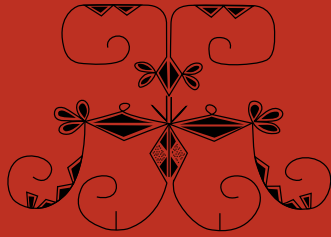
Once the debt has been paid and the Assets have been distributed, you must provide a Statement of Account to the Beneficiaries and Heirs. In the case of Minor children or Mentally Incompetent people you provide the final report to their legal representative.

The final report should include the following information:

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

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





Part Ten

Appeals

Once 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 by you, INAC, or the Minister. 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 (person making the complaint), and all interested parties. If the Minister finds that you have acted improperly or have failed to act in a timely way (allowing Assets to lose value), the Minister may remove you as the Executor and appoint someone new. However, if the Minister finds that you have acted properly, honestly, and with integrity or that the 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. The Minister may declare all or part of a Will Void if there is evidence that:

- The deceased signed the Will under **Duress** or **Undue Influence**;
- The deceased did not 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 (children or dependant adults);
- 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 (for example, clauses that make inheritance conditional on marrying or not marrying a particular person).



Duress: The use of threats to compel a person to do something they do not 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 be of sound mind and memory, knows the extent of their property, and understands the effects of the Will.

An application to declare a Will Void must be made in writing to the Minister. The applicant must provide evidence that supports the request. When a credible application with supporting evidence is submitted, INAC will contact all Beneficiaries and Heirs to 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, the administration of the Estate will be treated as though the deceased died Intestate. 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.

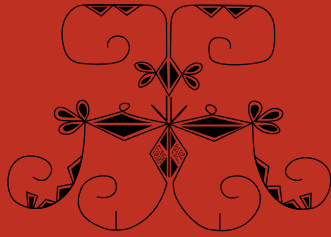
The appeal must be limited to the use of the Minister's power with respect to:

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 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; or
6. The Voiding of a Will or part of a Will of a deceased.

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 going to court against the potential benefit that may result from winning the case. A court hearing can be stressful, expensive, and time consuming. It may yield relatively little benefit in the end when compared to the potential costs.

There will be circumstances where you will need to hire a lawyer. The lawyer should be someone who has knowledge of and experience dealing with Wills of Status Indians who are Ordinarily a Resident on Reserve.





Part Eleven

Hiring a Lawyer

Before meeting with a lawyer make sure to ask if you will be charged for the initial meeting. Below are questions you may want to ask the lawyer during the initial visit:

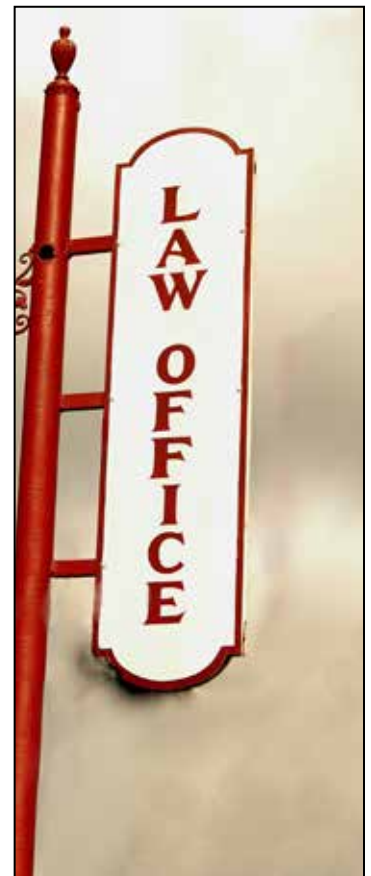
- How long have you been practicing Wills & Estates law?
- What are the procedures involved in administering an Estate, and how long will it take?
- What are the complications that might arise in administering this particular Estate?
- Do you bill at an hourly rate or on a flat fee?
- Will I be charged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

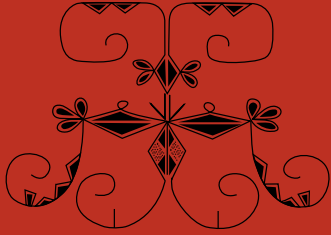
You should request a retainer letter stating what legal services the lawyer agrees to provide and the fee for those services. If things change and the fees increase, your lawyer should let you know immediately. The lawyer should stop working and obtain instructions from you before doing any other work on your behalf.

You should bring all the documents and information you have collected in order to administer the Estate to your first visit with the lawyer. You should be prepared to answer a lot of questions. If a lawyer asked for something and you do not have the information, you should make a note of it and bring it to the next meeting. If you do not understand what the lawyer is asking or saying, make sure you let the lawyer know.

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>.

Lawyers often bill their clients on an hourly rate, but some lawyers will bill you a flat fee for their service. Be sure to ask your lawyer what their fee structure is in order to avoid surprises. When you hire a lawyer, you should receive a retainer letter. In the retainer letter the lawyer will set out what legal services they are agreeing to provide to you and how they will bill you for their time. A retainer letter is the best way to make sure you and the lawyer are both clear in your expectations and obligations.





For More Information

Indigenous and Northern Affairs 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

PO 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/>

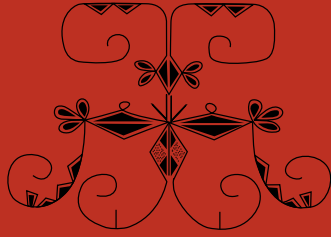
The Confederacy of Mainland Mi'kmaq

PO Box 1590 Truro, NS B2N 5V3

Toll-Free: 1-877-892-2424

Tel: 1-902-895-6385

Website: www.cmmns.com



About the Authors



Angelina Amaral, BA, MEd, JD, is a member of the Miawpukek (Conne River) First Nation of Newfoundland and Labrador; and is of Portuguese heritage. She has two children, Miguel and Jayden Amaral. Through the help and support of her parents, Adelia (John) and Miguel Amaral, she has been able to earn an undergraduate degree in psychology from Cape Breton University, a Masters of Education: Life Long Learning from Mount Saint Vincent University; and a law degree from the Schulich School of Law.

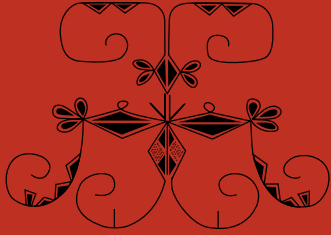
After articling through the *Ku'tawtinu: Shared Articling Initiative*, Angelina, was called to the Bar in June of 2015.



Angeline Gillis, BA, LLB, 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, Halifax's Estate Planning Counsel, and is commissioned as a Notary Public.



About the Authors



Shelly Martin, BA (Hons), MA, LLB, was born in Halifax, NS and raised in nearby Mount Uniacke. A member of the Millbrook First Nation, she was raised off reserve by her parents, grandparents, many aunts, uncles and cousins.

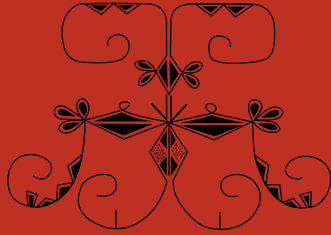
After completing undergraduate and graduate degrees in history, Shelly enrolled at the Schulich School of Law (formerly Dalhousie Law School) in 2003. After articling with Boyne Clarke Barristers and Solicitors, Shelly was called to the Bar in October 2007, the first Mi'kmaq to swear her oath in English and Mi'kmaq. Shelly, in addition to her work as Chair of the Justice Committee for the Halifax Aboriginal People's Network, has sat 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.



Andrew John, BA (Hons), JD, is an aspiring Mi'kmaq lawyer from Conne River, Newfoundland. Having grown up on the small reserve he is seeking to better reflect Mi'kmaq values in the current justice system and be a role model for youth in the community.

Andrew has developed a passion for community engagement stemming from his time before law school at Saint Mary's University, where he graduated *magna cum laude* with a Bachelor of Arts in the Criminology program. It was in this program that Andrew volunteered with at risk youth in the Pathways to Education initiative. Andrew has combined his interests in community development and social justice with a prior Paralegal diploma from the Nova Scotia Community College, and he has found this combination has led to a natural progression into the law.

Andrew graduated from Schulich School of Law at Dalhousie University in 2016. He is currently taking part in the *Ku'tawtinu: Shared Articling Initiative*, which allowed for a 3-month placement within Millbrook First Nation as a way to understand and assist our Mi'kmaq communities. After his placement with Millbrook, Andrew will continue placements with Patterson Law and Stewart McKelvey to gain different perspectives on the law.



End Notes

¹ RSC 1985, c I-5, at ss 4(3), 5-7, 42-52 [*Indian Act*].

² SC 2013, c 20 [*FHRMIRA*].

³ *Indian Act*, *supra* note 1 at ss 42 and 43.

⁴ Indian Estates Regulations, CRC, 1978, c 954 at s 3(1) [*Indian Estates Regulations*].

⁵ Indian and Northern Affairs Canada, *Decedent Indian Estates Procedures Manual*, Ottawa: Canada, January 2008 at 9 [*Decedent Indian Estates Procedures Manual*].

⁶ *Ibid.*

⁷ *Ibid* at 10.

⁸ *Indian Act*, *supra* note 1 at s 42.

⁹ *Decedent Indian Estates Procedures Manual*, *supra* note 2 at 11.

¹⁰ *Indian Act*, *supra* note 1 at s 44.

¹¹ *Decedent Indian Estates Procedures Manual*, *supra* note 2 at 16.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid* at 18.

¹⁶ *Ibid* at 19.

¹⁷ *Indian Act*, *supra* note 1 at s 45(2).

¹⁸ *Decedent Indian Estates Procedures Manual*, *supra* note 2 at 75.

¹⁹ *Ibid* at 78.

²⁰ *Ibid* at 116; also see *Indian Estates Regulations*, *supra* note 4 at s 8.

²¹ *Decedent Indian Estates Procedures Manual*, *supra* note 2 at 126.

²² *Ibid* at 127.

²³ RSC 1985, c 1 (5th Supplement).

²⁴ *Indian Act*, *supra* note 1 at ss 48-50.1.

²⁵ *Ibid* at s 48.

²⁶ *Indian Act*, *supra* note 1 at s 2(1).

²⁷ *Children and Family Services Act*, SNS 1990, c 5 at s 78A(1).

²⁸ *Indian Act*, *supra* note 1 at s 52.1.

²⁹ *Ibid* at s 2(b).

³⁰ *Indian Act*, *supra* note 1 at s 51(1).

³¹ *Ibid* at s 48.

³² *Ibid* at s 48(1).

³³ *Ibid* at s 48(2)(b).

³⁴ *Ibid* at s 48(2)(c).

³⁵ *Ibid* at s 48(4).

³⁶ *Ibid* at s 48(5).

³⁷ *Ibid* at s 48(6).

³⁸ *Ibid* at s 48(3)(a).

³⁹ *FHRMIRA*, *supra* note 2 at s 36.

⁴⁰ *Ibid* at s 37.

⁴¹ *Ibid* at s 36(1)(a).

⁴² *Ibid* at s 36(1)(b)(iii).

⁴³ *Ibid* at s 34(2).

⁴⁴ *Ibid* at s 34(3).

⁴⁵ *Indian Act*, *supra* note 1 at ss 46(1)(d) and 50(1).

⁴⁶ *Ibid* at s 50(2).

⁴⁷ *Ibid.*

⁴⁸ *Ibid* at s 50(3).

⁴⁹ *Indian Act*, *supra* note 1 at s 44.



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