

# **Common Sense Should Be Common with Respect to Grants – Even the Unusual Ones**

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**COMMON SENSE SHOULD BE COMMON**  
**WITH RESPECT TO GRANTS – EVEN THE UNUSUAL ONES! <sup>1</sup>**

## INTRODUCTION

Upon death, the deceased's estate needs to be administered. In particular, the debts need to be paid out of the assets, following which the remaining assets need to be either distributed to the beneficiaries named in the deceased's will, or, in the event that the deceased died without a will, or having a will, failed to dispose of all of the residue of the estate, distributed according to the *Wills and Succession Act*.<sup>2</sup> The person responsible for administering the estate will either be an executor or an administrator, depending on the circumstances. An executor is a person who has been appointed in the deceased's will to carry out the administration of the estate.<sup>3</sup> An administrator is a person who is appointed by the court to carry out the administration of the estate. An administrator will be appointed when no executor has been named, such as when a deceased has died without a will, or when a named executor is unable or unwilling to act.<sup>4</sup>

An executor takes his or her authority from the will itself and therefore can begin acting for the estate as soon as an individual dies.<sup>5</sup> Practically speaking, however, it is often difficult for an executor to deal with the estate assets unless the executor can provide proof of his or her authority.<sup>6</sup> This proof comes in the form of a grant of probate. A grant of probate is a document that certifies that the will was duly proved and that the administration of the deceased's property was committed by the court to the executors.<sup>7</sup>

Unlike an executor, an administrator has no authority to act for the estate until a grant of administration is issued.<sup>8</sup> A grant of administration certifies that the court has authorized the administration of the estate by the person named in the grant of administration.

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<sup>1</sup> An earlier version of this paper was presented at the Legal Education Society of Alberta's seminar *Wills and Estates for Legal Support Staff* in 2012.

<sup>2</sup> SA 2010 c W-12.2. This Act applies to deaths occurring after February 1, 2012. The *Intestate Succession Act* RSA 2000 c I-10 continues to apply to deaths occurring prior to February 1, 2012.

<sup>3</sup> Jennifer A. Greenan, *The Executor's Handbook*, 5<sup>th</sup> ed. (Toronto: Lexis Nexis Canada, 2015) at 2.

<sup>4</sup> *The Executor's Handbook*, *supra* note 3.

<sup>5</sup> James MacKenzie, *Feeney's Canadian Law of Wills*, looseleaf (Markham: LexisNexis Canada Inc., 2000) at para. 7.33.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Feeney's Canadian Law of Wills*, *supra* note 5 at para. 7.32.

<sup>8</sup> *Feeney's Canadian Law of Wills*, *supra* note 5 para. 7.56.

Regardless of whether a grant of probate or a grant of administration has been issued, both types of grants allow the person named in the grant to fully administer the estate. Samples of applications for a grant of probate and a grant of administration are included in these materials.

Pursuant to an ordinary grant of probate or administration, a grantee is able to deal with all of the property in the estate. This is not appropriate in all situations, however. Accordingly, the court has the power to issue limited grants. There are various types of limited grants that can be issued, all of which are set out in rule 10 of the Alberta *Surrogate Rules*, which reads:

### Grants

**10(1)** The following grants may be applied for under this Part:

- (a) grants that are unlimited and unrestricted, including
  - (i) a grant of probate;
  - (ii) a grant of administration with will annexed (*cum testamento annexo*);
  - (iii) a grant of administration;
  - (iv) a supplemental grant (*cessate*);
  - (v) a grant of double probate;
- (b) grants that are limited to part of the deceased's property, including
  - (i) a grant of administration of unadministered property (*de bonis non administratis*);
  - (ii) a grant of re-sealed probate with respect to property in Alberta;
  - (iii) a grant of re-sealed administration with respect to property in Alberta;
  - (iv) a grant of administration limited to specific property;
  - (v) a grant of administration of property not included in another grant (*caeterorum bonorum*);
  - (vi) an ancillary grant;
- (c) grants that are for a limited time, including
  - (i) a grant of administration until a will is found;
  - (ii) a grant of administration during the minority, absence or mental incompetence of the personal representative (*durante minoritate, absentia, dementia*);
- (d) grants that are for a limited purpose only, including
  - (i) a grant of administration when the validity of a will is in question (*pendente lite*);