

# Estates Management Process

PHASE 3





# Distribution of Assets

## *Survivor?*

- It was determined at the outset if there is a survivor and if there is Matrimonial Real Property(MRP) involved
- Determine if the First Nation enacted its own MRP law
  - If the FN has its own MRP law, then its provisions for survivor rights will apply
  - If the FN has NOT enacted its own MRP law, then provisional Federal Rules(PFR)of *Family Homes on Reserves and Matrimonial interests or Rights Act(FHRMIRA)* will apply

The survivor choose between MRP provisions and the Indian Act(with Will or Intestacy)



# Distribution of Assets

## *Survivor Assets*

When the PFR of FHRMIRA apply

- Survivor is entitled to half the value of the deceased interest in Matrimonial Real Property (MRP)
- MRP consists of reserve land on which the family home is situated, as well as the home itself
- If there is NO Will, the survivor may apply to the court for half the value of the deceased's interest in matrimonial property



# Distribution of Assets

## *Survivor Assets*

- To claim survivor rights and interest, the survivor must apply to court within 10 months of the death
- The survivor must notify the other heirs, beneficiaries, and the FN, as they may want to be heard in court as well
- NOTE: Non-Indians and non-members cannot take possession of the reserve land, but may be entitled to compensation
- The survivor may also inherit other assets of the deceased

Detailed information available through the COEMRP

[www.coemrp.ca](http://www.coemrp.ca) 1-855-657-9992 or 1-705-657-9992



# Distribution of Assets

Compose a Proposal for Distribution, which includes

- List of all assets with estimated or appraised values
- List of debts and amounts
- List assets sold for debt repayment and amounts received
- List of bequests(\$\$ and chattels), devises (land), and shares being distributed to the heirs and beneficiaries according to the Will
- Calculation showing the proportionate shares going to heirs and beneficiaries where there was insufficient funds
- An Heirs Agreement, if applicable...



# Distribution of Assets

## Heirs Agreement

- May be used for a situation where heirs want to find a creative solution to a family disagreement
- Generally is in the same spirit as the deceased's wishes
- It is a written document signed by ALL heirs
- It acknowledges that they have a right to inherit
- The document must set out how the new distribution will be carried out

BEST PRACTICE: HAVE IT DRAWN UP BY A LAWYER

# Distribution of Assets

- If there is a survivor, distribution may only begin after survivor chooses MRP provisions or the Indian Act
- Survivor has 10 months after the death to make this decision( unless survivor decides sooner or waives the right in writing)
- Distribute Matrimonial Real Property first, if applicable
- Distribute remaining assets according to the Proposal for Distribution or the Heirs Agreement

**Obtain a sign-off from each heir and beneficiary**



# Distribution to Minors

In all cases, the minor's legal representative must be notified

## Land

- Land can be transferred to a minor
- The land must remain in minor's interest unchanged until minor reaches the age of majority
- No one may sell or dispose of the minor's interest in the land, even if the minor requests it

## Funds

Where the estate is under the Minister's jurisdiction

### **Minor under Minister's jurisdiction, funds...**

- may be deposited in the Minor's Departmental Trust account
- may be paid to the custodial parent or guardian
- should be deposited in the Minor's Departmental Trust account if funds are from registered land generating revenues

### **Minor not under Minister's jurisdiction, funds...**

- must be paid to the public Trustee who is managing the minor's affairs

## Other assets:

**Consult with the minor's legal representative**



# Distribution of Assets

## *Distribution to Mentally Incapable (MI)*

In all cases, the MI'S legal representative must be notified

Land: Can be transferred to an MI

Funds: Where the estate is under the Minister's jurisdiction

-MI under Minister's jurisdiction , funds ...

... may be deposited in the MI consolidated Revenue Fund(CRF) account

... should be deposited in the MI's CRF account if funds are from registered land generating revenues

-MI not under Minister's jurisdiction, funds must be paid to the public Trustee who is managing the MI's affairs

Other assets: Consult with the MI legal representative



# Distribution of Assets

## *Close the Estate*

- Prepare an accounting (using the proposal for Distribution as a template) Showing:
  - Assets(including value or sale processed)
  - Debts paid
  - Distributed assets
- Close estate bank accounts (if any)
- Provide a copy of the accounting and the sign-offs to all heirs and beneficiaries
- Keep copy of the accounting and the sign-offs



# Breakout Session

## Handling an Estate

Use the form provided to handle the estate

-The deceased: First Nation member , Joseph Demers who lived on reserve. The FN does NOT have MRP law.

-Assets:

- A CP on reserve land where the matrimonial home is situated.

- A restored 1970 Corvette, quarter horse, a joint bank account of 20,000\$ with his wife, securities of 13,000\$

-Heirs/beneficiaries:

- A spouse , Marie Demers, not a member of Frist Nation

- One daughter, Kim

-Will: Bequeaths

- Names his wife Marie as the Executor

- Matrimonial home and all physical chattels to his spouse, Marie

- Monies to his daughter



# Best Practices

Members: make a Will

First Nation representative:

- Gain knowledge on the Estate Management process so that you can assist members
- Provide members with Information Booklet

Administrator:

- Maintain accurate documentation of ALL transactions
- Be transparent, communicate regularly with the heirs and beneficiaries
- Aim to complete the tasks in a timely fashion



# Distribution of Assets

- The third and final phase of Estates Management Process, “Distribution of Assets” is now complete
- We will now look at some of the INAC form that are used in the management of an estate



# Forms

## Jurisdiction

(1) Request for a Consent to Assumption of Jurisdiction by Minister at request of Heir/Beneficiary

- used by and heir/beneficiary to request that the minister assume jurisdiction over an estate where the deceased lived off reserve

(2) Request for Consent to a Transfer of Jurisdiction

- used by an Executor/heir/beneficiary to request that the minister transfer jurisdiction to the competent Court that would have jurisdiction if the deceased were not an Indian.

## The Will

(3) Applications for Approval of a Will

- Used to apply for approval of a Will that names an Executor
- Parts 1 and 2 : filled out by the named Executor
- Part 2: must be sworn to by a Commissioner of Oaths
- The last portion: filled out by INAC



# Forms

## Administration

### (4) Application for Administration with Will Annexed

- Used to apply for approval of a Will where Executor was not named or was named but is unable or unwilling to take on the role

- Part 1: filled out by the person applying to be Administrator or who is nominating someone.

- Part 2: filled out by a person applying personally to be Admin: this portion must be sworn to by a commissioner of oaths

- Part 3: filled out by the person who is nominating someone for Admin role

- Part 4: filled out by person who has been nominated( and agrees) to be Admin: this portion must be sworn to by commissioner of oaths.

- Part 5: is to be filled out the prospective Admin

- The last portion is to be filled out by INAC



# Forms

## Administration

### (5) Application for Administration(where there is no Will)

- Used to apply for an Administrator where there is no Will
- Part 1:filled out by the person applying to be Administrator or who is nominating someone.
- Part 2: filled out by the person applying personally to be Admin: this portion must be sworn to by a Commissioner of Oaths.
- Part 3: filled out by the person who is nominating someone for Admin role
- Part 4: filled out by a person who has been nominated(and agrees) to be Admin: this portion must be sworn to by a Commissioner of Oaths
- Part 5: filled out by the prospective Admin
- The last portion is to be filled out by INAC



# Forms

## Administration

### (6) Renunciation by Executor/Administrator

- used by an Executor/Administrator to renounce administering an Estate
- Part 1: filled out by the Executor who does not want to be appointed.
- Part 2: filled out by an appointed Executor/Administrator to renounce administering an estate

## Common-Law

### (7) Common- Law Partner Statutory Declaration !

- Used by person claiming to be the common-law partner of the deceased
- in top portions: the claimant makes the declaration
- the declaration must be sworn to by Commissioner of Oaths

### (8) Common-Law Partner- Declaration of Third Party

- A third-party confirmation of a common-law relationship
- In top portions: the deponent ( third-party person) makes the declaration
- The declaration must be sworn to by Commissioner of Oaths



# Forms

## Notice

### (9) Notice to creditors, Heirs and Other Claimants

-Used by the Executor/Administrator to give public notice to creditors, heirs, and any other claimants to make their claims.

## Land Transfer

### (10) Request for Transfer of Land by Executor/Administrator

-Used when the Executor/Administrator is effecting a transfer of reserve land from the deceased member of a First Nation to another member of the same First Nation.



# Acknowledgements

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