

Estates Management Process

PHASE 1



Estates Management

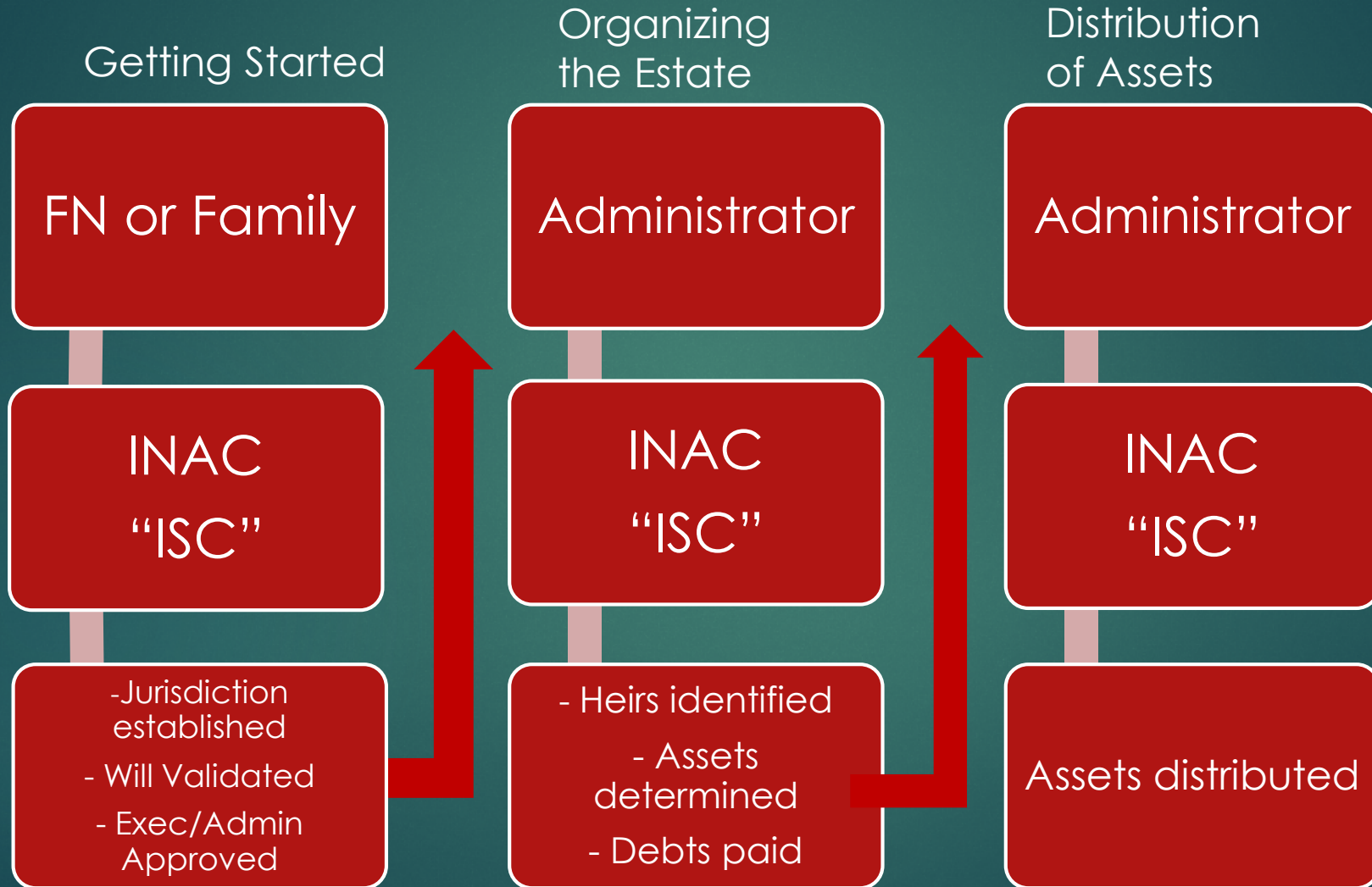
- ▶ The following phases will provide a sample process for administering an Estate.
- ▶ In this section, we will examine the steps in the first phase of the Estate Management process: “Getting Started”

Terminology

For convenience:

- Exec/Admin refers to the Executor of the Administrator
- Prov/Terr refers “provincial” or “territorial” depending on the region
- Minister refers to the Minister of INAC now known as ISC

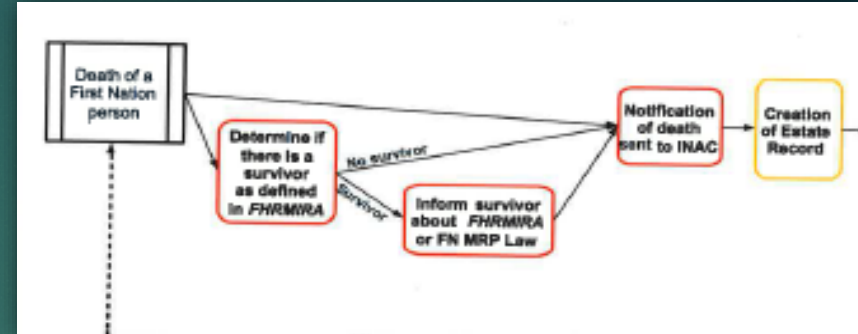
Estate Management Process



Estate Management Process

-Getting Started:

-*Is There a Survivor?*



-Determine if the deceased had a spouse or a common-law partner: the “survivor”

-If there is a survivor, there may be Matrimonial Real Property (MRP)- Interest to consider

-MRP on reserve includes land and the family home situated on that land, as defined by *FHRMIRA* (Family Homes on Reserve and Matrimonial Interests or Rights Act)

-The survivor should be informed whether or not the First Nation has its own MRP law, or uses *FHRMIRA*

-The provisions of a Will may be more/less advantageous than the regulations of *FHRMIRA*

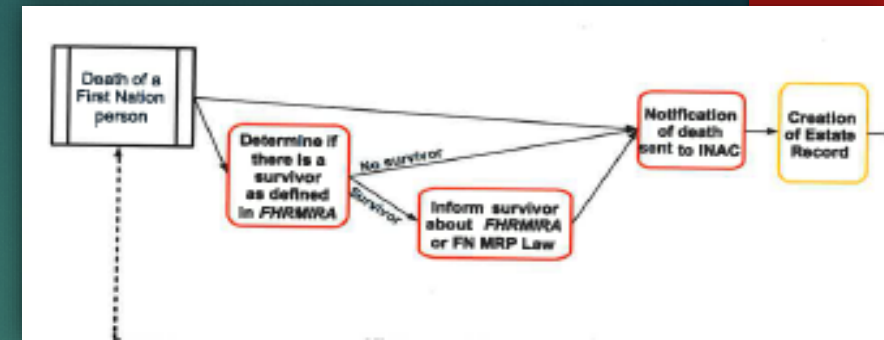
Getting Started:

-Inform Survivor

-Inform the survivor about the option

To choose:

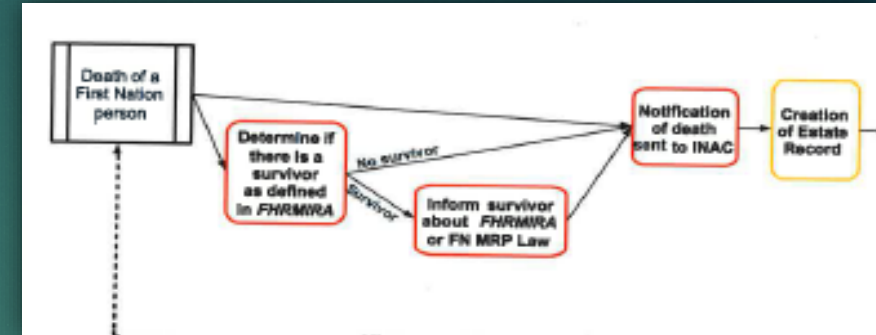
- Between the Will and the provisions of *FHRMIRA*
- Or if there is no Will, between Intestacy(Indian Act s48) and *FHRMIRA*
- The option must be exercised within 10 months of date of death (sometimes can be extended)
- During this 10-month period,
 - The survivor can assess which option is preferable
 - Distribution cannot begin until the choice is made or the 10 months have elapsed, unless
 - The survivor has waived this right sooner and in writing



Getting Started:

-Notification of death

- Notice to INAC(ISC) initiates estate administration
- Proof of death id required with a...
 - Death Certificate
 - Funeral Home Director's statement
 - Burial Permit/Interment Certificate
 - Record of Death from Vital Statistics
- A finding of Presumption of Death may be obtained if a lengthy whereabouts is unknown
- This notification keeps the Indian Register up-to-date



Getting Started: *Creating Estate Record*

-INAC will want to know:

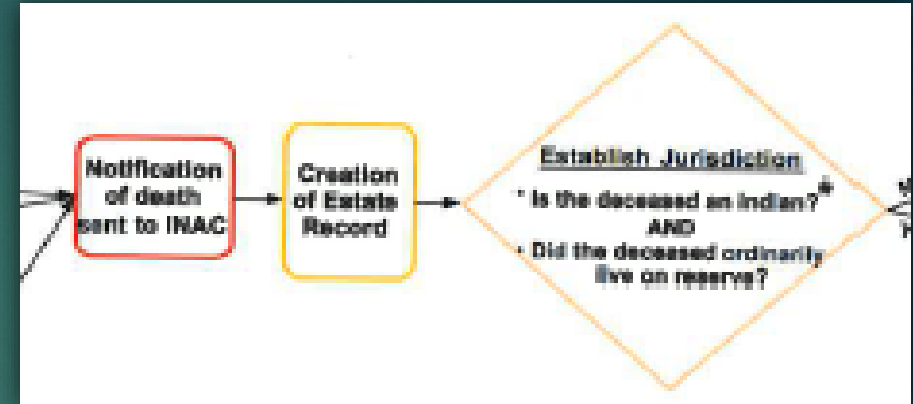
- If the deceased lives on reserve
- If the deceased had a will
- Who the deceased 's family members are

-INAC creates an Estate Record(paper)

Containing:

- information about deceased's estate
- this information is then recorded in Estates Reporting System(ERS)
- all estate information is protected

-INAC requires an original Will



Getting Started: *Creating Estate Record*

-INAC authority is derived from the *Indian Act*, Sections 42-50, and Includes:

- Approving a Will
- Appointing an administrator for an estate
- Administering an estate when no family member willing or available
- Voiding a Will, in whole or in part, (with approval from the Deputy Minister)

-There are 4 ways estates can be managed:

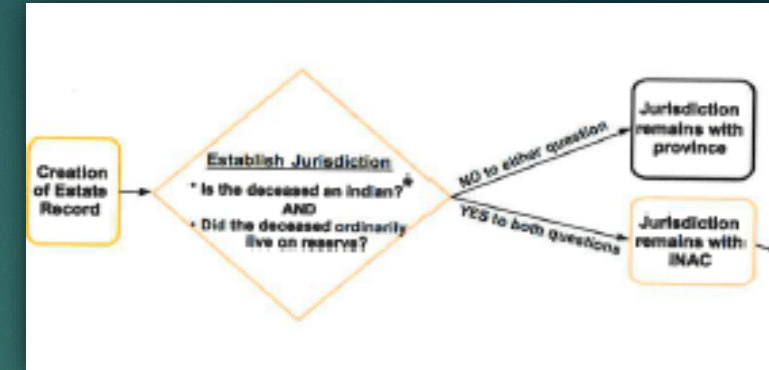
- 1) By a family member
- 2) By a departmental Estates Officer (last resort)
- 3) By transfer of jurisdiction to Prov/Terr Court (requested by family or Minister)
- 4) By an assumption of jurisdiction (e.g., from prov/terr to federal)

Getting Started: *Establishing Jurisdiction*

There are 2 criteria required for INAC jurisdiction

First Criteria: The deceased must;

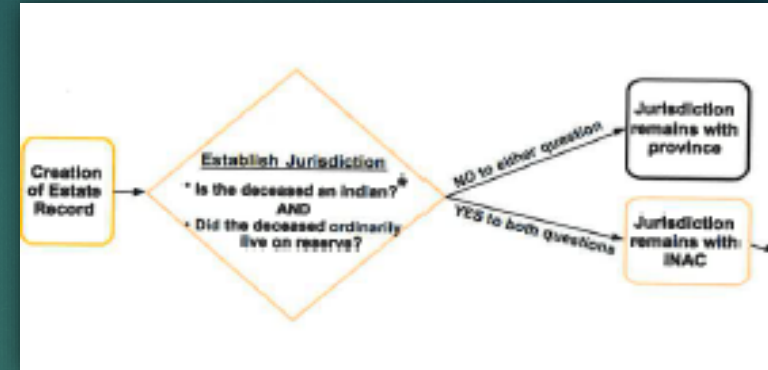
- Registered with INAC's Indian Registrar, OR
- Eligible to be registered with INAC's Indian Registrar
- Note that membership in a First Nation does NOT imply eligibility



Getting Started: *Establishing Jurisdiction*

Second criteria: The deceased must have died
Ordinarily resident on reserve or crown land

- It can be the actual domicile on reserve
- It can be the intention about where the primary residence is; ...
 - returning “home” in old age
 - away for work or school
 - away due to need for special medical care



Getting Started: *Establishing Jurisdiction*

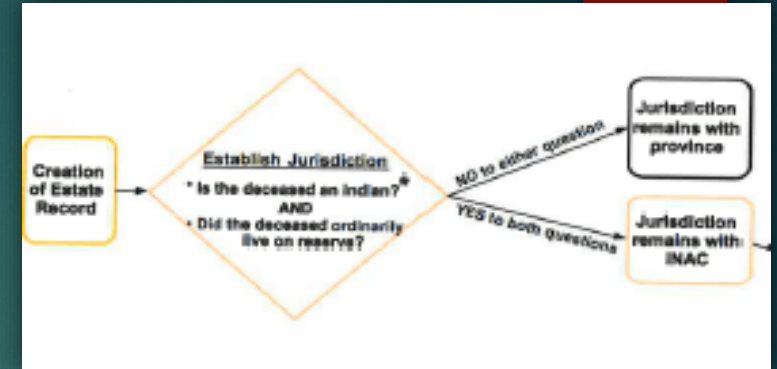
- If both conditions are met, jurisdiction remains with INAC

- Administration of estate proceeds according to the *Indian Act*

- If either one of the conditions is not met, jurisdiction remains with the province/Territory

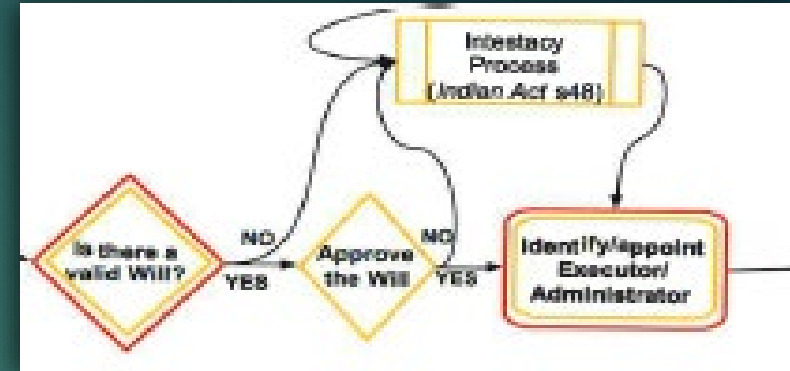
NOTE: in either case, any reserve lands

- remain under the INAC Minister's responsibility
 - are subject to the *Indian Act* rules and regulations



Getting Started: *Valid Will*

- Locate the Will – It may be
 - at home
 - in a bank safety deposit box
 - at a lawyer's office
- Multiple Wills:
 - Choose the most recently dated Will
 - Same dates -> both Wills are read together
- Photocopied Will:
 - usually not acceptable, but Minister's discretion
- Changes to a Will
 - Accepted at Minister's discretion



Challenges to the Will

- Only heirs and beneficiaries can challenge a Will
- There is no time limit for a challenge to a Will
- Why would a Will be challenged?
 - it was made under duress
 - The testator lacked mental capacity(unable to understand what a Will is, or what it says at the time it was signed)
 - The terms of the Will create undue hardship for dependents
 - The Will provides for the disposition of reserve land contrary to the interest of the band of the *Indian Act*
 - The Will is too vague or uncertain
 - The terms of the Will are against the public interest

Challenges to the Will

How Is a Will challenged ?

- An heir or beneficiary makes claim to INAC to challenge the Will with proof or supporting documentation
- INAC will inform all heirs and beneficiaries
- INAC will determine if the challenge is valid
 - If not valid -> heirs and beneficiaries are informed, and
 - > estate administration proceeds
- If valid ->INAC HQ void the Will,
 - >Intestacy provisions of the *Indian Act* take effect

Getting Started: *Intestacy*

Intestacy occurs when

-There is no will

OR

-The Will has been voided

-Distribution of the deceased's property follows Section 48 of the *Indian Act*: the process is initiated by INAC

-INAC contacts family and offers three options

1)An heir requests to be appointed Administrator

2)An heir nominates someone else to be Administrator

3)An heir requests a departmental employee be appointed as Administrator

Getting Started: *Executors*

Five possible scenarios:

- 1)The Will names and executor who is willing and able to act
- 2)The Will names an Executor but that person is unwilling or unable to act
- 3)The Will makes no mention of an Executor
- 4)The Will names “the Department” as Executor
- 5)The Executor can’t be located

Executor
Named in Will

Administrator
Appointed by INAC

Getting Started:

Appoint Administrator

- If there is no Executor named in the Will, Choosing an Administrator is the first task
- Some criteria for the choice of the Administrator
 - 1)A family member is usually preferred
 - 2)The person with the greatest interest under the terms of the Will normally is the preferred person, then the second, and so on
 - 3)A beneficiary may apply or nominate someone as Administrator
 - 4)Good business insight is an asset for the Administrator
 - 5)Potential conflicts of interest are usually an impediment
 - 6)The person should normally live close by
 - 7)The person must have time to Administer the estate

Getting Started

- The first phase of the Estates Management Process, "Getting Started" is now complete
- Most of the responsibilities belong to INAC
 - in determining jurisdiction
 - in approving the Will
 - in appointing the Executor/Administrator
- We will now look at the second phase: Organizing the Estate

BREAKOUT SESSION



BASICS QUIZ

Acknowledgements

A special Thank you to NALMA The National Aboriginal Lands Managers Association, as the experts in Training for Lands Managers.