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Worth the Wait – New Estate Administration Act Introduced

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In an earlier [post](#), I indicated that the Government of Alberta was likely to introduce new estate administration legislation in the Fall term. Although the original timing estimate was off, new estate administration legislation has now been introduced and, as of the date of this blog, is [adjourned in Third Reading](#).

Chances are, unless one has a legal practice in the area of wills and estates, estate administration is not something one thinks about on a regular basis. However, the chances are great that at some point in life, one is likely to have some involvement in the administration of an estate – whether acting as a personal representative, a beneficiary, or both. When the [Estate Administration Act](#) comes into force, the process of estate administration in Alberta will be greatly simplified and modernized.

The Act includes the following key elements:

It clearly sets out the role of a personal representative who is administering an estate. This should help laypeople acting as personal representative better understand their role and responsibilities.

- s 5 (1) sets out the general duties of the personal representative. They must perform their role honestly and in good faith in accordance with the deceased person's intentions and with the will and with the care and diligence and skill of a person of ordinary prudence. The personal representative must also distribute the estate as soon as practicable.
- s 5(3) recognizes that professional personal representatives, who administer an estate as their professional occupation or business, should be held to a higher standard.

- s 7 sets out the four core tasks of a person administering an estate: identify estate assets and liabilities; administer and manage the estate; satisfy debts and obligations; and distribute and account for the estate. To make the task of the personal representative even clearer, a Schedule sets out examples of each of the core tasks.
- s 6 also directs the personal representative and others to the *Funeral Services Act*, [RSA 2000, c F-29](#) and the *Cemeteries Act*, [RSA 2000, c C-3](#) which applies to determine who has the authority to control and give instructions for the funeral and making funeral arrangements. It is unfortunate that the Act does not go the next step and incorporate the relevant provision of these statutes directly, rather than requiring a personal representative to look up these other statutes.

The Act also recognizes that many estates will be administered without obtaining a grant from the court. It ensures that personal representatives acting without a grant are subject to all the same roles and responsibilities as those that apply when a grant is issued.

Additionally, s 8 provides that if a personal representative refuses or fails to provide the required notice or perform a duty or core task, a person can bring an application to the court to obtain an order to require the personal representative to comply with their duties, impose conditions on the personal representative, or have the personal representative removed.

Further s 20 updates the rules governing the authority of the personal representative in regard to the property included in the estate. It indicates that the personal representative can do anything the deceased person could do with their property subject to the will and any other legislation restrictions.

Finally, s 28 of the Act modernizes the law by reforming the marshalling rules. Marshalling rules are common-law rules that set out how the gifts are distributed to the beneficiaries if the estate does not have enough money to pay all the debts and to distribute all the gifts. Under the new legislation, all assets in the estate must contribute proportionately to the payment of the debts and liabilities of the estate. As a result, all assets in an estate contribute to the payment of the estate's debts and liabilities, and it makes the final distribution of the estate to the beneficiaries fairer.

Except where a court orders otherwise, s 51 provides that the new Act applies to an existing administration, application or grant. If passed, the new Act will come into force on proclamation. Before coming into force, it is likely that the Surrogate Rules, [Alta Reg 130/1995](#), will also need to be revised to be consistent with the new Act.

Many of the key provisions in the Act track closely to the recommendations contained in ALRI's [Final Report no. 102, Estate Administration](#) and [Report for Discussion 19, Order of Application of Assets in Satisfaction of Debts and Liabilities](#). The [Alberta Law Reform Institute](#) and [Alberta Justice](#) worked independently, but cooperatively to produce this legislation.

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