

Estates Management Process

PHASE 2



Estate Management Process

Organizing the Estate:

Some Cautions and Best Practices

Some estates require expertise that may be beyond that of the Administrator when...

- there are sizable assets, especially off reserve
- there is a business with employees
- litigation is ongoing or expected against the estate, or by the estate
- Hire a lawyer, accountant or surveyor(estate pays)
- Maintain ongoing communication and accounting to beneficiaries
- Maintain a system of record keeping of all transactions with receipts

Organizing the Estate

Role of Executor/Administrator

- Administer the estate properly in a timely fashion:
 - Maintain ongoing communication with all interested parties
 - Identify, collect and protect assets until distribution
 - Pay debts
 - Attend to taxes, if any
 - Distribute remaining assets
 - Provide an accounting of the estate to the heirs/beneficiaries
- Seek professional advice when needed from a
 - Lawyer
 - Surveyor
 - Accountant
- Treat all heirs/beneficiaries equally and fairly
- Avoid and conflicts of interest

Organizing the Estate

Administrator first Duties

- Identify and locate any vulnerable assets:
 - pets
 - Livestock
 - Insurance policies to be kept current
 - Buildings are winter-ready, if applicable
 - Arrange funeral if not already arranged or requested
 - advise the survivor (if there is one) about *FHRMIRA* and whether or not the First Nation has its own MRP law
 - if there is no Will, determine who the heirs are
 - if there is a Will, identify the beneficiaries

Organizing the Estate

Determine Heirs

-Heirs: are those who have a right to inheritance if there is no Will

Heirs include:

- Surviving spouse or common-law partner
- Blood relatives as shown on the chart
- Adopted children
- Children born out of wedlock

(if deceased died after April 17,1985)

-Heirs are determined as of the date of death of the deceased

Organizing the Estate: *Determine Heirs*

- Spouse and relatives
- Degrees of kindred are shown in this chart

	Great-Grandparents (3)	
	Grandparents (2)	
Uncles (3)	Parents (1)	Aunts (3)
Brothers (2)	Deceased (0)	Sisters (2)
Nephews (3)	Children (1)	Nieces (3)
First cousins (4)	Grandchildren (2)	First Cousins (4)
Second cousins (5)	Great-Grandchildren (3)	Second cousins (5)
	Great-Great-Grandchildren (4)	

Organizing the Estate: *Determine Heirs*

- Who can inherit reserve land? If status Indian: Survivor, and 1st and 2nd degree kindred only

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	Grandparents (2)	
Uncles (3)	Parents (1)	Aunts (3)
Brothers (2)	Deceased (0)	Sisters (2)
Nephews (3)	Children (1)	Nieces (3)
First Cousins (4)	Grandchildren (2)	First Cousins (4)
Second Cousins (1)	Great-Grandchildren (3)	Second Cousins (3)
	Great-Great-Grandchildren (4)	

Organizing the Estate: *Determine Heirs*

Who is not an heir, and thus cannot inherit in an intestacy?

- Step-children, unless they were adopted
- spouses of heirs(other than the survivor)
- daughter –in-law or son-in-law of deceased

Organizing the Estate: *Determine Heirs*

-Even if there is a Will, under *FHRMIRA*, some heirs have a right of inheritance to Matrimonial Real Property(MRP),namely

- The survivor (spouse or common-law partner)
- The children
- Dependent adults

*Note that if there is a survivor, distribution cannot occur now, as there is a 10-month hold period from the date of death.

Complaints about the Administration

- Complaints can happen anytime after the Administration is appointed
- Complaints are only recognized if they are made by an heir, a beneficiary or someone affected
- Typical complaints relate to timeliness, mishandling the estate either due to inexperience or fraud
- Complaints must be submitted in writing to INAC
- There is no time limit, even after estate is closed

Complaints about the Administration

The INAC Estates Officer will...

- Determine if the complainant is actually suffering a loss and if the complaint is serious
- Notify the Administrator and require a reply within 30 days

Satisfactory explanation

- Advise complainant of explanation

NO Satisfactory explanation

- Notify heirs & beneficiaries that Administrator will be removed
- Obtain an MO for the removal of the Administrator
- Appoint new Administrator and notify all concerned

Breakout Session 2 – Assignment

In groups of 3, determine “WHO” can inherit “WHAT”

-George was a status Indian, member of an FN with no MRP Law of its own, who died intestate George’s Estate includes:

- A Family home on 2 acres of land on his reserve where he lived

- A cottage off-reserve

- He owned a gas station and convenience store on reserve

- Fully restored cars: 1959 Corvette, 1947 jaguar, 1965 Mustang

-His family is as follows:

- A wife Susan, status Indian and member of the same FN.

- Two sons: George Jr and his wife Betty, and Kevin (who pre-deceased his Dad by 3 Months) and his common-law partner Jen.

- George and Betty have three daughters, Kim, Lori, and Jane.

- Kevin and Jen had adopted son, Robin.

- An invalid father who lived with him.

- A brother, James, who is married to Marcia. They have two children, Joyce and Brian.

Organizing the Estate: *Continued*

- The heirs and/or beneficiaries have been identified
- The Administrator is ready to begin the research to determine:
 - all the assets
 - all the debts
 - commitments(e.g., employment, membership, etc.)
- A first step would be to contact all organizations, businesses, and institutions that the deceased dealt with...

Organizing the Estate:

Notify Organizations

- Banks and financial institutions
 - Notify them that you are the Executor/Administrator of the estate
 - Cancel recurring charges to credit cards or recurring debits to bank accounts
 - Request information about assets held by and/or debts with these institutions
 - Enquire about requirements to access the safety deposit box(especially if the key is not available)
- Insurance companies
 - To end payments to private health or life insurance

Organizing the Estate:

Send Notifications

- Employer

- Not only as a courtesy, but also to determine if there are any wages or benefits owing

- Government offices, such as:

- The Ministry of Transportation to cancel Driver License

- The Ministry of Health to cancel health insurance

- Other organizations

- To cancel membership and other commitments

- To inform volunteer organizations

- To cancel individual cell phone service

Organizing the Estate:

Notify Organizations

However, DO NOT cancel:

- Postal service yet
- Any insurance policies that cover assets such as:
 - Dwelling,
 - Buildings,
 - Businesses,
 - Cars,
 - Boats

Organizing the Estate:

Determine Assets

- In addition to the determinations made in the process of notifications, many other avenues must be pursued
- Vulnerable assets such as living creatures, insurances, winterizing of buildings should already be identified and handled
- Identify land holdings
 - on-reserve land... talk to the band Land Manager or to INAC to determine the status of any land holdings
 - ➔ CP's, CO's, Joint-tenancy or tenancy-in-common land holdings, land transfers in progress?
 - Off-reserve land...Search municipal and provincial registries

Organizing the Estate:

Determine Assets

- Determine if INAC holds any funds in trust
- Inquire from family members about other assets such as
 - chattels of value or cultural significance; have appraisals done if they are deemed valuable
 - contract payments owed to the deceased; collect these funds
- Inquire from employer and businesses if
 - salary or wages are due to the deceased
 - there are any death benefits payable to the deceased's estate, private or CPP

Organizing the Estate:

Determine Assets

- Identify financial assets, e.g.,
 - Funds, investments, and securities held in financial institutions
 - Any life insurance policies
 - Initiate the process for receiving payouts from life insurance policies
- Exclude any assets owned jointly with anyone
 - They now belong to the joint owner(s)
 - They do NOT form part of the estate

Organizing the Estate:

Determine Assets

- Determine if any outstanding debts are owed to the deceased
 - collect all debts owed to the deceased
 - provide receipts to the debtors
 - keep a copy of all transactions for your file
- Catalog assets
 - List items with actual, estimated, or appraised value
 - Calculate the total value of the assets

Organizing the Estate:

More Cautions and Best Practices

- Avoid distribution before debts are paid, except when;
 - Funds are needed to protect some assets
 - Funds are needed for reasons of hardships as long as enough funds remain to cover bequests
 - Advise the heirs and beneficiaries beforehand
- Anyone who receives assets while there are debts still outstanding may be liable for those debts
- An Administrator who distributes assets while there are debts still outstanding may be liable for those debts

Organizing the Estate:

Determine Debts

- In the same manner as determining assets, research must be carried out to locate all creditors and to determine all debts and their amounts
- Inquire from financial institutions about outstanding mortgages, loans, credit card balances
- To ensure that all debts are identified
 - post a Notice to Creditors, heirs and other claimants, and keep a copy for the estate files
 - The posting must be up for 8 weeks
 - The posting should be at the Bank office, The post office , local newspaper, other locations where deceased had business
- Calculate the total debts

Organizing the Estate:

Determining Debts

- Determine if there is sufficient cash money to settle the debts
- Debts are only paid from the assets of the estate
- Family members and the Administrator are not expected to cover any shortfall
- If there is not enough money to cover the debts, some assets will have to be sold

Organizing the Estate:

Settling Debts-Priority Order

- Some debts take priority over others
- Priority is important if there are not enough assets to cover the debts
- General priority order(may vary by province):

- 1)Funeral expenses
- 2)Secured creditors
- 3)Preferred creditors
- 4)Ordinary creditors

Organizing the Estate: *Settling Debts*

1) Funeral expense debt is a top priority

- Funeral home does not need a written contract as proof of debt, however...

- ...Cost must be for a reasonable funeral; excessive costs for a lavish funeral may have to be borne by the person who signed the contract

- ...the deceased is entitled to be buried according to his/her station in life

- If the estate cannot pay, seek advice/assistance from Band Office

Organizing the Estate: *Settling Debts*

2) Secured Creditors

are paid but only in the lesser amount if :

➤ Value of item

OR

➤ What is owed

-e.g., house mortgage,
Car loan

-Any remaining amount becomes an ordinary debt, ex:

-Car loan of 25,000\$ **However** Car value is only 20,000\$

-Secured portion is 20,000\$, to be paid now as a secured loan

-Remainder of 5,000\$ is deemed an ordinary debt

-The Administrator can choose any one of 3 options:

1) Pay loan with estate funds and keep the asset in the estate

2) Transfer asset ownership back to the creditor(debt is satisfied)

3) Sell the asset, add funds to estate, pay loan from estate funds

Organizing the Estate: *Settling Debts*

3) Preferred Creditors



-e.g., Wages owed to deceased's employees

(Preferential Creditors) are paid after the secured creditors;

- These debts, while not secured, have a higher priority than general unsecured debts
- Examples (varies province or province)
 - Wages owed to employees
 - Taxes
 - Funds owing from a lawsuit
 - Legal fees incurred while settling the estate

Organizing the Estate: *Settling Debts*

4) Unsecured Creditors

- Creditors where no security or collateral was provided are paid last
- There is no defined order, but it is advised to deal with any high-interest debts first
- If there are insufficient funds, the distribution is prorated according to the debts(i.e., each creditor receives the same percentage of the debt)
- Examples :
 - credit card debt
 - phone bills
 - personal loans

Organizing the Estate:

Determine Debts

- Prepare a debts inventory list
- You may use INAC's Asset/Debt Form
- Or you may make your own

Organizing the Estate:

Sale of Assets to Pay Debts

- If assets must be sold to cover debts, discuss the choice of assets with the heirs and beneficiaries
- Other assets can be sold; suggested order or priority:
 - Personal items not gifted
 - Any real estate designated for paying debts
 - Other real estate
 - General legacies , then specific legacies
- If reserve land is involved and the heir/beneficiary is not a member of the same FN, the land must be sold: a Section 50 Sale
 - Other member heirs or beneficiaries may decide to buy it
 - All heirs and beneficiaries may decide on an Heirs Agreement
 - Otherwise, any band member can bid on the land
 - If there are no bids, the land reverts back to the FN who must compensate the heir or beneficiary

Organizing the Estate:

Settling Debts- Best Practices

- Pay debts

 - Maintain accurate and clear records of debts payments

- Pay ALL debts before distributing any bequests

 - (unless there is hardship and the assets easily outweigh the debts)

- Obtain a “paid-in-full” letter from all creditors

 - (these letters will be part of your final reporting)

- If bequests are paid before the debts are settled, and there is a shortfall, the Administrator is liable!!

Organizing the Estate:

Settling Debts- Best Practices

- Treat all creditors within a category equally
 - ...pay the same proportion to each if the total debt can't be satisfied
- Don't privilege one creditor over another
 - e.g. resist the temptation to pay an irritating collection agency before the funeral expenses are paid
- Keep a paper trail of all transactions
- Debts and taxes belong to (follow) the estate only, and they do not go away with time!

Organizing the Estate

- The second Phase of the Estate Management Process, “Organizing the Estate”, is now complete, With
 - Heirs/Beneficiaries identified
 - Assets determined
 - Debts determined
 - Debts paid
- We will now look at the third Phase: Distribution of Assets

Acknowledgements



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