

PART 16: PROBATE AND ADMINISTRATION OF ESTATES

What this Part is about: This Part applies to proceedings for probate and administration of estates.

Unless a different procedure is specified in this Part or in an enactment, the other Parts of the Rules also apply to proceedings for probate and administration of estates.

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PART 16: PROBATE AND ADMINISTRATION OF ESTATES

DIVISION 1

Application and Interpretation

Application

16-1(1) This Part applies to proceedings for probate and administration of estates.

(2) Unless an enactment or this Part provide otherwise, the general procedure and practice of the Court must be adopted and applied, with any necessary modification, in a proceeding pursuant to this Part.

Interpretation of Part

16-2 In this Part unless the context otherwise requires:

“**grant**” includes letters probate, letters of administration, letters of administration with will annexed, letters of administration *de bonis non* or other documents of a similar nature and the resealing of any of these; (« *lettres successorales* »)

“**property guardian**” means a property guardian as defined in *The Adult Guardianship and Co-decision-making Act*; (« *tuteur aux biens* »)

“**trust company**” means a trust corporation as defined in *The Trust and Loan Corporations Act, 1997*. (« *société de fiducie* »)

DIVISION 2

Court Administration

Notice of application

16-3 The notice of application for grant required by section 5 of *The Administration of Estates Act* must be made in duplicate in Form 16-3.

Registrar to be notified

16-4(1) If an applicant renounces after notice of application for grant has been given to the registrar or any alteration is subsequently made in the grant, the local registrar shall immediately notify the registrar.

(2) If an application for grant is dismissed, abandoned or for any other reason not proceeded with, the local registrar shall notify the registrar.

Scope of registrar's certificate

16-5(1) Every certificate issued by the registrar pursuant to section 6 of *The Administration of Estates Act* must be in Form 16-3.

(2) On receipt of a certificate or true copy of a certificate received from the office of the registrar, by facsimile or other means, the local registrar shall promptly lay the application for grant before the Court.

(3) If the registrar returns a copy of the certificate to the local registrar, the registrar shall file and retain the original certificate.

Signing and sealing of grant

16-6(1) A grant must:

- (a) be signed by the local registrar and sealed with the seal of the Court; and
- (b) bear the date of issue of the grant.

(2) A copy of the will, if any, annexed to a grant must be authenticated by the signature of the local registrar and the seal of the Court.

(3) A grant must be in Form 16-6A, 16-6B, 16-6C or 16-6D, as may be applicable.

(4) On issue of a grant, the local registrar shall give notice to the registrar in Form 16-6E.

Information Note

Form 16-6A is the form for Letters Probate.

Form 16-6B is the form for Letters of Administration with Will Annexed.

Form 16-6C is the form for Letters of Administration.

Form 16-6D is the form for Double Probate.

Certificate re no minor

16-7 On the request of the applicant, if the local registrar is satisfied that no minor is interested in the estate of the deceased, the local registrar shall provide the applicant with a certificate in Form 16-7 together with the grant.

Local registrar's duties re: wills

16-8(1) A will of a living person deposited for safekeeping in the office of a local registrar must be enclosed in an envelope and sealed, and the envelope must be endorsed with the following notice:

“This envelope contains the last will and testament (or as the case may be) dated (state date of paper enclosed) of (name and address of testator) and (names and addresses of executors) are named as the executors”.

(2) The person depositing the will shall sign the endorsement required by subrule (1).

- (3) The local registrar shall:
 - (a) number each envelope; and
 - (b) record:
 - (i) the names of the testator and the person depositing the will; and
 - (ii) the number of the envelope and the date of deposit.
- (4) The local registrar in whose office a will is deposited shall:
 - (a) issue a certificate in Form 16-8;
 - (b) deliver a copy of the certificate to the person depositing the will; and
 - (c) immediately send the original certificate to the registrar.
- (5) A will deposited for safekeeping must not be removed from the office of a local registrar except by the testator in person or, after the testator's death, by the executor or by order of the Court, and the seals of the covering envelope must not be broken while it is in the custody of the local registrar without leave.
- (6) When a will deposited for safekeeping is removed from the office of the local registrar:
 - (a) the local registrar shall notify the registrar of the name and address of the person by whom it was removed; and
 - (b) the registrar shall record the fact.

Information on registrar's certificate

16-9 Each certificate in Form 16-3 must show whether the deceased person has deposited for safekeeping any will or other testamentary paper in the office of a local registrar.

DIVISION 3
Proofs Leading to Grant

Subdivision 1
Proof of Death

Proof of death

- 16-10(1)** Proof of death of the deceased must be filed with an application for grant.
- (2) If an application states that an executor or other person entitled to a grant is deceased, proof of death of that person must be filed with the application for grant.

(3) For the purposes of this rule, proof of death includes a statement of death or certificate of death issued by:

- (a) a funeral director;
- (b) a coroner; or
- (c) the Registrar of Vital Statistics.

(4) If the applicant is unable to file direct evidence of death and there is evidence from which death may be presumed, the Court may give leave to swear to or affirm the death, on application without notice or on any notice that the Court may require.

New. Gaz. 13 Nov. 2015.

Subdivision 2

Applications for Grant in General

Applications for grant in general

16-11 An application for grant must be in Form 16-11A, 16-11B, 16-11C, 16-28B, 16-29A or 16-34A.

Information Note

Form 16-11A is the Form for an Application for a Grant of Letters Probate.

Form 16-11B is the Form for an Application for a Grant of Administration with Will Annexed.

Form 16-11C is the Form for an Application for a Grant of Administration.

Form 16-28B is the Form for an Application for a Grant of Administration as Attorney for Next-of-Kin.

Form 16-29A is the Form for an Application for Administration *de Bonis Non*.

Form 16-34A is the Form for an Application for Resealing a Foreign Grant.

General requirements for applications

16-12(1) An application for grant must set out:

- (a) the name and address and relationship to the deceased of every person entitled to share in the deceased's estate;
- (b) the age and marital status of the deceased at death; and
- (c) that the applicant is of the full age of 18 years, is a trust company or is the Public Guardian and Trustee.

(2) If a minor or a dependent adult is interested in the estate or may have a claim under *The Dependants' Relief Act, 1996* or *The Family Property Act*:

- (a) the application for grant must state that fact; and
- (b) there must be filed with the application for grant a notice to the Public Guardian and Trustee or the property guardian, as the case may be, in duplicate, in Form 16-12.

(3) If the deceased is not survived by a minor or dependent adult, the application for grant must state that fact.

Signature on application and affidavit of applicant

16-13(1) An application for grant must:

- (a) be signed by the applicant; and
- (b) be verified and exhibited to the affidavit of the applicant.

(2) The affidavit of the applicant must be in Form 16-13A, 16-13B, 16-28C, 16-29B or 16-34B.

Information Note

Form 16-13A is the Form for the Affidavit of an Applicant for Probate or Administration with Will Annexed.

Form 16-13B is the Form for the Affidavit of an Applicant for Administration.

Form 16-28C is the Form for the Affidavit of an Applicant for Administration as Attorney for Next-of-Kin.

Form 16-29B is the Form for the Affidavit of an Applicant for Administration *de Bonis Non*.

Form 16-34B is the Form for the Affidavit of an Applicant for Resealing a Foreign Grant.

Statement of property required

16-14(1) An applicant shall file with an application for grant a statement in Form 16-14 showing all the real and personal property of the deceased at the time of death.

(2) The statement mentioned in subrule (1) must be verified by and exhibited to the affidavit of the applicant.

(3) On an application for a second grant in Saskatchewan, the statement mentioned in subrule (1) must be limited to the property then unadministered or to be administered in Saskatchewan at its value at the time of the application for grant.

Information Note

There is a rebuttable presumption that property, other than land or other real property, held by a deceased with an adult child in joint names with right of survivorship is held in a resulting trust for the benefit of the beneficiaries of the deceased's estate. (See *Pecore v Pecore*, 2007 SCC 17, [2007] 1 SCR 795.)

Amended. Gaz. 13 Nov. 2015; 24 Jly. 2020.

Special circumstances

16-15 An application for grant pursuant to section 17 of *The Administration of Estates Act* must set out the insolvency of the estate or other special circumstances on which the applicant relies.

***Subdivision 3
Grants of Probate*****Grants of probate**

16-16(1) If the deceased died leaving a will, the persons entitled to apply for a grant of probate or administration with will annexed are the following in order of priority:

- (a) executors;
 - (b) residuary beneficiaries in trust;
 - (c) residuary beneficiaries for life;
 - (d) ultimate residuary beneficiaries, or, if the residue is not wholly disposed of, the person entitled on an intestacy;
 - (e) executors and administrators of persons mentioned in clause (d);
 - (f) beneficiaries and creditors;
 - (g) contingent residuary beneficiaries, contingent beneficiaries and persons having no interest in the estate who would have been entitled to a grant if the deceased had died wholly intestate;
 - (h) the official administrator.
- (2) If an executor does not apply for a grant, the executor shall renounce in Form 16-16.
- (3) If a will appoints an executor whose right to act is subordinate to another, the executor shall state in the application for grant that the executor having a prior right has renounced, has died or as the case may be.

Information Note

See also section 10 of *The Administration of Estates Act* regarding the priority to apply for letters probate or letters of administration with the will annexed.

Grant re testamentary document

16-17 A testamentary document with respect to which a grant is sought must be exhibited to the affidavit of the applicant.

Application for grant of probate

16-18(1) An application for grant of probate must show:

- (a) that at the time of the execution of the will the deceased:
 - (i) was of the age of majority;
 - (ii) was or had been married, or was or had been cohabiting in a spousal relationship;
 - (iii) was a member of the armed forces in actual service; or
 - (iv) was a sailor or mariner at sea or in the course of a voyage;
- (b) either that:
 - (i) the deceased, after execution of the will, did not marry or cohabit in a spousal relationship continuously for 2 years; or
 - (ii) the will was made in contemplation of marriage or in contemplation of entering into a spousal relationship;
- (c) that neither witness is a beneficiary named in the will or a spouse of a beneficiary, or if so, that:
 - (i) the will is sufficiently attested without the attestation of any of those persons; or
 - (ii) no attestation is necessary; and
- (d) that after making the will and before the death of the testator:
 - (i) the marriage of the testator was not terminated by a final judgment of divorce, nor was it found to be void or declared a nullity by a court in a proceeding in which the testator was a party; and
 - (ii) the testator, and his or her spouse, who are not legally married, did not cease to cohabit in a spousal relationship for at least 24 months.

- (2) The applicant for grant of probate shall give particulars of the following if:
 - (a) after the making of a will and before the death of the testator:
 - (i) the marriage of the testator is terminated by a final judgment of divorce;
 - (ii) the marriage of the testator is found to be void or is declared a nullity by a court in a proceeding to which the testator was a party; or
 - (iii) the testator, and his or her spouse, who are not legally married, ceased to cohabit in a spousal relationship for at least 24 months; and
 - (b) it is alleged that, pursuant to section 19 of *The Wills Act, 1996*:
 - (i) a devise, bequest, appointment or power is revoked; or
 - (ii) the will is to be construed as if the spouse had predeceased the testator.
- (3) Unless the Court orders otherwise, the applicant shall file proof of service of the application for grant and the allegations on the person named in the will as a spouse.

Proof of execution of will

16-19(1) The execution of a will must be proved by one of the attesting witnesses by an affidavit in Form 16-19A that is sworn or affirmed by the witness at any time after the will is signed.

(2) If no affidavit can be obtained from an attesting witness, the execution of the will may be established by affidavit of the handwriting and signatures of the witnesses or of the testator, or both, or by affidavit from any other person present at the execution of the will.

(3) If a will that is deposited in the local registrar's office is accompanied by the affidavit of execution of each attesting witness and by a statutory declaration of the lawyer by whom the will was drawn setting forth that the will was executed on a specified date, the affidavits of execution are proof of the execution of the will in the absence of evidence to the contrary.

(4) If a will was signed by some person other than the testator, in the presence of, and by the direction of the testator, an affidavit setting forth the full circumstances under which the will was so signed must be filed in support of the application for grant.

(5) Proof of execution of a holograph will must be in Form 16-19B.

(6) If a will contains any alteration, interlineation, erasures or omissions, an affidavit of plight and condition in Form 16-19C must be filed in support of the application for grant.

(7) In every case, the Court may:

- (a) require additional or other proof of execution of a will; or
- (b) require proof in solemn form.

Other documents to be produced

16-20 If a will contains a reference to, or if an applicant has any knowledge of, any paper, deed, memorandum or other document that raises a question whether it forms a constituent part of the will, that paper, deed, memorandum or other document must:

- (a) be produced; and
- (b) if not produced, its non-production must be accounted for.

Proof of lost will

16-21 If a grant is sought of a will that is lost or destroyed, proof of the loss or destruction must be made as the Court may require.

Translation of a will

16-22(1) If a grant is sought of a will written in a language other than English or French, the following must be filed with the will:

- (a) an English or French translation of the will; and
 - (b) an affidavit in Form 16-22 verifying the translation.
- (2) A copy of the English or French translation together with a copy of the will in its original form must be attached to the grant.

Subdivision 4

Grants of Administration

Grants of administration

16-23 An application for grant of administration with will annexed must also comply with the applicable rules relating to grants of probate.

Information Note

The rules relating to grants of probate are found in Subdivision 3.

Priority of right to apply

16-24 If the deceased died intestate, the persons entitled to apply for a grant of administration are the following in order of priority:

- (a) spouse of the deceased;
- (b) children of the deceased;
- (c) grandchildren and other issue of the deceased taking per stirpes;
- (d) father or mother of the deceased;
- (e) siblings of the deceased;
- (f) nephews and nieces of the deceased;

- (g) next of kin of the deceased of equal degree of consanguinity;
- (h) creditors of the deceased;
- (i) the official administrator.

Information Note

See also section 11 of *The Administration of Estates Act* regarding the priority to apply for letters of administration in intestacy.

Application for administration

- 16-25**(1) The application for administration must show that the applicant:
- (a) has a beneficial interest in the property to be administered;
 - (b) is attorney for a person having a beneficial interest;
 - (c) is a person the Court may consider fit in the circumstances of section 17 of *The Administration of Estates Act*; or
 - (d) is the official administrator.
- (2) Unless the Court orders otherwise, on the making of a grant of administration:
- (a) live interests will be preferred to dead interests; and
 - (b) in the case of conflicting claims, the nearer interest will be preferred to the more remote.
- (3) Unless the Court orders otherwise, a grant of administration must be made to a person resident within Saskatchewan in preference to a person having equal right residing outside Saskatchewan.

Conditions for grant of administration

- 16-26**(1) No grant of administration must be made to any person unless all persons with a prior or equal right have been cleared off by renunciation or by an order of the Court.
- (2) If it is sought to join, with a person entitled to a grant, a person not equally or next entitled, all persons with a prior or equal right must be cleared off by renunciation.
- (3) A renunciation must be in Form 16-16 or 16-26.
- (4) If persons with a prior or equal right have not renounced or if there is a contest over the right to administration, an application must be made to the Court by notice of application, served on those having a prior or equal right:
- (a) showing the applicant's claim; and
 - (b) stating that in the event of non-attendance of the person served an order will be made that the judge considers proper.
- (5) On the return date of the application, the judge may hear the persons present and summarily determine to whom the grant shall be made.

Information Note

See Division 1 of Part 6 for the general application procedure.

Grant to no more than 3 persons

16-27 Unless the Court orders otherwise, a grant of administration must not be made to more than 3 persons.

Power of attorney for application

16-28(1) If a person is entitled to apply for a grant of administration and has not renounced but desires a grant to be made to an attorney on his or her behalf, that person shall execute a power of attorney in Form 16-28A appointing an attorney to apply for and obtain a grant.

(2) The application for grant by an attorney made pursuant to this rule must be in Form 16-28B.

(3) An affidavit verifying an application for grant made pursuant to this rule must be in Form 16-28C.

Grant of letters of administration *de bonis non*

16-29(1) If the administrator of an estate has died leaving part of the estate unadministered, an application may be made for a grant of letters of administration *de bonis non* to complete the administration of the estate.

(2) If the executor of an estate has died intestate and there are no other executors to carry on the administration of the estate or if the administrator with the will annexed of an estate has died leaving part of the estate unadministered, an application may be made for a grant of administration *de bonis non* with the will annexed to complete the administration of the estate.

(3) An application for administration *de bonis non* must be made by filing an application in Form 16-29A.

(4) An affidavit verifying an application for grant made pursuant to this rule must be in Form 16-29B.

(5) The original grant must be surrendered with the application or, if the original has been lost, a court certified copy of the grant must be filed.

Affidavit re search for will

16-30 On an application for grant of administration, it must be shown by affidavit that a search for a will has been made in all places where the deceased usually kept papers and had depositories.

Bond

16-31(1) The bond to be given on an application for grant of administration and the necessary affidavits of justification and execution must be in Form 16-31, or any other form that the Court may approve.

(2) Subject to subrule (3), unless the Court orders otherwise, the bond to be given must be in a penalty of double the value of the estate calculated in accordance with subsection 21(3) of *The Administration of Estates Act*.

(3) If the bond is given by a guarantee company, a bond equal to the value of the estate calculated in accordance with subsection 21(3) of *The Administration of Estates Act* may be accepted.

(4) The sureties to a bond, other than a guarantee company, shall make an affidavit of justification, and the net value of the property of which the several sureties swear or affirm they are possessed must in the aggregate equal the amount of the penalty of the bond.

(5) In estimating the value of the property of which any surety to a bond claims to possess, the value must be determined after deducting:

- (a) debts owed;
- (b) the value of statutory exemptions from seizure; and
- (c) any other sums for which that person is already surety.

(6) The Court may:

- (a) require a surety to a bond to file a sworn or affirmed statement of assets and liabilities or to appear before the Court for examination; and
- (b) after the statement is filed or examination held, refuse or accept that surety.

(7) A surety, other than a guarantee company, must not be accepted unless that surety:

- (a) is permanently resident in Saskatchewan; and
- (b) has real or personal property in Saskatchewan exigible under execution to the amount of the bond.

(8) None of the following must be surety to a bond:

- (a) a lawyer;
- (b) a registrar, a local registrar or an employee of their respective offices.

Request to dispense with bond

16-32(1) If it is sought to dispense with a bond, there must be included in the affidavit information revealing that:

- (a) the creditors and all persons who are or may be beneficially interested in the estate consent in writing; or

- (b) there are no debts for which the estate is or may be liable and:
 - (i) the value of the estate does not exceed \$25,000;
 - (ii) the administrator is the sole beneficiary; or
 - (iii) all persons who are or may be beneficially interested in the estate consent in writing.
- (2) If a minor is or may be beneficially interested in the estate, the written consent of the Public Guardian and Trustee must be filed.
- (3) If a dependent adult is or may be beneficially interested in the estate, the written consent of the Public Guardian and Trustee or property guardian, as the case may be, must be filed.

Subdivision 5

International Wills

International wills

16-33 A will must be regarded as valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made and executed according to the rules contained in the Convention Providing a Uniform Law on The Form of an International Will as set out in the schedule to *The Wills Act, 1996*.

Subdivision 6

Resealing Foreign Grants

Resealing foreign grants

16-34(1) An application to reseal a foreign grant must:

- (a) be in Form 16-34A;
 - (b) be verified by affidavit in Form 16-34B; and
 - (c) comply with the rules relating to probate or administration, as the case may be.
- (2) If the will affects immovable property, including real property and a leasehold or other interest in land in Saskatchewan, it must be shown that the manner of making, the validity and effect of the will is in accordance with the law of Saskatchewan.
 - (3) The manner of making the will may be proved for the purposes of subrule (2) by an affidavit or a certified copy of the affidavit filed in the original application.
 - (4) The original foreign grant, or a copy of that foreign grant certified by the issuing court, must be filed with an application for grant pursuant to this rule.
 - (5) An additional copy of the foreign grant certified by the issuing court, or a notarial copy of that foreign grant, must be exhibited to the affidavit of the applicant.

Subdivision 7
Ancillary Grants

Ancillary grants

16-35(1) An application for an ancillary grant must comply with all the rules relating to probate or administration, as the case may be.

(2) A certified copy of the original foreign grant must be exhibited to the affidavit of the applicant.

(3) If the application is for a grant ancillary to a grant issued by a court named in section 38 of *The Administration of Estates Act*, the affidavit of the applicant must show why the foreign grant ought not to be resealed.

Subdivision 8
Applications for Small Estates or in Special Circumstances

Applications for small estates or in special circumstances

16-36(1) An application for an order pursuant to section 9 of *The Administration of Estates Act* may be made without notice or on any notice that the Court may require.

(2) The application and the supporting affidavit must be in Form 16-36.

(3) All receipts for payment or other dispositions of the property of the deceased made by the person named in the order of the Court must be filed in the office of the local registrar of the judicial centre at which the order was made.

DIVISION 4
Contentious Business

Subdivision 1
Intervention

Intervention

16-37(1) Any person interested in an estate may intervene by filing:

- (a) a notice in Form 16-37; and
- (b) an affidavit showing the nature of the interest.

(2) An intervenor shall serve a copy of the notice and affidavit on the applicant for a grant and on other persons affected by the intervention, as soon as is reasonably possible after filing.

(3) Notice of all subsequent proceedings must be served on the intervenor and on any other persons affected by the intervention.

Subdivision 2

Caveats

Caveats

16-38(1) At any time before a grant is issued or resealed, any person intending to oppose it may file a caveat with the registrar or a local registrar at any judicial centre.

(2) The caveat must:

(a) be in Form 16-38; and

(b) set out the nature of the caveator's claim and the grounds on which a grant is opposed.

Filing caveat

16-39(1) On the filing of a caveat, the local registrar shall notify the registrar by telephone of that fact.

(2) If it appears from the records of the registrar that an application for grant has been filed and a certificate in Form 16-3 has been sent, the registrar shall notify the local registrar by telephone of that fact.

(3) All notices given pursuant to this rule must be confirmed by letter enclosing a copy of the caveat.

Withdrawal of caveat

16-40(1) A caveat may be withdrawn or vacated by order.

(2) A caveat lapses after the expiration of 3 months after the day on which it is filed unless it is extended by an order, which may be made without notice.

Issuance of grant

16-41 A grant must not issue until the caveat has lapsed, is withdrawn or is vacated by order.

Notification of applicant and caveator

16-42 If an application for grant is made and a caveat has been filed or is filed at any time before a grant is issued, the local registrar shall notify the applicant and the caveator.

Application for resolution

16-43 The applicant or the caveator may, after receiving notice from the local registrar, apply by notice of application to the Court at the judicial centre at which the application for grant is filed for a resolution of the matter in issue.

Information Note

See Division 1 of Part 6 for the general application procedure.

Subdivision 3
Compelling Production of Will

Compelling production of will

16-44 If an executor fails to file a will for probate within 60 days after the death of the testator, any person interested in the estate may serve a notice of application on the executor to:

- (a) appear and produce the will; and
- (b) either:
 - (i) accept or refuse the probate and execution of the will; or
 - (ii) show cause why letters of administration with will annexed should not be granted to the applicant or any other person who may be deemed to be legally entitled to that grant and willing to accept it.

Compelling production of testamentary document

16-45 If it is suggested that a testamentary document is in the custody of any person, a notice of application may be served on that person to:

- (a) appear;
- (b) either:
 - (i) produce the document and show cause why the document should not be deposited with the local registrar; or
 - (ii) state under oath or on affirmation that no such document is or has been in his or her custody or control; and
- (c) provide any information in his or her possession as to the location of the document.

Information Note

See Division 1 of Part 6 for the general application procedure.

***Subdivision 4
Applications*****Applications to prove will in solemn form**

16-46 A person who is or may be interested in the estate of a deceased person may give notice for the will to be proven in solemn form.

Revoking a grant

16-47(1) A person interested in an estate who seeks to revoke a grant may apply at the judicial centre at which the grant was made, or to which the estate has been transferred, by notice of application to be served on the personal representative to show cause why the grant should not be revoked.

(2) On an application pursuant to subrule (1), a judge may order that pending the disposition of the application nothing be done under the grant without leave.

**DIVISION 5
Accounts*****Subdivision 1
Advertising for Creditors*****Advertising for creditors**

16-48 Notice to creditors pursuant to the provisions of section 32 of *The Administration of Estates Act* must be in Form 16-48.

Subdivision 2
Passing of Accounts

Passing of accounts

16-49(1) A personal representative may file accounts with the local registrar at any time for passing.

- (2) Subject to rule 16-57, a personal representative shall file the accounts for passing:
- (a) when the administration of the estate has been completed;
 - (b) within 2 years after the issue of the grant unless that time is extended by order;
 - (c) when the personal representative desires to be discharged; or
 - (d) when the personal representative desires to substitute security other than that furnished when the grant was made, or by subsequent order, or to have the amount of the security reduced.

Failure to file

16-50(1) If a personal representative fails to file the accounts as required by rule 16-49, any person interested in the estate may serve the personal representative with notice requiring filing of the accounts within 30 days.

(2) If a personal representative does not file accounts after being served with notice, the person serving the notice may apply by notice of application for an order compelling filing of the accounts.

(3) A person interested in the estate may at any time apply for an order requiring a personal representative to file accounts if it is alleged by affidavit that a personal representative is negligent or is wasting the estate.

(4) On the return of a notice of application, the Court may order that the personal representative file the accounts within a time to be stated.

Information Note

See Division 1 of Part 6 for the general application procedure.

Powers of Court if administration of trust accounts not rendered

16-51 On application by a creditor or beneficiary interested in an estate or trust to require a personal representative or trustee to administer or execute an estate or trust, if no accounts or insufficient accounts have been rendered, the Court may, in addition to its other powers:

- (a) order that:
 - (i) the application stand over for a certain time; and

- (ii) the executors, administrators or trustees render to the applicant a proper statement of their accounts, with a warning that if this is not done, they may be made to pay the costs of the proceedings; and
- (b) if necessary to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order for administration, with a condition that no proceedings are to be taken under the judgment or order without leave of the Court.

Verification of accounts

16-52(1) The accounts to be filed must:

- (a) be verified by the affidavit of each personal representative in Form 16-52;
 - (b) contain a true and perfect inventory of the property of the deceased; and
 - (c) include:
 - (i) an account showing the assets and liabilities of the deceased at date of death;
 - (ii) an account showing all receipts and disbursements, including the amount distributed to each beneficiary;
 - (iii) an account of all property remaining on hand and all liabilities remaining unpaid;
 - (iv) a statement setting out the manner in which it is proposed to distribute the remaining assets, including the proposed amount of compensation claimed by the personal representative, the amount of lawyers' fees and the amounts proposed to be distributed to each beneficiary of the estate in full discharge; and
 - (v) any further accounts or information that may be necessary or that may be required by the examining officer or the Court.
- (2) If principal and income are dealt with separately by the will, or if more than one trust is created by the will, the account must be divided to show separately:
- (a) each trust; and
 - (b) receipts and disbursements with respect to principal and income respecting each trust.
- (3) If a personal representative has invested or reinvested trust funds, the account must show separately particulars of:
- (a) all moneys invested or reinvested from time to time;
 - (b) all moneys received by way of repayment or realizations on those investments in whole or in part; and
 - (c) the balance and particulars of all investments remaining on hand.

Examination of accounts

16-53(1) Within 30 days after filing the accounts, the personal representative shall apply without notice for an appointment for the examination of the accounts.

(2) On an application pursuant to this rule, the Court may:

- (a) designate the local registrar or other person as the examining officer;
- (b) give directions respecting the persons to be served with the appointment, the accounts and the affidavit verifying the accounts; and
- (c) authorize the examining officer to fix a time and place for the examination of the accounts in accordance with Form 16-53 and to adjourn the examination from time to time.

Amended, Gaz. 3 Mar. 2017.

Referring disputed account to Court

16-54(1) Any person interested in the estate and appearing at the examination of the accounts may require the examining officer to refer any disputed item to the Court for a ruling and direction.

(2) On the examining officer's own initiative, the examining officer may refer any item in doubt or dispute to the Court for a ruling and direction.

(3) If a doubtful or disputed item is referred to the Court, the Court may fix a time and place for the hearing and determination of the matter in doubt or dispute and give directions as to the service of notice of that hearing.

Certificate of examining officer

16-55 On completion of the examination, the examining officer shall file a certificate in Form 16-55.

Order for passing of accounts

16-56(1) On the filing of the certificate mentioned in rule 16-55, the personal representative or any other person interested in the estate may apply for an order allowing and passing the accounts.

(2) Unless the Court orders otherwise, notice of an application pursuant to this rule must be served on all persons served with the appointment.

Subdivision 3***Discharge Without Passing Accounts*****Discharge without passing accounts**

16-57(1) A personal representative desiring to be discharged without passing accounts may apply without notice on filing:

- (a) a release or a consent from each beneficiary; and
- (b) proof that all debts are paid.

- (2) The remedy sought on an application pursuant to this rule may include the fixing of compensation to the personal representative, costs, cancellation of security or other business necessary to wind up the estate.

DIVISION 6

Fees and Costs

Fees and costs

16-58(1) In this Rule and in Schedule I “C” of the Tariff:

“**core services**” means:

- (a) receiving instructions from the personal representative;
- (b) reviewing a will or *The Intestate Succession Act, 1996* with the personal representative;
- (c) providing a copy of the will to each beneficiary;
- (d) obtaining details about the deceased and the deceased’s property and debts;
- (e) attending to obtaining the grant from the Court;
- (f) advertising for creditors;
- (g) transmitting all estate assets to the personal representative and subsequently transferring them to each beneficiary;
- (h) dealing with the Public Guardian and Trustee if required;
- (i) generally advising the personal representative about estate matters;
- (j) dealing with ordinary attendances and correspondence for the core services; (« *services essentiels* »)

“**non-core services or other services**” includes but is not limited to the following:

- (a) with respect to estate administration, doing all or any of the following:
 - (i) determining who will apply for a grant in intestate estates;
 - (ii) locating beneficiaries;
 - (iii) locating assets in an intestacy or testate situation;
 - (iv) obtaining a bond for the purposes of Rule 16-31;
 - (v) determining whether joint property is an estate asset;

- (vi) making court applications, including for matters such as substantial compliance, interpretation or contentious business;
 - (vii) dealing with distribution issues respecting personal belongings;
 - (viii) paying bills and dealing with creditors;
 - (ix) dealing with property in joint tenancy;
 - (x) dealing with life insurance claims where the beneficiary is not the estate;
 - (xi) dealing with pensions and investments where the beneficiary is not the estate;
 - (xii) handling receipts and disbursements through trust account;
 - (xiii) dealing with property management;
 - (xiv) acting for the estate in the sale of estate property;
 - (xv) gathering information and dealing with accounts respecting terminal income tax returns, trust returns and goods and services taxes;
 - (xvi) attending to preparation or filing of tax returns;
 - (xvii) obtaining tax clearance certificates;
 - (xviii) corresponding with and attending on beneficiaries;
 - (xix) preparing personal representative accounts for approval by the beneficiaries;
 - (xx) preparing and obtaining beneficiaries' releases;
- (b) with respect to passing of accounts, doing all or any of the following:
- (i) preparing an affidavit of the personal representative;
 - (ii) applying without notice for an appointment for examination of accounts and serving the appointment;
 - (iii) appearing on appointment date to speak to the application;
 - (iv) attending before the examining officer;
 - (v) setting and serving the appointment date;
 - (vi) appearing on the appointment date to speak to matters in dispute and to the order allowing and passing accounts;
 - (vii) issuing and serving the order allowing and passing accounts.
(« services non essentiels ou autres services »)

(2) The lawyer retained by the personal representative is entitled to payment for providing core services to the personal representative or the estate as follows:

- (a) as a percentage as set out in Schedule I “C” of the tariff; or
- (b) any lesser fee than that provided for in clause (a) that is agreed to by the lawyer and the personal representative.

(3) Before being retained by the personal representative, the lawyer shall advise the personal representative in writing of the lawyer’s method of billing for non-core services or other services to the personal representative or the estate, based on one or more of the following:

- (a) a percentage of the value of the estate;
- (b) at a specified hourly rate;
- (c) as a fixed fee;
- (d) a combination of the methods set out in clauses (a), (b) and (c).

(4) When presented with the lawyer’s bill of fees and disbursements, a personal representative may proceed to have the account assessed pursuant to *The Legal Profession Act, 1990* and these rules.

