

# What is Probate?

## Estate Administration Self-Help Guide



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## Public Guardian and Trustee of Yukon

## Information Resources - Whitehorse, Yukon

### **Office of the Public Guardian and Trustee**

867-667-5366; toll free (in Yukon) 1-800-661-0408, ext. 5366

Email: [publicguardianandtrustee@gov.yk.ca](mailto:publicguardianandtrustee@gov.yk.ca)

Web site: [www.publicguardianandtrustee.gov.yk.ca](http://www.publicguardianandtrustee.gov.yk.ca)

Location: Third Floor Andrew A. Philipsen Law Centre, 2134 – 2nd Avenue

### **Yukon Public Law Library**

867-667-3086; toll free (in Yukon) 1-800-661-0408, ext. 3086

Email: [yukon.law.library@gov.yk.ca](mailto:yukon.law.library@gov.yk.ca)

Web site: [www.justice.gov.yk.ca/prog/cs/library.html](http://www.justice.gov.yk.ca/prog/cs/library.html)

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

### **Registry of the Supreme Court of Yukon**

867-667-5937; toll free (in Yukon) 1-800-661-0408, ext. 5937

Email: [courtservices@gov.yk.ca](mailto:courtservices@gov.yk.ca)

Web site: [www.yukoncourts.ca/courts/supreme.html](http://www.yukoncourts.ca/courts/supreme.html)

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

## Non-Government

### **Yukon Public Legal Education Association (YPLEA)**

867-668-5297; toll free (in Yukon) 1-866-667-4305

Email: [ypleayt@gmail.com](mailto:ypleayt@gmail.com)

Web site: [www.yplea.com](http://www.yplea.com)

### **Law Society of Yukon (Lawyer Referral Service)**

867-668-4231

Email: [info@lawsocietyyukon.com](mailto:info@lawsocietyyukon.com)

Web site: [www.lawsocietyyukon.com](http://www.lawsocietyyukon.com)

Lawyer Referral Service - half-hour consultation with a lawyer - \$30 plus GST

### **Lawyers**

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

## IMPORTANT!

This guide has been produced by the Office of the Public Guardian and Trustee in the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication. Please refer to the guide **List of Key Words Estate Administration Resource Guide** for definitions of any unfamiliar terms that are highlighted in this guide.

## WHAT IS PROBATE?

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Probate is a term that refers to the legal process of confirming that a will is valid. A **Grant of Probate** is required to confirm an executor as the legal representative of the estate so that the executor can act upon the terms of the will.

In order to probate a will, the executor is required to complete a series of specific court documents that must be filed at the registry for the Supreme Court of Yukon in Whitehorse. These documents provide the court with information about the estate and the will.

The information in this guide applies to cases where there is no disagreement about the appointment of the person who applies to probate the will. If the application is contested, or if you intend to oppose the application, you should seek legal advice and refer to the Supreme Court rules and forms for the process used in such cases.

### Is probate required for every estate?

Yukon law requires that an executor obtain a Grant of Probate. If the assets of the estate include real property and the executor intends to transfer title of the real property from the name of the deceased to the estate, the Land Titles Office will require a certified copy of the Grant of Probate. (This does not apply if the property was held jointly with another person and the right of survivorship applies.)

An executor may want to check with financial institutions and other third parties who hold assets of the estate to determine what they require to release the assets. These institutions may not release the assets until they are provided with the Grant of Probate and (in some cases) the Certificate of Death.

## What forms do I need to probate a will?

Supreme Court Rule 64 provides information about applying for a probate of an estate in cases that are not contentious. The Supreme Court requires that a number of documents be filed in court before a Grant of Probate can be issued. The court registry can provide you with a package of the required forms or you can download them from the Supreme Court web site at [www.yukoncourts.ca/courts/supreme/ykrulesforms.html](http://www.yukoncourts.ca/courts/supreme/ykrulesforms.html).

Before you file the documents in the Supreme Court, you must swear them before a Notary Public. Many executors retain the services of a lawyer to complete the necessary documents required to receive a Grant of Probate.

The Supreme Court requires that the following documents be filed in court before a Grant of Probate can be issued:

- **Requisition (Form 4):** This document starts the file and requests that the applicant be issued a Grant of Probate under Supreme Court Rule 64. (Please note that the registry has a specific version of Form 4 for use in such cases. It is not available on the courts web site.)
- **Affidavit of Executor (Form 72):** The executor (or in some cases co-executors) must swear an affidavit setting out the details of the estate for the court, including the identity of the deceased and any beneficiaries, the identity of any dependents of the deceased, and a statement by the executor that he or she will administer the estate according to the law (see section 107 of the *Estate Administration Act*). The executor must also attach the original will, a copy of the Certificate of Death and the Statement of Assets, Liabilities and Distribution as exhibits to this affidavit.
- **Affidavit of Notice of Application (Form 73) with Notice of Application for Probate or Administration (included):** Under section 108 of the *Estate Administration Act*, a notice must be sent to individuals who are considered “interested persons” to the estate. The notice should state that the executor intends to apply for a Grant of Probate. A copy of the original will must be attached to the notice for the information of the individuals who receive the notice. Included in the list of interested persons are the named beneficiaries, the spouse of the deceased, the common-law spouse of the deceased, the children of the deceased, and any minor or person under legal disability related to the deceased. The executor must swear the Affidavit of Notice of Application which identifies who received the notice, how it was sent and the date it was sent. The assistance of a lawyer may be required to properly carry out the requirements of this section of the Act and to draft the required documents.
- **Grant of Probate (Form 115):** This form must be completed, signed by the executor and submitted to the Supreme Court of Yukon with the required probate documentation. After the executor files the necessary documents at the court registry and pays the filing fee (if applicable), a Supreme Court judge will review all the documents filed and issue the Grant of Probate if everything is in order.

- If the deceased was a member of a Yukon First Nation, the Supreme Court also requires that an affidavit be filed to inform the court of the membership status of the deceased and whether at the time of death the First Nation has passed any laws about inheritance, wills, intestacy and administration of estates relating to its citizens.

Please note that the Supreme Court does not issue the order granting probate of the estate immediately upon filing of the required documents. The timing of the issuing of the order will depend on how and when the notice was served. The clerk will phone you when the judge approves your request or if further information is needed to make a decision.

### **Is there a fee for probating a will?**

If the estate is worth more than \$25,000, the Supreme Court charges a filing fee of \$140 to obtain a Grant of Probate. There may be a fee charged for an estate that is estimated to have a value of not greater than \$25,000. There is also a fee for certified true copies of documents. If the executor retains a lawyer to prepare the documents and provide legal advice, there is a separate cost for the estate.

# NOTES



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For more information, or to obtain copies of these publications, please contact:

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