

INFORMATION FOR PERSONAL REPRESENTATIVES AND BENEFICIARIES

NOTE: Under Queen's Bench rule 74.14(4), the lawyer retained by the personal representative of an estate must serve this form on the personal representative of the estate and those beneficiaries whose interests in the estate may be affected by the lawyer's fees or disbursements, no later than 60 days after the lawyer is retained by the personal representative.

PART A**PERSONAL REPRESENTATIVE OF AN ESTATE****1 Role of the Personal Representative**

The property of a deceased person is placed in the hands of a trustee, known as a personal representative who may also be called an executor (executrix) or administrator (administratrix). The personal representative must collect the assets, pay the debts of the deceased and then distribute the assets of the estate to the beneficiaries in compliance with all applicable laws and the terms of any will of the deceased. A lawyer can be the personal representative of an estate. Further information about the role of the personal representative can be found in the *Revised Statement of Principles — Fees in Estate Matters* approved by The Law Society of Manitoba which is available on the Law Society's website at www.lawsociety.mb.ca or by calling the Law Society at 204-942-5571.

The actions of a personal representative may be subject to review by the court. Any person interested in the estate may, on reasonable grounds, require the personal representative to appear before the court to give an account of the handling of the estate.

2 Compensation for Personal Representative

A personal representative is entitled to fair and reasonable compensation for their care, pains and trouble. The compensation is not a fixed amount or percentage but will vary according to the work done and the trouble and time expended. If all beneficiaries are adults and are satisfied with the work of the personal representative, they may agree on the amount of the compensation and sign releases when the estate work is completed and they have received their share of the estate.

A beneficiary who is not satisfied with how the estate was handled, or the amount of the compensation being claimed, has the right to request that the actions of the personal representative be reviewed by the court and to have the court set the personal representative's compensation.

PART B

LAWYER FOR THE PERSONAL REPRESENTATIVE

1 Role of the Lawyer for the Personal Representative

A personal representative is permitted to retain a lawyer to provide legal advice to assist with the completion of the duties imposed on a personal representative by law. Queen's Bench rule 74.14 sets out the services that are generally provided by the lawyer retained by the personal representative for an estate of average complexity. The *Queen's Bench Rules* are posted on the Manitoba Laws website at web2.gov.mb.ca/laws/rules/qbr1e.php.

2 Fees and Disbursements of the Lawyer for the Personal Representative

The fees and disbursements for the personal representative are paid out of the estate and the amount is governed by the *Queen's Bench Rules*, particularly rule 74.14.

It should be understood that the lawyer retained by the personal representative acts only as the lawyer for the personal representative and not the beneficiaries. In the event of any dispute, a beneficiary is free to obtain independent legal advice from another lawyer.

The fees of the lawyer for the personal representative must be fair and reasonable and disclosed in a timely manner. In assessing if the fees are fair and reasonable, the court looks at the services provided by the lawyer to the personal representative and the results achieved.

Basic legal fees are calculated as a percentage of the total value of the estate assets that are under probate or administration and are intended to cover the work involved in estates of average complexity. These services are listed in Queen's Bench rule 74.14(8). To determine the total value of the estate, the following assets are not included:

- (a) gifts made by the deceased during his or her lifetime;
- (b) insurance, annuities and pensions not payable to the estate;
- (c) property held in joint tenancy where the beneficial interest is intended to pass by right of survivorship;
- (d) the death benefit under the *Canada Pension Plan*.

The basic legal fees (allowable fees) for the lawyer for the personal representative for an estate of average complexity are calculated as follows:

- 3% on the first \$100,000, or the portion of that amount, of the total value of the estate, subject to a minimum fee of \$1,500;
- 1.25% on the next \$400,000, or the portion of that amount, of the total value of the estate;
- 1% on the next \$500,000, or the portion of that amount, of the total value of the estate;
- 0.5% on the total value of the estate over \$1,000,000.

However, if the personal representative is

- (a) an individual who is a lawyer and, while acting as the personal representative, also acts as the lawyer for the personal representative; or
- (b) a trust company; or
- (c) the Public Guardian and Trustee;

the lawyer performing the legal services for that personal representative may only charge 40% of the fees calculated as above, or a minimum fee of \$1,500.

The lawyer for the personal representative is also entitled to charge for the following additional services, as specified in Queen's Bench rule 74.14(9):

- (a) appearances in court, in an amount set by the court;
- (b) legal services with respect to a review by the court of the handling of estate assets by the personal representative under Queen's Bench rule 74.12, in an amount set by the court;
- (c) acting on the sale of an estate asset;
- (d) finding a purchaser of an estate asset;
- (e) assisting the personal representative with estate administration duties, including
 - (i) keeping and preparing the accounts of the personal representative,
 - (ii) listing and valuing the assets and debts, and
 - (iii) safekeeping, insuring and disposing of estate assets;
- (f) advising the personal representative with respect to an estate of above-average complexity;
- (g) advising and assisting the personal representative as to ongoing trust matters, including
 - (i) the personal representative's duties,
 - (ii) the personal representative's powers of sale, investment and encroachment, and
 - (iii) the allocation of assets as capital or revenue.

Adult Beneficiaries May Consent to the Lawyer's Interim Fees or Final Fees

The lawyer for the personal representative is permitted to be paid interim fees and disbursements for services completed to date or final fees and disbursements on completion of an estate, without court approval, if

- all beneficiaries whose interests in the estate may be affected by the lawyer's fees or disbursements are adults and they consent, in writing, to the fees and disbursements requested by the lawyer;
- all beneficiaries are served with a copy of this form (Information for Personal Representatives and Beneficiaries) and are given an itemized statement setting out the lawyer's fees and disbursements, with the fees and disbursements for basic estate services under rule 74.14(8) set out separately from those for additional services under rule 74.14(9), if any; and
- the personal representative consents, in writing, to the requested fees and disbursements.

Collecting interim fees that are within the basic allowable amount

The lawyer for the personal representative is permitted to be paid interim fees for basic estate services under rule 74.14(8) if they are within the allowable amounts under rule 74.14(6) or (7), as well as disbursements, with the consent of the personal representative, if all beneficiaries whose interests in the estate may be affected by the lawyer's fees or disbursements have been served with a copy of Information for Personal Representatives and Beneficiaries (Form 74AA) and given an itemized statement setting out the lawyer's fees and disbursements, with the fees and disbursements for basic estate services under rule 74.14(8) set out separately from those for additional services under rule 74.14(9), if any.

If any beneficiary is a minor or mentally incompetent, the documents must be served in accordance with Queen's Bench rule 74.14(11.1).

3 Court Review of the Lawyer's Fees and Disbursements

The court may review the fees and disbursements at the time the accounts of the personal representative are placed before the court to be passed (or approved) under Queen's Bench rule 74.12. Or, they may be reviewed when an application is made to court for an assessment of the lawyer's fees and disbursements under Queen's Bench rule 74.14(13). The personal representative, the lawyer for the personal representative or a beneficiary whose interest in the estate may be affected by the lawyer's fees and disbursements can apply to court for this assessment.