

ESTATES MANAGEMENT AND ADMINISTRATION

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Canada.ca/indigenous-estates



Indigenous Services
Canada

Services aux
Autochtones Canada

Canada

WHAT SHOULD YOU DO WHEN A FAMILY MEMBER OR FRIEND DIES

INDIGENOUS SERVICES CANADA OR CROWN-INDIGENOUS RELATIONS AND NORTHERN AFFAIRS CANADA WILL ASSIST YOU

Indigenous Services Canada (ISC) is responsible for estate services in all provinces.

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is responsible for estate services in the Yukon and Northwest Territories.

PLEASE CONTACT US FOR MORE INFORMATION

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OUR QUESTIONS WILL BE SIMPLE

Did your family member or friend live on or off a reserve?

Under the **Indian Act**, ISC or CIRNAC is only involved with estates for people “ordinarily resident” on a reserve.

“Ordinarily resident” on a reserve means that an eligible First Nations person usually lives on a reserve and does not maintain a primary residence off a reserve. They may, however, temporarily live off a reserve for education purposes or to obtain care or services not available on a reserve.

If a First Nations person was living off a reserve at the time of death, the estate is the responsibility of the province, territory or country where they lived.

Please contact the appropriate **government office** for more information on the next steps.

Did they have a will?

The deceased may have left a will with a lawyer’s office, in a safety deposit box at home or at the band council office, or with family or a trusted friend.

Who are their family members?

We will ask you the names and addresses of each family member.

Is there a death certificate?

A document that shows proof of death is needed to start the estate process.

The answers to these questions will help clarify if the estate should be looked after by us, or the province, territory or country where your family member or friend lived.

If ISC or CIRNAC is looking after the estate, we will send out the required forms so that someone can be appointed to settle the estate.

WHAT IS AN ESTATE

AN ESTATE IS ALL OF THE PROPERTY AND PERSONAL POSSESSIONS OF A PERSON

The estate of a person who has died may include:

- cash
- bonds and investments
- work benefits
- earnings
- pensions
- proceeds from legal actions
- insurance settlements or other settlement monies
- personal effects, like jewelry
- personal property, like vehicles and bank accounts
- lands and buildings owned both on and off-reserve

The estate of a dependent adult or a living minor may include:

- cash and bank accounts
- bonds and investments
- earnings
- pension
- tax and disability benefits
- personal effects, like jewelry
- personal property, like vehicles and bank accounts
- lands and buildings owned both on and off-reserve
- insurance settlements or other settlement monies

An estate does not generally include:

- any jointly held assets if one of the holders is still alive, for example, joint bank accounts, joint bonds and investments, and joint tenancy of property or
- lands or buildings that are owned by a First Nation.

WHAT IS AN ESTATE EXECUTOR OR ADMINISTRATOR

The estate of a deceased person can be managed by an executor or an administrator.

A dependent adult or living minor can also have an administrator for their estate.

EXECUTOR

When a person makes a will, they name someone or a group, such as a law firm or bank, to be responsible for managing the estate once they have died. That person or group is known as the executor.

The executor manages all of the legal and financial matters of the estate and ensures that the will is carried out.

ADMINISTRATOR

If someone living on a reserve dies without a will or does not name an executor in their will, ISC or CIRNAC will appoint someone to manage the estate. The appointed person is known as the administrator and has the same duties as an executor.

If no one is willing or able to manage the estate, ISC or CIRNAC will act as the administrator.

WHAT DO ADMINISTRATORS OR EXECUTORS DO

The executor or administrator is responsible for managing all of the legal and financial matters of the estate and is accountable to the beneficiaries named in the will or to the heirs.

The duties of an executor or administrator for the estate of someone who has died include:

- identifying and protecting the estate property and belongings
- claiming work benefits
- providing a full report to the beneficiaries or heirs on what has been done
- paying the estate debts, including funeral expenses
- filing tax returns
- distributing the estate assets according to the will or the provisions of the **Indian Act** when there is no will

The duties of an administrator for the estate of someone who is living include:

- identifying and protecting the estate property and belongings
- purchasing necessities for the dependent adult or minor, and providing an allowance as required
- consulting with the person responsible for looking after the everyday wellbeing of the dependent adult or minor
- paying bills
- settling debts
- making arrangements for the person's business
- looking after any pension or benefit concerns
- filing tax returns
- providing a full report regarding what has been done each year upon request from:
 - a member of the family
 - the dependent adult
 - the minor
 - the guardian of the minor or dependent adult
 - ISC or CIRNAC

ISC OR CIRNAC WILL:

- review and address concerns and complaints about the management of the estate.
- review the management of the estate upon request from the family.

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WHY SHOULD YOU HAVE A WILL

A will is a document that leaves instructions about what you want done with your personal possessions and land after you die.

DO YOU HAVE A WILL

If you die without a will on a reserve, also called “dying intestate”, the **Indian Act** determines how your assets will be distributed, not you or your family. Without a will, friends, charities, or other beneficiaries cannot inherit from your estate. Only a member of your First Nation can inherit your land.

Having a will ensures that your wishes will be carried out. It will ensure that your loved ones are provided for. Be sure to consider making arrangements for care of your children and pets. Consider all of your possessions when making a will, such as money, vehicles, books, pieces of art, furniture, land, livestock and keepsakes. You can only gift your land on a reserve to someone who is a member of your First Nation.

Writing a will is free, unless you go through a lawyer, or a notary in Quebec. It does not have to be complicated.

BY MAKING A WILL, YOU CAN:

- provide for your loved ones, your children and grandchildren
- decide who will get your home and property
- clearly state who should receive your personal possessions, such as jewelry, vehicles and money
- leave instructions about who will take care of your children and dependents
- leave instructions for end of life ceremonies
- name who will take care of your estate

A WILL MAY:

- avoid delays in settling your estate
- reduce administrative paperwork for your family at a difficult time
- make the settlement of your estate a more personal matter
- provide peace of mind and clear direction about your wishes to your family and loved ones
- reduce ISC or CIRNAC's involvement in your private affairs

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WHAT NEEDS TO BE IN A WILL

THE INDIAN ACT OUTLINES WHAT SHOULD BE INCLUDED IN YOUR WILL

If you live on a reserve, a valid will must:

- be in writing. You can write your own or use a form available from various sources, such as will kits, and websites
- be signed and dated by you
- state what you want done with at least one of your possessions
- state that it takes effect after your death

Ideally, a will should also:

- be signed by two people who witnessed you signing your will
 - your witnesses should be adults who are not beneficiaries or the spouse of a beneficiary
- name someone that you want to be your executor
- list the full names and addresses of your beneficiaries
- list all of your assets and where they are located
 - assets include all of your property and personal possessions and effects, for example, land, bank accounts, jewelry, commercial licenses, crops, animals, investments, vehicles and buildings
- list all of your debts, how much they are worth and who holds them
- list your wishes regarding who should inherit each of your assets
- list the other items that you wish to give to specific people, including special items of sentimental value
- leave instructions for who should care for your children and dependents

DO YOU POSSESS LAND ON A RESERVE

If you possess land on a reserve, you may wish to include instructions in your will for how the land should be divided after your death. The **Indian Act** states that you can only gift your land to someone who is a member of your First Nation.

The transfer of land can be affected by the **Family Homes on Reserves and Matrimonial Interests or Rights Act** or by your First Nation's laws about **matrimonial real property on reserves**. Your band council should be able to help clarify which laws apply to your situation.



WHEN SHOULD YOU MAKE CHANGES TO YOUR WILL

You can change your will as often as you like. In fact, it is a good idea to read it over from time to time to make sure it is accurate and up-to-date.

You should change your will when:

- you have a child or grandchild
- you get married, divorced, or enter into a common-law relationship
- you move to a new address
- someone mentioned in your will dies
- you acquire new valuable property or possessions

You should always date and initial all changes or additions and have them witnessed.

DO YOU NEED A LAWYER TO MAKE A WILL

You do not need to have a lawyer (notary in Quebec) to help you write your will. However, you may wish to consult one if your estate is complicated.

For example, if you:

- have children or you care for someone who has special needs
- have property or possessions of significant value
- own property
- own a business

WHERE SHOULD YOU KEEP YOUR WILL

After your death, we will need to have the original will to help settle your estate. It will be returned to you after the estate executor is appointed.

You may wish to keep your original will in a safe place such as:

- a safety deposit box
- a fireproof box
- a home safe or a safe at the band council office
- a lawyer or notary's office
- with a trusted friend or family member

You should tell your executor or someone you trust where you stored your will.

Banks will usually allow your executor to take your will from a safety deposit box. If you live on a reserve and need more information on making a will, please contact the **Public Enquiries Contact Centre**, or **Estate Services**.

HOW ARE ESTATES OF PEOPLE WHO HAVE DIED ON A RESERVE MANAGED

ISC or CIRNAC is required **under sections 42 to 50(1) of the Indian Act** to manage the estates of people who were, or could have been, registered under the Act and who usually lived on a reserve. If you think the person who has died could have been entitled to registration under the Act, contact **Public Enquiries**.

Estate administration is a private family matter and we encourage family members or their nominees to manage the estates of those who have died.

As part of estate services, ISC or CIRNAC:

- appoints estate executors or administrators
- approves wills so they can take effect
- transfers reserve lands from the estate to the beneficiaries or the heirs
- determines the heirs if a person dies without a will
- serves as administrator if no one is willing or able to settle the estate
- if serving as the administrator, distributes estate assets according to the will or the provisions of the **Indian Act** when there is no will

If the estate cannot cover funeral expenses, contact **Estate Services**.

HOW ARE ESTATES OF DEPENDENT ADULTS AND MINORS WHO LIVE ON A RESERVE MANAGED

Under section 51 of the Indian Act, ISC or CIRNAC is required to manage the estates of people who currently cannot manage their financial or legal affairs and usually live on a reserve, including:

- those who are registered under the Act
- those who are entitled to be registered under the Act
- those whose names are on a First Nation membership list or could be added to a First Nation membership list.

Under section 52 of the Indian Act, ISC or CIRNAC may help manage the estates of minors registered under the Act and who usually live on a reserve, including:

- minors who are entitled to be registered under the Act
- minors whose names are on a First Nation membership list or could be added to a First Nation membership list
- minors whose parents are registered under the Act.

Family members are encouraged to manage the estates of dependent adults and minors.



Who is a dependent adult?

A dependent adult is someone who cannot currently manage their legal or financial affairs. This could include people with dementia or other medical conditions affecting their mental capacity.

ISC or CIRNAC can only help manage the estate once the adult has been officially diagnosed as incapable of managing their own financial or legal affairs.

Diagnosis must be done by a provincial or territorial authority such as:

- a doctor or other certified health professional
- a capacity assessor employed by the province, territory or country in which the adult lives
- a court of law

The person appointed as administrator of property for a dependent adult can only help with managing personal property and effects, such as money, lands, and debts.

Authority for decisions relating to personal care is the responsibility of the province, territory or country where the dependent adult lives.

Please contact the appropriate government offices for more information.

Who is a minor?

A minor is someone who is under the age of majority in the province, territory or country where they live. For example, in Quebec a minor is anyone 17 or younger, while in British Columbia a minor is anyone 18 or younger.

A minor can have an estate, such as property or possessions. Usually a parent or guardian is responsible for the management of the estate, because the minor is not of legal age to do so.

ISC or CIRNAC can only help manage the estates of minors in rare circumstances.

ISC or CIRNAC's ability to help manage the estate of a minor is outlined in **section 52 of the Indian Act**, and is considered discretionary. This means that ISC or CIRNAC only steps in when necessary, such as when the parent or guardian is unable to manage the estate or upon request.

ISC or CIRNAC's goal when helping to manage the estates of minors is to do what is in the best interests of the minor.

The accounts ISC or CIRNAC creates to manage the estates of minors are known as individual trust accounts.

WILLS AND ESTATES GLOSSARY OF COMMON TERMS

Administer (an estate): to determine what property the deceased owned when they died, what rights to property arose because of their death, what debts they had, collect the property, pay debts, decide who is entitled to receive the remaining property and arrange for the property to be distributed.

Administrator: a person appointed by the Minister or a court to administer an estate.

Administrator with will annexed: a person appointed to administer an estate where there is a valid will but there is no executor named in the will or the named executor is deceased or otherwise incapable or unwilling to act.

Affidavit: a voluntarily made written statement of facts for which the person who makes the statement signs and swears is true in front of a commissioner of oaths.

Assets (see also Liquid Assets): everything of value, for example, a car, land, cash, cheque, promissory note, or account receivable.

Beneficiaries: persons named in a will, in an insurance policy or provincial law to receive a gift or financial compensation generally when a person dies.

Child: section 2 of the Act states that a child includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with First Nations customs.

Claim: a statement that a person has a right to something (in relation to the estate). For example, a person may claim that they have a right to estate assets to compensate for money owed to them by the deceased.

Codicil: a codicil is a supplement to a will. It is a separate document; it is a legal instrument made to modify an existing will, a document to be read as part of and with the will itself.

Consent (noun): agreement or permission that is freely given.

Court of competent jurisdiction: a court which has the authority under the law to handle a particular matter. In relation to the estates provisions of the **Indian Act**, it means the court in a province or territory that has the power to decide the estate matters of individuals other than those falling under **subsection 2(1)** of the Act and who are not ordinarily resident on a reserve.

Creditor (see debtor): a person to whom money, goods or services are owed by the debtor.

Debtor (see creditor): a person who owes money, goods or services to another, the latter being referred to as the creditor.

Debt: an obligation to pay money or some other valuable thing.

Debts to the Crown: debts owing to federal or provincial governments, such as income taxes.

Devise or descent: **subsection 20(5) of the Indian Act** speaks of those claiming possession of land by devise or descent. This means persons claiming possession of land because of a gift made in a will (“by devise”) or because the person became entitled to possession on intestacy because they were a relative of the deceased (“by descent”).

Devisee: a person receiving land by a gift in a will. See also “legatee”.

Devolve (devolution): pass on or the passing on of property upon death.

Distribution (see also “pro rata” distribution): the division and sharing of the property of a deceased person.

Estate: **section 2 of the Indian Act** defines estate to include real and personal property of the deceased.

Executor: a person named in a will to administer the estate according to the wishes of the testator (author) as contained in the will.

Fair market value: the price that would be paid for something if it were sold on the open market.

Heir: a person related to the deceased by blood, or through adoption, and who is entitled to receive the property of the deceased where the deceased dies intestate - without a will.

Incompetent: lacking the physical or mental ability necessary to do something. For example, a mental incompetent is a person incapable of handling their own affairs due to a mental disability. A child under the age of majority is considered legally incompetent to enter contracts.

Intestacy: when a person dies without a valid will. A partial intestacy can also arise when part of a person’s property is not given away by a valid will. There is an intestacy with respect to the property that was not given away by the will.

Intestate: a person who dies without making a will or whose will is declared void; also the state of dying without a valid will - to die intestate.

Inventory: the description and valuation of the property owned by the deceased and by the estate and of the debts owing by the deceased and the estate.

Issue: children and grandchildren and all other persons in a straight line from a person.

Joint tenancy: a situation where a person shares a right to possess land or other asset in common with other owners. When a joint tenant with an interest in land dies, their interest passes automatically to surviving co-owners and does not become part of the estate, and therefore cannot be the subject of a gift in a will. A person may own other assets, such as a bank account, in joint tenancy. The account proceeds go to surviving account holders on the death of one of the joint tenants.

Jurisdiction: the authority to do something. For example, the Minister has jurisdiction to administer the estates of deceased First Nations people who were ordinarily resident on a reserve. It may also be said that the administration of the estate of a deceased First Nations person who was ordinarily resident on a reserve “falls within the jurisdiction” of the Minister.

Liquid assets: cash on hand or in a bank, and other assets that can quickly be converted into cash.



Monetary assets: a form of liquid asset including cash or cheques.

Mortgage: the transfer of title to land to the mortgagee (lender) to ensure payment of a debt of the mortgagor (borrower).

Net assets: assets remaining after all debts have been paid.

Next-of-kin: blood or adopted relatives.

Ordinarily resident: a person is “ordinarily resident” on a reserve when they habitually make their home there. Even if the person is forced to spend time in hospital, or if they leave the reserve to go to school or to go hunting, they may still be deemed “ordinarily resident” if they intended to return to the reserve.

Partial distribution: a distribution of part of the estate assets.

Personal property: property that is movable, as opposed to real property, land and attached buildings or structures. Personal property, also called chattels, includes everything owned by the deceased that is not an interest in land or permanent improvement, for example, money, bonds, vehicles, equipment, furniture. In Quebec, personal property is called “immovables”.

Per capita (see also *per stirpes*): individually or by the head. Property is distributed per capita if it is divided in equal shares among all persons entitled to it. For example, if the property of an intestate is distributed per capita among three children, each child receives an equal portion. It means according to the number of individuals. Where a division per capita occurs, an equal share is given to each person without reference to their stocks or the right of representation. Thus, in **subsection 48(6) of the Indian Act**, where nieces and nephews are alive, they share equally, regardless of whether one niece descended from one brother and ten descended from another.

Per stirpes: the property of an intestate is distributed equally among the branches of descent.

Possessory interest: the right to possess property. For example, a person might claim a possessory interest in land.

Post a bond: to give a written agreement that a penalty will be paid if something is not done.

Preferential share (of spouse): the amount that is paid to the spouse of an intestate after all debts have been paid. This amount is paid out before any sum is paid to other heirs. If the estate does not have enough assets to pay the spouse’s preferential share, the other heirs receive nothing. Under **subsection 48(2) of the Indian Act**, the preferential share of the widow is \$75,000. The other heirs will only receive a share if the estate is greater than \$75,000.

Priority (among creditors, or priority of debts or priority of payment): the right to be paid before others. For example, the claims of secured creditors have a priority over the claims of unsecured creditors. The claims of the unsecured creditors will

be paid only if anything remains after paying the claims of the secured creditors. See also “secured creditors” and “unsecured creditors”.

Pro rata distribution: If there are not enough estate assets to pay every creditor, each creditor will receive the same proportion of what is owed to them as the other creditors of the same class or rank. Pro rata means in “proportion”.

Probate (of Will): the process of proving that a document is the last will of the deceased. Probate is granted by a court, however, it is the same process as the approval of a will by the Minister pursuant to **subsection 45(3) of the Indian Act**.

Quasi-judicial: an act or decision that is essentially similar to the type of decision made by a judge. Quasi-judicial decisions are subject to the rules of natural justice, for example, an individual must have the opportunity to make representations.

Quit claim: a statement signed by a person in which they give up their right to claim an interest in a piece of land or other asset to someone else in exchange for money or other valuable consideration.

Real property: land and permanent improvements, such as buildings or structures, erected on the land. In Quebec, real property is referred to as “immovables”.

Registered interest: a charge (debt) that is registered in a registration system that provides for the priority of charges.

Release (noun): a signed statement in which a person gives up their right to sue someone or to make a legal claim for something. For example, a person injured in a car accident might receive money from an insurance company and then be required to sign a release preventing them from claiming more money from the company; (verb) the act of signing a release.

Relinquish: to forsake or give up a right or privilege (see also renounce, release, waive).

Renounce (office): to give up the right to perform the functions of that position (such as acting as personal representative of the estate).

Representation: taking the place of another. For example, if an heir predeceased an intestate, the heir’s children may represent their parent so as to take the share their parent would have taken if alive.

Residue: the remainder or part left over. The residue of an estate is that part that has not been used to pay debts and that the deceased did not give away in their will. The deceased may have forgotten to give something away, in which case it becomes part of the residue. Or, they may have stated explicitly in their will that everything they did not expressly give away in the body of the will was to fall into the residue. A residue clause in a will directs the disposition of assets which are not the subject of gifts outlined elsewhere in the will.

Residuary beneficiaries: beneficiaries who are to receive a share of the deceased's property, including land, after all their debts are paid and after all gifts made in the will have been distributed. The residuary beneficiaries therefore share the residue of the estate. Residuary beneficiaries can exist only where there is a will.

Secured asset: an asset that is the subject of a security agreement. For example, if a person pledges their car to guarantee that they will pay back a loan, it is said that the car is a secured asset.

Secured creditor (see **unsecured creditor**): a person who has a right to obtain what is owing to them before the claims of unsecured, ordinary creditors. The right is guaranteed or secured against, or may be realized from, a particular asset or class of assets in the event of death or default in payment of the loan.

Statutory declaration: a written statement of facts that the person making the statement signs and swears to be true before a commissioner of oaths. A commissioner of oaths is someone who is, generally as a function of their office, formally appointed to take oaths and statutory declarations.

Succession: the passing of property on the death of a person.

Successors (to an estate): the heirs or beneficiaries who are entitled to the estate on the death of a person.

Tenancy in common (see also **Joint tenancy**): a type of ownership of land or other asset where two or more persons are entitled to the whole of the asset in common with others, as opposed to being entitled to exclusive possession of a defined part of the land. On the death of a tenant in common, the share of the deceased passes to their heirs or beneficiaries who then become tenants in common with the surviving co-owners. Land owned by a person as a tenant in common is included in their estate. Land held as a joint tenant automatically passes to the surviving joint tenants and does not become part of the estate.

Testamentary: an expression that means "about a will". For example, a testamentary dispute is a dispute about some aspect of a will, such as its validity, or the way property is being distributed under the will.

Testate: to die with a valid will.

Testator: a person who makes a will.

Transfer of jurisdiction: the transfer under the **Indian Act** of the Minister's power to oversee the administration of estates. The power is transferred to a court that would normally handle the estate matters of non-First Nation individuals. **Subsection 44(1)** of the Act gives the Minister the authority to transfer jurisdiction.

Trust account: an account kept by a trustee (a person or an organization) for the benefit of a beneficiary (a person or an organization). An executor is the trustee of the deceased's estate. A bank account set up by the executor to manage estate assets would be considered a trust account.

Unsecured assets (see also "secured assets"): assets that are not the subject of a security agreement.

Unsecured creditor (see also "secured creditor"): a creditor (also known as an "ordinary creditor") who does not have a right to the assets of an estate ahead of other creditors.

Void: (to invalidate) invalid. A will may be voided in part or in whole.

Will: a written or typed document stating how a person wants their property to be administered and distributed after they die.