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TURNING POINT LAW FAQ FOR PERSONAL REPRESENTATIVES

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1. I have been appointed as a Personal Representative. What does that mean?

As the Personal Representative of an Estate, you are responsible for *administering* the Estate.

You will be focused primarily on the property of the Deceased—the real estate, bank accounts, money, investments, farm and business assets, debts, taxes, etc. This is not to deny the importance of concern about the welfare of dependent spouses and the guardianship of children. However, as the Personal Representative, you do not have any powers or duties to deal with these other issues, apart from ensuring that there is enough money to meet the short-term needs of dependants while the Estate is being administered.

It is an honour to be asked to be a Personal Representative, but it is also a lot of work. Turning Point Law lawyers and staff have extensive experience in the administration of estates and will be happy to provide you with sound legal advice and practical guidance to ensure that your experience as a Personal Representative is a positive one.

2. What are the differences between a Personal Representative, an Executor, an Administrator and a Trustee?

Personal Representative is a modern, generic term used in Alberta to cover the traditional terms, *Executor* (feminine form: *executrix*; plural forms: *executors* and *executrices*), *Administrator* (feminine form: *administratrix*) and *Trustee* (where the Will creates a trust). Some other provinces still use the traditional terminology. In Ontario, the equivalent generic term is *Estate Trustee*.

Executor means appointed in a Will: If you were appointed as Personal Representative in a Will, you are what was traditionally referred to as the *Executor* of the Will. Your authority flows from the Will and begins on the death of the maker of the Will. Depending on the circumstances, you may have to apply to the Court for a *Grant of Probate*. The Grant of Probate affirms the Will as the *last* valid Will of the Deceased and confirms your appointment as Personal Representative of the Estate.

Administrator means appointed by the Court: There are two circumstances where the court will appoint a Personal Representative to administer an Estate:

- ❖ If a person dies without a Will (known as an *intestacy*), an application can be made to the Court for a *Grant of Administration*. This Grant appoints a Personal Representative (formerly called an *Administrator*) to administer the Estate and distribute it in accordance with the *Intestate Succession Act*. The person(s) who can apply for this Grant are set out in Rule 11(2) of the Surrogate Rules.
- ❖ If a person leaves a Will, but the person named in the Will is unable or unwilling to take on the responsibilities of being a Personal Representative, the court will issue a *Grant of Administration with the Will Annexed*. This Grant appoints a Personal Representative (formerly called an *Administrator with the Will Annexed*) to administer the Estate. The Personal Representative follows the Will when distributing the Estate. The person(s) who can apply for this Grant are set out in Rule 11(1) of the Surrogate Rules.

The authority of the Personal Representative flows from the date of the Grant, leaving a gap when no one is officially authorized to deal with the Estate.

Trustee means responsible for administering trusts in a Will. If the Will requires the Personal Representative to hold property in trust (for example, where the person making the Will wants their children's shares held until they reach 25 years of age), the Personal Representative becomes a Trustee of the property until it is distributed.

Most of the duties of a Personal Representative are the same, no matter how they were appointed.

Turning Point Law can help you determine which kind of Grant you need. We can also prepare the documents needed to apply for the Grant.

3. Do I have any powers or responsibilities as a Personal Representative before the person who appointed me dies?

No. The Will speaks from the moment of death; before then, you have neither powers nor responsibilities as Personal Representative.

4. Can I turn down the appointment as Personal Representative in a Will?

Yes.

You can decline an appointment as Personal Representative in a Will by signing a document called a *renunciation*. However, if you have "intermeddled" in the Estate, you need the permission of the Surrogate Court to renounce, so you should not do anything connected with the Estate if you are not sure you want to accept the appointment as Personal Representative.

If you decide you don't want to be the Personal Representative, Turning Point Law can prepare your renunciation in the proper form.

5. Once appointed, can I resign as Personal Representative?

Yes.

However, before you resign, you must apply to the Court for permission. You may also be required to prepare an accounting. If any of the beneficiaries are dissatisfied with the accounting, you can be forced to formally pass your accounts before the Court.

6. Can I be removed as Personal Representative?

Yes.

Your appointment as Personal Representative is always subject to review by the Court. Anyone who has a legal interest in the Estate can apply to the Court to have you removed. If the Court is satisfied that you have engaged in misconduct, you will be removed and someone else will be appointed.

7. Who can apply to be Personal Representative if there isn't a Will?

If there isn't a Will (known as an *intestacy*), Rule 11(2) of the Surrogate Rules sets out the persons entitled to apply for a Grant of Administration and their order of priority. The emphasis is on the family of the deceased. The application is made by the person or persons with the highest priority who is/are willing and able to apply. A person with priority can renounce, in which case the rest of the persons with the same priority can apply. If no one at a level of priority is willing to apply, the person(s) with the next lower level of priority can apply.

This is how it works. The surviving spouse or adult interdependent partner has first priority. If there isn't a spouse or adult interdependent partner, or the spouse or adult interdependent partner renounces, the child(ren) of the Deceased can apply. If there are no children, or if they all renounce, the grandchildren of the Deceased are next. After grandchildren, the right to apply goes to other issue of the Deceased, then to parents, then siblings, then child(ren) of siblings, then other next of kin. If there is no family willing or able to apply (which sometime happens if the Estate is bankrupt), a creditor of the Estate can apply. The Crown can apply if no one else will.

If more than one person is eligible to apply, preference is given to persons living in Alberta.

When more than one person is eligible to apply, what usually happens is that the family gets together to discuss and negotiate who will make the application and who will renounce. If the family cannot agree, the Court will decide among competing applications or will appoint a neutral Personal Representative, such as a trust company.

You cannot have more than 3 Personal Representatives without permission from the Court.

When there is more than one Personal Representative, all decisions require the agreement of all the Personal Representatives. In other words, unanimous agreement is required, not majority vote.

Turning Point Law can help your family sort out who should apply for a Grant of Administration. We can also prepare the documents needed for the application, including renunciations.

8. Who can apply to be the Personal Representative where the person named in the Will can't or won't apply?

If none of the Personal Representatives named in a Will is willing and able to act, Rule 11(1) of the Surrogate Rules sets out the persons entitled to apply for a Grant of Administration with the Will Annexed and their order of priority. The emphasis is on the beneficiaries of the Will. The Crown can apply if no one else will.

The application is made by the person or persons with the highest priority who is/are willing and able to apply. A person with priority can renounce, in which case the rest of the persons with the same priority can apply; if no one at a level of priority is willing to apply, the person(s) with the next lower level of priority can apply.

When more than one person is eligible to apply, what usually happens is that the family gets together to discuss and negotiate who will make the application and who will renounce. If the family cannot agree, the Court will decide among competing applications or will appoint a neutral Personal Representative, such as a trust company.

If there is more than one Personal Representative, all decisions require the agreement of both or all the Personal Representatives. In other words, unanimous agreement is required, not majority vote.

You cannot have more than 3 Personal Representatives without permission from the Court.

Turning Point Law can help your family sort out who should apply for a Grant of Administration with the Will Annexed. We can also prepare the documents needed for the application, including the renunciations.

9. What if I live outside Alberta?

You can be the Personal Representative of an Alberta Estate even if you are not a resident of Alberta.

There are no special requirements if at least one of the Applicants for a Grant is an Alberta resident. However, if there is no Alberta-resident Applicant, the *Administration of Estates Act* and the Surrogate Rules states that the Applicant must purchase a bond from an Insurance Company. The bond guarantees that the Personal Representative will administer the Estate properly.

It is possible to apply to the Court for an order dispensing with the bond requirement. The application to dispense with the bond is made using NC 17 and NC 18. The Court will grant the application unless there are unusual circumstances that require a bond.

10. How are decisions made if there is more than one Personal Representative?

If there is more than one Personal Representative, all decisions require the agreement of both or all the Personal Representatives. In other words, unanimous agreement is required, not majority vote. The only exception to this is where the Will states otherwise.

Turning Point Law can advise you about who must participate in Personal Representative decisions.

11. What does it mean to be a *fiduciary*?

A *fiduciary* is a person who stands in a special relationship of trust, confidence or responsibility in carrying out legal responsibilities for the benefit of others.

As a Personal Representative, you are a fiduciary because you are responsible for administering the Estate for the benefit of the beneficiaries and others with claims against the Estate, such as creditors and the tax authorities.

As a fiduciary, you must act only in the interests of the Estate beneficiaries and others with claims, and not for your own benefit. You must carry out your duties with complete fairness and utmost good faith, and you may not exert influence on or pressure, take advantage of, or deal with any of the beneficiaries in such a way that it benefits you or prejudices one or more beneficiaries.

When making decisions in the administration of the Estate, you are entitled to seek expert assistance, such as legal, appraisal, accounting, investment and tax advice. The responsibility to make decisions, however, is yours and you cannot delegate this responsibility, with two exceptions:

- you can delegate decisions if and to the extent that the Will specifically allows delegation
- you can delegate some investment discretions if you comply with section 5 of the *Trustee Act*

Because you are a fiduciary, you must act with complete transparency because the residuary beneficiaries of the Estate are entitled to complete disclosure of everything you do in the administration of the Estate.

If you have a claim against the Estate as a beneficiary, creditor or otherwise, you are in a potential conflict of interest. If you wish to pursue your rights as a beneficiary to the potential detriment of other beneficiaries, you must resign as Personal Representative while the dispute is being resolved. In situations where there are multiple competing interests among the beneficiaries, the Court will appoint a neutral third party, such as a trust company, to administer the Estate

If you fail to carry out your fiduciary duties, the Court can hold you personally liable for losses of the Estate or the beneficiaries.

Turning Point Law will be pleased to help you understand and fulfill your fiduciary duties.

12. What if I discover an embarrassing secret about the Deceased?

Sometimes, Personal Representatives discover embarrassing secrets that the Deceased would not want the rest of the world to know. If the secret does not affect the administration of the Estate, you should keep it confidential to protect the Deceased's privacy and dignity.

13. What are my duties as a Personal Representative?

As Personal Representative of an Estate, you are responsible for administering the Estate, which means, at the most general level,

- applying to the Court for a Grant, if needed
- taking possession and control of the assets of the Estate
- paying the funeral expenses, debts and taxes of the Deceased and the expenses of administering the Estate
- liquidating the Estate as necessary to free up funds to carry out your duties
- accounting to the beneficiaries of the Estate
- distributing the Estate according to the Will or the *Intestate Succession Act*

This is only a very general description of your duties; your duties are spelled out in more detail elsewhere in this FAQ.

The Surrogate Rules contain a schedule that lists the Personal Representative's duties, as follows:

Personal Representatives' Duties

- 1 Making arrangements for the disposition of the body and for funeral, memorial or other similar services.
- 2 Determining the names and addresses of those beneficially entitled to the estate property and notifying them of their interests.
- 3 Arranging with a bank, trust company or other financial institution for a list of the contents of a safety deposit box.
- 4 Determining the full nature and value of property and debts of the deceased as at the date of death and compiling a list, including the value of all land and buildings and a summary of outstanding mortgages, leases and other encumbrances.

- 5 Examining existing insurance policies, advising insurance companies of the death and placing additional insurance, if necessary.
- 6 Protecting or securing the safety of any estate property.
- 7 Providing for the protection and supervision of vacant land and buildings.
- 8 Arranging for the proper management of the estate property, including continuing business operations, taking control of property and selling property.
- 9 Retaining a lawyer to advise on the administration of the estate, to apply for a grant from the court or to bring any matter before the court.
- 10 Applying for any pensions, annuities, death benefits, life insurance or other benefits payable to the estate.
- 11 Advising any joint tenancy beneficiaries of the death of the deceased.
- 12 Advising any designated beneficiaries of their interests under life insurance or other property passing outside the will.
- 13 Arranging for the payment of debts and expenses owed by the deceased and the estate.
- 14 Determining whether to advertise for claimants, checking all claims and making payments as funds become available.
- 15 Taking the steps necessary to finalize the amount payable if the legitimacy or amount of a debt is in issue.
- 16 Determining the income tax or other tax liability of the deceased and of the estate, filing the necessary returns, paying any tax owing and obtaining income tax or other tax clearance certificates before distributing the estate property.
- 17 Instructing a lawyer in any litigation.
- 18 Administering any continuing testamentary trusts or trusts for minors.
- 19 Preparing the personal representative's financial statements, a proposed compensation schedule and a proposed final distribution schedule.
- 20 Distributing the estate property in accordance with the will or intestate succession provisions.

Turning Point Law has a more detailed checklist of Personal Representative's duties.

You are required to act with **reasonable prudence**. Sometimes this requires you to obtain the advice of legal, appraisal, accounting, tax and investment advisors. If you act negligently or illegally, the Court can hold you personally responsible for losses of the Estate or the beneficiaries.

You are required to act with **reasonable diligence**. Normally, this means that you should wrap up the Estate within a year, though some Estates can be administered more quickly and some take longer due to circumstances beyond the Personal Representative's control.

You have to file income tax and GST returns and pay the taxes owing by the Deceased, though you are not responsible for paying the Deceased's taxes out of your own money. However, if you pay debts or expenses or distribute the assets of the Estate without protecting the claims of Canada Revenue Agency, you can be held personally liable for the deficiency.

You must account for everything you do as Personal Representative on behalf of the Estate. You do this by producing a detailed accounting of all financial transactions. The beneficiaries of the residue of the Estate are entitled to go through the Estate with a fine-toothed comb and if they don't like what they see, they can force you to submit your accounting records to the Court for review by a judge. This is an expensive and potentially harrowing experience. Therefore, you should

- diligently gather in and protect all the assets of the Estate
- ensure that the prices and terms of all sales of Estate assets are justifiable
- carefully scrutinize the claims of creditors
- create a paper trail for every transaction (especially cash transactions) that clearly identifies the date, amount and purpose of every amount received into or paid out of the Estate
- keep all banking records (cheques, deposit slips, statements, etc.) that relate to the Estate
- keep a record (preferably in a spreadsheet) detailing all transactions
- keep all correspondence that relates to the Estate in a properly organized file

All these documents and records will be needed when you prepare the estate accounts for submission to the beneficiaries and possibly to the Court.

Turning Point Law lawyers and staff can give you sound legal advice and practical guidance to help you administer the Estate properly. We can also provide you will an Excel spreadsheet to help you fulfill your accounting responsibilities. Don't hesitate to call if you have any questions or concerns.

14. Do I have to do all the work myself?

No.

If you don't have the time, skills or inclination to do all the work yourself, you can enlist and pay others to help you. However, you cannot delegate decision-making power.

One option is to ask Turning Point Law to take on some of the Personal Representative's jobs. This may result in higher legal fees to the estate.

Another option is to get an accountant involved in the record-keeping and operational aspects of administering the Estate, particularly if there is a business or farm in the Estate.

A third option is to use a trust company as agent. Many of the large trust companies have trust departments that are set up to assist Personal Representatives in the administration of estates. The trust company does not have to be named as Personal Representative in the Will or in the Grant. The role of the trust company will be to carry out the administrative, clerical and drudge work, leaving the decision-making to you.

If you have to invest assets of the Estate, section 5 of the *Trustee Act* allows you to use investment advisors.

If you decide to delegate some of the Personal Representative's duties, your compensation will be reduced because you will have less to do.

15. What do I have to do with respect to guardianship of the children?

The Personal Representative of the Will is not responsible for the guardianship of the minor children of the Deceased.

If the Will names guardians, the Personal Representative should give the Guardians a notarial copy of the part of the Will that appoints them so they will have evidence of their authority to take custody of the children.

If there is no Will, or the Will doesn't name guardians, what usually happens is that the family gets together to discuss and negotiate what is best for the children. If there is conflict that cannot be resolved by discussion, the matter may end up in court.

Turning Point Law does not practice in the area of family law, but we can refer you to experience, talented lawyers who specialize in this area of legal practice.

16. What if there is a trust in the Will?

People put trusts in their Wills when they want the Personal Representatives to hold part or all of the Estate for longer than is necessary to simply wrap the Estate up. For example, the person making the Will may want the Personal Representatives to hold the shares of young beneficiaries until they reach, say, 25 years of age.

A trust in a will is known as a *testamentary trust*.

A trust is a relationship between the person with legal ownership of property (the trustee), the persons entitled to the benefit of the property (the beneficiaries, also referred to as the beneficial owners), and the property. The trustees are the legal owners of the property insofar as dealings with third parties concerned, but they must exercise their ownership for the benefit of the beneficiaries.

The terms of a testamentary trust are the provisions in the Will that spell out how the Personal Representative is to administer the part of the Estate that is not to be immediately distributed to beneficiaries, interpreted with reference to statutes like the *Trustee Act*, the *Administration of Estates Act*, the *Dependents Relief Act*, the *Dower Act*, the *Surrogate Rules*, along with centuries of case law that defines the legal rules that apply to trusts.

There are some technical differences between the obligations of a Personal Representative when administering the estate and when acting as trustee of a trust, but they don't matter for most practical purposes.

If there is a trust in the Will you are administering, your administration will have two phases. The first phase involves the so-called executor functions, which include everything you have to do *other than holding, administering and distributing the trust*. In other words, your focus is on gathering in the assets of the Estate, paying debts and taxes, paying expenses and distributing immediately deliverable gifts. Normally, you are expected to complete these duties in about a year, although it may take more or less time depending on circumstances.

Your final executor function is to distribute the Estate. However, if there is a trust in the Will, you may have to delay distributing the trust property until a condition is met, such as a child reaching a pre-determined age. During the trusteeship phase, your major responsibilities are

- safeguarding and investing the trust assets

- making decisions about encroachments for beneficiaries' maintenance, education and advancement in life, consistent with the rules set out in the Will
- filing the tax returns and pay the income taxes of the trust
- to distribute the trust assets when the time comes
- accounting to the beneficiaries of the trust

These phases overlap. At the beginning of the administration of the Estate, you will mostly be involved in executor functions, though you may have some trustee functions. The executor phase eventually winds down, but trust phase continues until the trust property is distributed.

A trustee is responsible for investing the trust assets. If the amount to be invested is small and the time for which it is to be held limited, it can be put into a term deposit or a guaranteed investment certificate. If the amount is larger and the time for which it will be in trust longer, you will have to come up with an investment plan that meets the requirements of the so-called prudent investor rule in the *Trustee Act*. The good news is that you don't have to do it all by yourself because section 5 of the *Trustee Act* permits delegation of investment discretion.

Trust law can be very complex, technical and confusing. Sometimes the law doesn't seem to make a lot of sense because some of the rules were developed in very different times. Turning Point Law has expertise in the area of trusts law and will be happy to help you with trust law issues.

17. Who decides about funeral arrangements?

If there is a Will, the Personal Representative named in the Will has the final say on the funeral arrangements. Even if the Will contains funeral instructions, they do not have to be followed.

If there is no Will, or if none of the Personal Representatives named in the Will are willing and able to act, there is no mechanism for resolving disputes other than an emergency application to the Court, which is, fortunately, very rare.

Usually, the funeral arrangements are made by the family in conjunction with a funeral director, taking into consideration the wishes expressed by the Deceased before he or she died.

A pre-arranged funeral makes it easy for the family, though disputes sometimes erupt when some family members don't like the pre-arrangements.

Turning Point Law can help your family negotiate funeral arrangements with legal advice and practical guidance.

18. Who pays for the funeral?

The Estate is responsible for reasonable funeral expenses.

Funeral expenses have priority over all other debts, taxes and expenses. Banks will release funds from frozen estate bank accounts to cover the funeral expenses. They will release these funds even if a Grant has not issued. If you pay the expenses yourself (for example, by cheque or credit card), you can take your receipt and/or cancelled cheque to the bank and get reimbursed.

If you think the Deceased may have a pre-arranged funeral, you will have to search among his or her papers and call around to funeral directors in your area to determine if the funeral has already been purchased.

The funeral expenses must be reasonable in the context of the size of the estate and the "station in life" of the Deceased. This rather quaint expression means that the Personal Representative of the Estate of a wealthy person may be justified in paying for a large funeral and erecting an elaborate monument, but the Personal Representative of a more humble person may only be justified in paying for a simple ceremony and a plain grave marker. If you spend too much, you may be personally liable for the excess.

Turning Point Law can help you understand the intricacies of the law about funeral expenses.

19. What should I look for when I am going through the Deceased's papers?

Generally, you should be looking for

- **Funeral Arrangements:** documents with regard to funeral prearrangements
- **Wills:** formal wills that were executed later than the Will you have, holograph Wills, and formally executed or holograph Codicils
- **Property:** any papers that relate to property owned by the Deceased, including bank and investment account statements, securities, RSP and RIF statements, RESP statements and any other paper that proves or suggests an asset of the estate
- **Debts:** any evidence of debts owed by the Deceased, especially current bills
- **Insurance:** any papers that relate to insurance on the life of the Deceased
- **Taxes:** tax returns and other tax information

If the Deceased was a packrat, you will have lots of irrelevant paper to go through. You should isolate current information so you can properly administer the Estate. You can throw the rest out.

Turning Point Law can help you decide what paper you need to keep and what you can get rid of.

20. What is a Codicil?

A Codicil is a document that amends a Will.

21. What is a holograph will?

A holograph Will is a document entirely in the handwriting of the Deceased, signed by the Deceased, that records the Deceased's intentions with respect to the distribution of the Deceased's property on death. A holograph Will does not have to be witnessed.

Notes made in contemplation of a meeting with a lawyer about a Will are not a holograph Will.

A suicide note may be a holograph Will.

When you are going through the Deceased's papers, you should keep an eye out for possible holograph Wills. A note that says, for example, "I want my rings to go to my niece, Stephanie" may be a holograph Will or a holograph Codicil to a formal Will and should be submitted to the Court with the Probate Application.

22. What is the Surrogate Court and what are the Surrogate Rules?

A *Surrogate Court* (also known as a Probate Court in some places) is a court with jurisdiction over the estates of deceased persons, including confirming the authenticity of wills, validating of the appointment of Personal Representatives, adjudicating disputes over wills and estates and approving the accounts of Personal Representatives.

In Alberta, the surrogate court jurisdiction is exercised by the Court of Queen's Bench; we don't have a separate Surrogate Court, though we sometimes refer to the part of the Court of Queen's Bench that deals with surrogate matters as the Surrogate Court.

The vast bulk of the surrogate functions in Alberta involve the submission of documents to the Surrogate Clerk's office, and do not require an appearance in court before a judge. These are known as non-contested proceedings. When an Estate issue cannot be resolved by the submission of documents, a court appearance is required.

The *Surrogate Rules* set out the rules, procedures and forms for the unique aspects of surrogate work. Where the Surrogate Rules don't provide an answer, the Queen's Bench Rules of Court apply.

Turning Point Law lawyers and staff have frequent dealings with the Surrogate Clerk's office and are thoroughly familiar with the Surrogate Rules and forms. We submit documents to the Surrogate Court on regular basis. We also appear before Court of Queen's Bench judges on surrogate matters when required.

23. How much are the Surrogate fees and the probate taxes in Alberta?

The fees charged by the Surrogate court for processing an Application for a Grant are on a sliding scale from \$25 for an estate under \$10,000 to a maximum of \$400 on an estate worth \$250,000 or more.

We do not have probate taxes in Alberta. You have to be careful when reading estate planning literature from these other provinces because many of the recommendations are designed to get around problems that don't exist here.

24. What is a Grant?

A Grant is a court document that establishes certain legal facts about an Estate:

- that the Deceased is dead
- whether the Deceased died with or without a Will
- if the Deceased died with a Will, that the Will attached to the Grant is the Deceased's last valid will
- who is the Personal Representative

The Grant gives the Personal Representative the authority to deal with the Deceased's property. It is official evidence for third parties, such as financial institutions and the Land Titles Office, that the Personal Representative named in the Grant has stepped into the Deceased's shoes.

There are several kinds of Grant. The most common are

- a *Grant of Probate* (when there is a Will and the person named as Personal Representative in the Will makes the application)
- a *Grant of Administration with the Will Annexed* (when there is a Will, but none of the persons named as Personal Representative in the Will are willing or able to make the application)
- a *Grant of Administration* (when there is no Will)

Most applications for a Grant are uncontested and the Court issues the Grant on the basis of documentation submitted to the Court through the clerk's office. Sometimes, however, there is a dispute about a Will and the Court requires the applicant to "prove the Will in solemn form" before issuing a Grant. In these cases, the applicant has to provide oral and written evidence to satisfy the Court that the Will is valid.

Turning Point Law lawyers and staff have extensive experience preparing applications for all kinds of Grants and will be happy to help you obtain the Grant you need.

25. What is Probate?

Probate is a court procedure that establishes that the document submitted to the Court is the *last valid* Will of the Deceased and confirms that the person named in the Will is the Personal Representative of the Estate.

In Alberta, the person named as Personal Representative in the Will applies to the Court of Queen's Bench of Alberta (Surrogate Matters) for a *Grant of Probate*. This is one of several kinds of Grant available in Alberta.

Turning Point Law can help you understand whether you should apply for a Grant of Probate or some other form of Grant.

26. What if the original Will can't be found?

When it is known that the Deceased made a will, but the original cannot be found, there is a presumption of law that the Deceased destroyed the document, and in doing so revoked the Will. The result is an intestacy.

The presumption can be overcome if the Court is satisfied by credible evidence under oath that the Will was actually lost and not destroyed. Such evidence could include facts like

- the Deceased never mentioned destroying his original Will
- the Deceased talked about his Will as if the original was still in existence right to the end of his life by, for example, mentioning gifts to beneficiaries as if they were going to get them
- the Deceased remained competent right to the end of his life
- the Deceased was a packrat and the original Will could have inadvertently been tossed out with other paper
- there was a fire, flood or other disaster that could have destroyed the original

If the original Will has been lost, it is best to submit a copy to the Court to prove what was in the original. It is possible to prove the contents of a lost original Will by oral evidence, but it is not easy.

Turning Point Law keeps an electronic copy of all Wills signed in our office in case it becomes necessary to prove that a Will was signed and to show what it said. We can prepare the submission to the Court to request a Grant of Probate of a missing Will.

27. When do I have to apply for a Grant?

You have to apply for a Grant to deal with

- real estate
- large bank accounts
- insurance money that goes into the Estate
- RSPs and RIFs that go into the Estate
- investment portfolios
- any Estate asset where the person with possession or custody of the asset, or the person to whom the asset is sold, requires official evidence of your authority to deal with the Deceased's property

You don't need a Grant to deal with

- joint property, which goes directly to the other joint owner(s) and doesn't pass through the Estate
- insurance money that goes directly to a designated beneficiary
- RSPs and RIFs that go directly to a designated beneficiary
- assets in a trust set up before the Deceased passed away
- small bank accounts where the financial institution is cooperative
 - ❖ each financial institution decides, on a case-by-case basis, whether to release a bank account of a Deceased customer without a Grant
 - ❖ when a financial institution waives the Grant, it usually requires the recipients of the money in the account to sign a *Bond of Indemnity* promising to return the money if it turns out that someone else has a valid claim to it

Between the above two categories, there is a grey area where the circumstances of the Estate will determine if you have to apply for a Grant.

Turning Point Law can advise you on whether you need a Grant. We can also help you negotiate with financial institutions to avoid having to apply for a Grant. If a Grant is needed, we can prepare it for you and submit it to the Court on your behalf.

28. What are the NC documents?

The NC documents are the forms prescribed by the Surrogate Rules for an application for a Grant where there is no dispute. *NC* means **Non-Contested**

The NC documents used most frequently are:

- NC 1 **Application**
- NC 2 **Affidavit** – the factual basis for the Court's decision to issue the Grant
- NC 3 **Deceased** – information about the Deceased

- NC 4 **Will** – information about the will and any codicils – not required for Grant of Administration
- NC 5 **Personal Representative** – information about you
- NC 6 **Beneficiaries** – information about how the Estate is to be divided
- NC 7 **Inventory** – information about the Deceased's assets and debts
- NC 8 **Affidavit of Witness to Will**
- NC 9 **Affidavit of Handwriting** – used when we cannot get an NC 8 because the witnesses have died or cannot be located
- NC 12 **Renunciation of Probate**
- NC 14 **Renunciation of Administration with the Will Annexed**
- NC 15 **Renunciation of Administration**
- NC 17 **Affidavit to Dispense with a Bond**
- NC 18 **Consent to Waive Bond**
- NC 19 **Notice to Beneficiaries (Residuary)** - includes a copy of the Application and the Will
- NC 20 **Notice to Beneficiaries (Non-residuary)**
- NC 21 **Notice to Beneficiaries (Intestacy)** - includes a copy of the Application
- NC 22 **Notice to Spouse (Matrimonial Property Act)** – used when the Deceased is married and the Estate does not all go to the spouse and when the Deceased was divorced or separated in the two years before the date of death – includes a copy of the Application
- NC 23 **Notice to Spouse/Adult Interdependent Partner of Deceased – *Dependent's Relief Act*** – used to give notice to the Spouse or Adult Interdependent Partner of the Deceased of his or her right to apply for a larger share
- NC 24 **Notice to Dependent Child of the Deceased - – *Dependent's Relief Act*** – used to give notice to a dependent child of the Deceased of his or her right to apply for a larger share – Note: this notice is for adult children; the notice for minor children goes to the Public Trustee
- NC 24.1 **Notice to Public Trustee** – used when there are minor children beneficiaries of the Estate – also used when there are missing beneficiaries or persons for whom the Public Trustee is the trustee

29. What is the NC 7?

The NC 7 is the most important NC document. It is an inventory of all the property owned by the Deceased in Alberta, valued as of the date of death, and all of the Deceased's debts. It forms the starting point for your accounts, and is the document you reconcile to when you reconcile your accounts.

The NC 7 is also the most complex NC document and the one that takes the most time. To prepare it, we need to get letters and/or printouts from financial institutions, stock value information, real estate and business appraisals, inventories of personal effects and all manner of other particular information. Most of the delay in submitting an Application for a Grant to Surrogate Court usually comes from the time it takes to gather information for the NC 7.

Turning Point Law has extensive experience preparing NC documents. We are familiar with the subtle nuances and the unpublished requirements of the Court. We will be happy to prepare the NC documents for your application.

30. What notices have to be served when I apply for a Grant?

The Surrogate Rules require you to serve notices on persons who have an interest, or a potential interest, in the Estate. The notices are served by handing them to the person or by sending them by registered mail. An affidavit proving service is included with the Application for a Grant submitted to the Court.

The Notices are as follows:

- NC 19 **Notice to Beneficiaries (Residuary)** - includes a copy of the Application and the Will
- NC 20 **Notice to Beneficiaries (Non-residuary)**
- NC 21 **Notice to Beneficiaries (Intestacy)** - includes a copy of the Application
- NC 22 **Notice to Spouse (Matrimonial Property Act)** – used when the Deceased is married and the Estate does not all go to the spouse and when the Deceased was divorced or separated in the two years before the date of death – includes a copy of the Application
- NC 23 **Notice to Spouse/Adult Interdependent Partner of Deceased – *Dependent's Relief Act*** – used to give notice to the Spouse or Adult Interdependent Partner of the Deceased of his or her right to apply for a larger share
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- NC 24.1 **Notice to Public Trustee** – used when there are minor children beneficiaries of the Estate – also used when there are missing beneficiaries or persons for whom the Public Trustee is the trustee

31. What will Turning Point Law do to help me obtain a Grant?

As the lawyer for the Estate, Turning Point Law will take the following steps to process your Application for a Grant.

1. **Gather Information** To prepare the Application for a Grant, we need extensive information about the Deceased, the Deceased's family, the Personal Representative, the Will (if there is one) and the witnesses, the beneficiaries and the Deceased's property. We can usually get most of this information from the Personal Representative.
2. **Prepare the Surrogate Court application forms** The Surrogate Rules prescribe the forms that must be prepared for an Application for a Grant. The requirements of the law and the Court are very technical and require a thorough understanding of numerous legal principles, so this is not just a matter of "filling in some paperwork".
3. **Arrange for the Personal Representative to sign the Application** When all the information has been obtained and the forms prepared, we arrange for you to come in to review and sign the Application.

4. **Serve notices** Under the Surrogate Rules, a person applying for a Grant must serve notices on various persons such as the beneficiaries, the spouse, dependent children and the Public Trustee. We take care of preparing and serving these notices.
5. **Submit the Application to the Court** We then submit the application to the Surrogate Clerk's Office.
6. **Respond to concerns of the Surrogate Clerk and judges** The Surrogate Clerk's Office reviews the application before it is submitted to a judge. This review is very technical. Sometimes the Clerks disagree with the way we have prepared the application, so they "bounce" it. We review the clerk's comments and respond accordingly. If the clerks are right, we correct the Application. If we feel that they have misinterpreted the legal requirements, we respond with written submissions that go to the judge. Sometimes, though rarely, the judge will "bounce" the Application. Once again, we respond and, if necessary, attend before the judge to explain the way prepared the Application. When the judge is satisfied, the Grant issues. It usually takes 6-8 weeks from the time of submission to the issuance of the Grant.
7. **Obtain the Order** When the Grant issues, the Surrogate Court notifies us that it is ready and advises us of the amount required for Surrogate fee and certified copies. The maximum Surrogate fee in Alberta is \$400.00. The Surrogate fee includes the original and one certified copy of the grant; there is a charge for each additional certified copy. We send the funds to the Surrogate Court and obtain the grant.

32. How long will it take to administer the Estate?

It's impossible to give a general answer to this question. If the Estate is small and very simple, it may be possible to wrap it up within a few months. The average is around a year. Many estates take longer than that.

Here are some of the factors that will make an Estate take longer than average:

- complex assets such as business, farms, rental properties or extensive investments that need to be evaluated and liquidated
- disputes among beneficiaries
- litigation
- foreign property
- beneficiaries located in other provinces or foreign countries
- lack of diligence from third parties like financial institutions, tax authorities, accountants, appraisers, etc.
- multiple Personal Representatives, requiring unanimous agreement for every decision
- lack of proper record-keeping by the Deceased
- secrecy by the Deceased
- a pack-rat mentality by the Deceased
- unresponsiveness by beneficiaries regarding returning releases

Given the uncertainties involved in virtually every estate, you are well advised not to make any promises or predictions to beneficiaries. Just tell them that you are working on it as hard as you can, that there is a lot of work to do, and that they will get what they are entitled to as soon as you can get it to them.

Turning Point Law can get some things done more quickly than you can. For example, we have procedures for getting information from financial institutions, ordering appraisals, and many other routine Personal Representative responsibilities.

33. On what grounds can a Will be contested?

Our law has great respect for the right of competent adults to dispose of their Estates as they see fit. This is known as "testamentary freedom", and is a fundamental right.

Nevertheless, there are several bases for claiming that a Will is invalid:

- the person making the Will lacked the required mental capacity at the time the Will was signed
- the person making the Will was so much under the influence of someone (usually a beneficiary of the Will or a person closely associated with a beneficiary) that the Will cannot be said to express the actual wishes of the person who made it (referred to as *undue influence* cases)
- the Will was not properly signed or witnessed (this kind of attack is rarely made if the Will was prepared by a lawyer, but often arises in connection with homemade or will kit Wills)
- the person making the Will failed to make reasonable provision for the support and maintenance of a spouse, an Adult Interdependent Partner, a minor child or an adult child who is unable to earn a livelihood because of a mental or physical disability; in these cases, the Will is contested under the *Dependants Relief Act*
- the person making the Will separated from or divorced his or her spouse shortly before dying and there was no settlement of their matrimonial property claims
- there is a competing document, such as a later Will or a letter or note that can be interpreted as a holograph codicil that changes the terms of the Will
- there are competing interpretations of the terms of the Will

A Will cannot be contested on the basis that the person making the Will make verbal promises unless the person to whom the promises were made can show that the promises amounted to a contract or a trust.

An otherwise valid Will cannot be contested on the basis of documents signed before the Will was signed. However, if the last will is successfully contested, the prior Will may turn out to be the last valid will and be admitted to probate.

34. What is included in the Estate?

The Estate includes everything owned by the Deceased. Most items fall into one of the following categories:

- Real Estate, including real estate in the Deceased's own name and real estate owned "as tenants in common" with someone else, but not real estate owned "as joint tenants"
- Mineral rights, including freehold minerals, leases, royalties, etc.
- Personal effects, including all items of tangible personal property, such as furniture, appliances, coin and stamp collections, crockery, silverware, trophies, art, tools, clothes, vehicles, mobile homes, boats, computers, books, decorations, jewelry, etc.
- Cash
- Accounts in banks, credit unions, trust companies or treasury branches, but not including joint accounts with survivorship

- Money owed to the Deceased, including personal loans and business accounts receivable, promissory notes, mortgages and debentures
- Assets of unincorporated businesses, including the receivables, inventory, capital assets, goodwill, etc.
- Interests in Partnerships
- Investments, including stocks, bonds, warrants, options, mutual funds, futures, limited partnership interests, joint venture shares, drilling funds units, trust units, bullion, term deposits, guaranteed investment certificates, treasury bills, etc.
- Pension fund refunds
- RSPs, RIFs and RESPs
- Intellectual property, including patents, copyrights, trademarks, industrial designs, software, etc.
- The right to bring certain kinds of lawsuits
- Life insurance payable to the Estate
- Benefits from reward programs (including Air Miles)

35. What is not included in the Estate?

There are several types of property which do not become part of the Estate:

- *Joint Property*: Upon the death of a person who owns property jointly, the property passes directly to the surviving joint owner(s) and does not become part of the Estate of the deceased joint owner.
- *Life Interest*: Property in which a person has a life interest goes directly to the person or persons entitled to the remainder interest under the document that created the life interest.
- *Life insurance payable to a designated beneficiary*: Life insurance proceeds go to the designated beneficiary, unless the beneficiary has predeceased or the owner of the policy changes the beneficiary in the Will.
- *Registered plans (RRSPs, RRIFs, LIRAs, etc.), pensions, etc. payable to a designated beneficiary*: The payout of a registered plan, pension or other similar plan goes the designated beneficiary, if there is one, or to the estate if there is no designated beneficiary.
- *Property held in trust*: If you place property in trust, it must be administered according to your instructions. It can be included in a beneficiary's Estate, but the trust instrument usually dictates that other individuals receive the benefit of the property. For example, if the Deceased was a GST registrant or an employer, part of the Estate may be subject to a tax trust. Technically, this money isn't even part of the Estate and must be paid to Canada Revenue Agency.

36. What if the Deceased was in a common-law relationship or an adult interdependent partnership?

This is actually a fairly complex question. Over the past several decades, family law has undergone several revolutions, but estates and succession law has not kept up.

In Alberta, common-law relationships have been given legal structure by the *Adult Interdependent Relationships Act*, which creates the legal status of *adult interdependent partner*. Adult interdependent partners have a number of as-if-married rights against their partners, including the right to a share of the Estate of the partner under the *Intestate Succession Act* and a right to make a claim for maintenance and support under the *Dependents Relief Act*. A major difference is that the *Adult Interdependent Relationships Act* does not give adult interdependent partners any property rights like the rights that married persons have under the *Matrimonial Property Act*.

If there is no Will, the adult interdependent partner has first priority to apply for a Grant of Administration.

If the adult interdependent partner is not the applicant for a Grant, he or she has to be service with an NC 23 – Notice to Spouse/Adult Interdependent Partner of Deceased – *Dependent's Relief Act*

Turning Point Law can help you sort out who is entitled to share in the Estate.

37. What about pre-nuptial, post-nuptial and domestic partner agreements?

It has become much more common for people to enter into Agreements that deal with the division of their matrimonial property on marriage breakdown or death. The partners may even agree to put certain gifts, trusts or other provisions in their Wills.

If the Will does not meet the obligations of the Deceased under an Agreement, the Will stands, even if it doesn't implement the Agreement, but the surviving partner may have a claim against the Estate for the benefits they were promised in the Agreement and didn't get. They may even start a lawsuit to recover their claim.

Turning Point Law does not practice in the area of family law, but we can refer you to experienced, talented family law lawyers.

38. What is dower and how does it affect the Estate?

If a married couple does not have both names on the title to their home, the Alberta *Dower Act* gives the spouse whose name is not on the title the right to remain in the family "homestead" (the house owned and occupied while the couple was married) for the rest of his or her life. This may complicate and/or delay administration of the Estate.

39. What is the Dependents Relief Act and how does it affect the Estate?

Under the Alberta *Dependants Relief Act*, the court can order you to use part or all of the Estate to make "adequate provision for the proper maintenance and support" of the Deceased's dependents, including the Deceased's spouse, adult interdependent partner, minor children and children over 18 who are unable to earn a livelihood because of a mental or physical disability. The court can consider anything it considers appropriate, including the Deceased's reasons for excluding the dependent, the character or conduct of the dependent, and any other benefits a dependent may have received. The court also has a wide discretion to decide how much the dependents need. The maintenance and support can be in the form of periodic payments, a lump sum or a transfer of property absolutely, in trust, for life, or for a term of years.

The [Public Trustee](#) may make an application on behalf of minor dependents but it will usually not interfere if the parents were living together at the time of the deceased's death and the children were living with, or being supported by, the parents.

You have to serve a notice of your application for a Grant on all beneficiaries who are entitled to make a claim under the *Dependants Relief Act*. They have up to six months after the Grant is issued to make the claim. This of course can severely delay the administration of the Estate.

Turning Point Law can help you identify dependants and take the steps to notify them of their rights under the [Dependants Relief Act](#). We can also help you to negotiate settlement of claims by dependents.

40. What do I do about financial institution accounts?

One of your first duties as Personal Representative is to go through the Deceased's papers to identify the financial institutions the Deceased deals with, including banks, trust companies, credit unions, brokerages, insurance companies, etc., and notify them of the death and the fact that you are the Personal Representative.

The financial institutions will immediately freeze the Deceased's accounts so no transactions can go through without your knowledge and approval.

When you notify the financial institution of the death, you should also request a printout of all the Deceased's accounts with the financial institution and its affiliates, along with the date-of-death values of the accounts. For savings-type accounts, you should ask for the value of any accrued interest to the date of death, as a separate figure.

If you don't have current statements, you should request a printout of past activity going back as far as necessary to satisfy yourself that there has been no improper use of the Deceased's accounts.

When you go through the Deceased's bank and credit card statements, you should look for recurrent transactions that automatically go through the account, such as utility bills, cable, charitable donations, etc. When you notify creditors of the death, you should terminate the recurrent payment and make other arrangement to cover the ongoing supply of needed goods or services. You should do this as soon as you can so the payees of these amounts don't receive non-payment notices.

Pending receipt of a Grant, financial institutions allow certain transactions to go through or reimburse you for out-of-pocket payment of certain expenses, upon presentation of receipts. There is some variation in how the various financial institutions interpret their rights and obligations when deciding which transactions to process, and you should discuss this with the Deceased's financial institutions so you know what will be allowed and what will not. For example, all financial institutions will pay or reimburse for funeral expenses. Most will pay or reimburse for utilities bills necessary to maintain real estate. Beyond that, it depends on the financial institution. Most will take instructions regarding rolling over term deposits and GICs.

The Grant will give you full authority to deal with the Deceased's accounts. You will be able to consolidate the Estate's cash into a single Estate bank account, cash in term deposits and GIC's, liquidate investment accounts, cash in RSPs and RIFs, and do whatever else you need to do to position yourself to complete the administration of the Estate.

If the only asset of the Estate is a small bank account, financial institutions will sometimes release the account without insisting that you get a Grant. Each financial institution has its own interpretation of what constitutes a small bank account, though for most the cap is between \$35,000 and \$50,000. The financial institution will assess, on a case-by-case basis, whether to release the funds; if it decides to waive the Grant, it will require the recipients of the money to sign a Bond of Indemnity promising to return the money if it turns out that someone else has a valid claim to it

Turning Point Law can help you negotiate with financial institutions with respect to the release of information and money from the Deceased's accounts, both before and after you receive a Grant.

41. Should I open an Estate bank account?

Yes.

One of the basic rules for Personal Representatives is that you must not mix (or "commingle") Estate money with your own money. The easiest way to keep Estate money separate is to open an Estate bank account. You then deposit all Estate money into the Estate bank account and pay all disbursements from that account. You will use the bank statements from the Estate account as the basis for your accounts.

When you notify the Deceased's financial institutions about the death, they will likely ask you if you want to open an estate account. There is no requirement that the Estate bank account be in the same financial institution as the Deceased's accounts. You can open the account in any financial institution you want. If it is more convenient for you, you can open the account in the financial institution you deal with personally.

The financial institution will allow you to deposit money into the Estate account before you get your Grant, so if you have money coming in, you can process the cheques. However, you will not be able to take money out of the Estate account until you have your Grant.

When you have your Grant, you have full control over the account.

You may end up holding a large amount of cash for a prolonged period. You are responsible for earning a reasonable rate of interest on this cash while it is sitting in the Estate. You should therefore have a conversation with the bank about rolling the excess cash into an interest-bearing instrument.

42. What happens if there is a safety deposit box?

The box needs to be searched for original wills and assets that must be listed in the Grant application.

If you are the person who will be making the application, make an appointment with the bank to open the safety deposit box. You will need:

- the key, if you have it (if you don't have the key, you will have to pay to have the lock drilled out)
- proof of death (e.g., the funeral director's statement of death)
- the original Will, if you have it, to prove that you are the Personal Representative
- if you don't have the original, a copy of the Will, if you have one, to provide evidence that you are likely the Personal Representative
- if there is no Will, or if there is one but you don't have the original or a copy, ID to show you are closely related to the Deceased

If you are the Personal Representative named in the original Will, the bank will allow you to open the box and inventory the contents.

If you are the Personal Representative named in a copy of the Will, the bank will allow you to open and search the box for the original Will. If the original is in the box and you are named as the Personal Representative, the bank will let you remove it and will also allow you to inventory the contents of the box. If there is a Will in the box that appoints someone other than you as the Personal Representative, the bank will not allow you to remove it or inventory the box; you should advise the person named in the Will to contact the bank to get the Will. If there is no Will in the box, the bank will allow you to inventory the contents.

If you don't have an original Will or a copy of a Will, but you appear to be a person entitled to apply for a Grant, the bank will allow you to open the box and search for a Will. If you find a Will, the same rules apply as in the last paragraph.

Until you have a Grant, the bank will not allow you remove anything other than an original Will in which you are named as Personal Representative. Once you have a Grant, you will have full authority over the contents of the box.

If you run into problems accessing the Deceased's safety deposit box, Turning Point Law can help you to negotiate with the bank.

43. What do I do with real estate in the Estate?

If your appointment as Personal Representative is in a Will, you should immediately take possession and control of the Deceased's real estate and secure it. If you have any concerns about unauthorized entries to the property (for example, if you don't know who has keys), you should change the locks. This is an expense of the Estate and is cheap insurance so you aren't held responsible for property going walk-about.

It's a little trickier if there isn't a Will, or the Personal Representative named in the Will can't or doesn't want to act. What usually happens in this situation is that the persons who have priority to apply for a Grant under the Surrogate Rules get together to discuss and negotiate who will make the application. The others sign renunciations. The person or persons who have been selected to make the application take possession and control of all the Estate assets, including the real estate. Turning Point Law can help sort this out and provide the needed documentation. If discussion and negotiation doesn't work, an application can be made to the Court for the appointment of an emergency Personal Representative with limited authority until the family can sort out who will make the formal application for a Grant.

If there is rental real estate in the Estate, you step into the Deceased's shoes as the landlord. You should direct the tenants to make their rent cheques payable to the Estate, although if the tenants pay by automatic debit or post-dated cheques that are automatically cashed by the Deceased's bank, you can leave those arrangements in place until you get your Grant. You will have to negotiate with the banks so you can pay ongoing expenses like insurance, taxes, utilities, maintenance and condo fees.

Cottages can be a problem, particularly if they are remote or are shared by multiple families or family members. You will need to temper your duty to take possession and control with reasonableness.

One of your duties as Personal Representative is to insure the property. Usually, the best way to do this is to contact the Deceased's insurance broker and continue the existing insurance. If the property is going to be empty, you must advise the broker and arrange for a vacancy permit. You will also have to arrange for someone to check the property regularly. Put a notebook in the house and make sure the date and time of all visits are recorded in case you have to prove to the insurer that the conditions of the vacancy permit were complied with. If you are not able to attend to these tasks yourself, you should delegate someone you trust, in writing, to do this for you.

It is usually necessary to get an appraisal of the real estate in an Estate. Valuing real estate is a tricky business, and you can expose yourself to heavy liability if you are wrong by a few percentage points. For a few hundred dollars, you can get the comfort of a professional opinion of the value of the property, which will protect you from allegations that you undervalued it.

Turning Point Law can arrange for an appraisal or refer you to an appraisal company.

If the real estate is in Alberta, Turning Point Law will prepare and register the documents necessary to *transmit* the title to your name as Personal Representative of the Estate. A transmission is not a transfer; it merely substitutes your name for the name of the Deceased on the title. You will then be in position to help you deal with the property:

- if there is a specific beneficiary of the land named in the Will, we will prepare and register the documentation needed to transfer the title to the name of the beneficiary
- if you decide to transfer the land to a beneficiary as part or all of the beneficiary's entitlement from the Estate, we will prepare and register the documentation needed to transfer the title to the name of the beneficiary
- if you decide to sell the property, we will help you to negotiate and complete the sale

If the real estate is outside Alberta, we will prepare and submit the necessary forms to allow you to deal with the property. To carry out this work, we may have to retain the services of a law firm in the jurisdiction where the property is located, which will be an additional charge to the Estate.

Turning Point Law has helped many Personal Representatives with real estate.

44. What if there is a recreational property in the Estate?

A recreational property, such as a cottage or farmland, is real estate, so all the comments in the question about real estate apply.

Getting possession and control of a recreational property may be a problem if it is in a remote location or is shared by multiple families or family members. You will need to temper your duty to take possession and control with reasonableness.

It is often difficult to decide what to do with a recreational property. Some family members may have a strong emotional attachment to it, arising out of fond memories of childhood summers spent by the lake or in the mountains. They will want to keep it in the family. Others may have moved away or are uninterested in using it. They will want to sell and get their money out. There is also the problem of the ongoing administration of the property. Who will be responsible for opening it in the Spring? Closing it in the Fall? Who will keep track of when it is being used? How will repairs and maintenance be financed and carried out? Who will make sure the insurance and taxes are paid and how will they be reimbursed?

If the recreational property is passing from one generation to the next, the ownership structure may become much more complicated, particularly if it is passing to the third or fourth generation. The number of owners may increase beyond what can be reasonably administered. Questions will arise around who should be allowed to become owners (spouses? adult interdependent partners? step-children?), how much the ownership should be allowed to be depleted and how to deal with someone who wants to have their share bought out. If you layer family dysfunction on top of these questions, the cottage can sometimes become the flashpoint of considerable conflict.

As Personal Representative, you may be able to do your family a big favour by facilitating a conversation within the family to resolve some of these issues. You may, for example, propose the establishment of a trust so there will be clearly understood rules for everyone to follow.

Recreational property are capital properties, so they raise tax issues. If they were bought a long time ago and are located in prime cottage country, they may have accrued hundreds of thousands of dollars in taxable capital gains. It may be difficult or inequitable for the Estate to pay the capital gains tax out of other Estate assets.

Turning Point Law can assist you to resolve the debate within your family about what to do about the cottage.

45. What if there is a time-share in the Estate?

Most time-shares are a form of real estate and are dealt with much the same as other real estate.

The best way to find out about the requirements for dealing with a time-share is to contact the company that manages the property in which the time-share is located. They will have experience dealing with the transfer of units into and out of estates.

If the time-share is located in Alberta, it will be included in the NC 7; if it is in another jurisdiction, it won't.

If the time share is not separately titled, the transfer process may involve little more than proving to the property management company that the old owner has died and providing evidence to show who is entitled to be the new owner.

If the time-share is separately titled, it may be necessary to go through the surrogate court of the jurisdiction in which it is located to get the title transferred. It may turn out that getting the title transferred will cost more than the time-share is worth, so you will want to obtain a cost estimate and check with local realtors to determine the market value of the unit.

46. What is my responsibility with respect to joint property?

Joint ownership is common in Alberta for assets like real estate, financial institution accounts and investments.

Handling jointly owned assets used to be relatively straightforward: they passed to the surviving joint owner(s) by the right of survivorship and did not form part of the Estate. The Personal Representative had no responsibility other than the courtesy of advising the surviving owners to remove the Deceased's name from the title or other ownership record.

However, things became much more complicated when the Supreme Court of Canada decided a pair of cases in 2007 known as the *Pecore* and *Saylor* cases. Now the Personal Representative must determine if the joint ownership was for convenience only, meaning that the surviving joint owner holds the property in trust for the Estate. The Personal Representative must determine the intention of the Deceased at the time the account was opened or the joint property was bought.

Turning Point Law can help you apply the criteria set out by the Supreme Court to assess whether joint property belongs to the surviving joint owner(s) or the Estate. If needed, we can make a court application to get a ruling on whether an account or property is part of the Estate or not.

47. What about out-of-province assets?

If the Estate you are administering has assets located outside Alberta, you will have to comply with the laws of the jurisdiction where they are situated.

We can usually deal with out-of-province property *other than real estate* by using a notarial or court-certified copy of your Grant to prove that you have the necessary authority to take possession. The lawyers of Turning Point Law are notaries and we can provide the notarial copies you need. If needed, we can get a court-certified copy from the Court.

When there is out-of-province real estate in the Estate, we have to determine the local rules for dealing with the property. For many jurisdictions, we can send a court-certified copy of the Grant to the equivalent court in the other jurisdiction, along with the forms required by its surrogate rules, and get the Grant "resealed" in the other jurisdiction so it can be used to deal with the real estate. To carry out this work, we may have to retain the services of a law firm in the jurisdiction where the property is located, which will be an additional charge to the Estate.

Out-of-province assets may raise tax issues. There may be income tax, capital gains tax, probate tax, estate tax and land transfer tax to be paid.

Turning Point Law will be pleased to help you deal with out-of-province real estate. We will also get you the information you need to assess the tax implications of out-of-province assets.

48. How are stocks valued and cashed in?

You will need to determine the date-of-death fair market value of stocks owned by the Deceased for the NC 7 and for the terminal tax return. You will also need the value at which they were acquired so you can determine the Adjusted Cost Base for tax purposes.

If the stocks are in a brokerage account, you can usually get a printout of the stocks held, the date-of-death values and the acquisition costs. The brokerage will also supply the forms needed to transmit the stocks into your name. In most cases, you will need a Grant before you can transmit the stocks.

Paper stock certificates are more difficult to deal with. It is not unusual for people to keep stock certificates of companies that have long since gone defunct. We can look up the date-of-death value of current, publicly traded stocks on the Internet, but unlisted stocks require more research.

Determining the cost of paper stocks can be a nightmare if the Deceased did not keep careful records. They are also more difficult to sell.

Turning Point Law can help you through the quagmire of identifying, valuing and selling stocks.

49. How are Canada Savings Bonds valued and cashed in?

There are two components to the value of a Canada Savings Bond, the *face value of the bond* and the *accrued interest*. We need both for the NC 7 (the inventory of the assets of the Estate that is filed with your Application for a Grant). Some series of Canada Savings Bonds pay interest each year, while others compound the interest for the life of the bond, so valuing them is not straightforward. We use the Bank of Canada website for the information needed to determine the accrued interest.

When you have a Grant, you can take the Canada Savings Bonds to a bank and cash them in.

Turning Point Law can help you value and cash in Canada Savings Bonds.

50. How do I collect insurance payable to the Estate?

As Personal Representative, you are only interested in insurance that is payable to the Estate. If the Deceased had insurance with a designated beneficiary other than the Estate, the insurance money goes directly to the designated beneficiary and does not pass through the Estate. You don't have any responsibility to the beneficiaries of the insurance other than the courtesy of advising them of the existence of the insurance and or their responsibility to make the claim.

If there is insurance payable to the Estate, your first step should be to contact the person who sold the policy to the Deceased and ask for assistance in making the claim. If you don't know who that is, contact the insurance company directly and ask for the claims department. They will put you in touch with the people you need to contact and will send you the forms you need to make the claim.

Some Wills contain a declaration that designates the Estate as the beneficiary of the insurance. This is authorized under the *Alberta Insurance Act*. However, if the insurance company is not aware of what is in the Will, it could pay out the insurance to the person named in a prior beneficiary designation. If the Will you are administering contains a beneficiary designation, it is important to notify the insurance company in writing as soon as possible.

Some insurance companies pay out insurance claims to Estates without requiring a Grant, but others require a Grant.

The insurance company will pay interest on the insurance money from the date of death to the date of payout; this will be income on the Estate's T3 income tax return.

Turning Point Law can help you deal with insurance claims.

51. What if the Deceased has a business or a farm?

The issues involved in settling an Estate where the Deceased had a business or a farm are more complex than those found in the normal Estate. They are even more complex if there is a business or farm partnership or corporation involved. You may have to operate the business or farm for a while. You will be faced with decision of whether to continue, sell or liquidate the business or farm. There will be tax issues to resolve. You will need the assistance of other experts, such as accountants and appraisers.

Turning Point Law can help you through the complexities of settling an Estate with a business or farm.

52. What should I do with the Deceased's stuff?

The world is being flooded with stuff in the form of consumer goods for which there is no resale market. It is getting to the point where even auctioneers and 2nd-hand outlets are getting picky. Plus, the younger generation is no longer interested in collecting the stuff that was important to their parents—china tea cups and dinner settings, silver settings, coins, stamps, etc. As a result of these trends, it is getting increasingly difficult for Personal Representatives to dispose of the personal effects of Deceased persons. It is doubly difficult if the Deceased was a packrat. It can be a huge job to clean out even a small bungalow that contains an accumulation of decades of stuff.

There are consultants who specialize in helping Personal Representatives determine the value of the stuff in an Estate. You should definitely consider hiring one of these consultants to inventory the Estate if you think that some of the Deceased's stuff is valuable.

Here are a few pointers for getting rid of stuff:

- items that are specifically mentioned in the Will should be preserved and delivered, in due course, to their beneficiaries
- residuary beneficiaries should be invited to take whatever they want as part of their shares of the residue
 - ❖ you may want to allow them to pick in order of age, with the oldest starting round 1 and the youngest starting round 2, and so on
 - ❖ unless the beneficiaries agree otherwise, you should record what each takes (with, if possible, a photograph); you will then establish a value for what each beneficiary has taken, which you will show as a credit against their shares
- another way of proceeding is for you, with or without the assistance of the residuary beneficiaries, to put together piles of stuff that you think have about the same total value, then let the beneficiaries choose by piles
- you should try to sell items for which there is a market, such as art, coins, stamps, tools, etc.
- if the Deceased owned any items of historical or cultural value, call a museum
- if you believe there is still some value in what is left, you can try calling an auctioneer or a used goods dealer
 - ❖ depending on the nature, volume and value of the items the auctioneer is interested in, you may be offered a lump sum right there and then, or you may have to wait to see what comes at the auction
- the next step is to try giving the stuff away
- the last step is to dispose of whatever is left, at a cost to the Estate

The last moments in cleaning out a house are often filled with sadness as you realize that a life of accumulation of meaningful things ends with a dumpster full of stuff nobody wants.

53. What should I do with the Deceased's motor vehicles?

Once you have established your entitlement to deal with the Deceased's property, you can go to a private Registry Agent and get the ownership changed to your name or you can transfer the vehicle to a new owner by way of a sale or a gift authorized by the Will or the *Intestate Succession Act*.

Go to <http://www.servicealberta.gov.ab.ca/617.cfm> to search for a Registry Agent near you. For more information on registering vehicles, http://servicealberta.ca/Drivers_MotorVehicles.cfm.

Turning Point Law can provide you with the documents you need to deal with the Deceased's motor vehicles, such as a notarial copy of the Will or a letter stating that, in our opinion, you have the authority to deal with the vehicle.

54. What should I do with the Deceased's firearms?

The possession and transfer of firearms must be handled with caution. Firearms have to be registered in the Firearms Registry.

It is a crime to acquire possession of a firearm while you do not have a firearms acquisition certificate. There is an exemption for Personal Representatives who come into possession of firearms by operation of law and then lawfully dispose of them.

It is also a crime to sell, barter, give, lend, transfer or deliver a firearm to a person who does not produce a firearms acquisition certificate for inspection. You are bound by this law, and if the Will gives firearms to specific beneficiaries, you must not deliver the gifts without complying.

There is more information on this topic at http://www.cfc-cafc.gc.ca/factsheets/will_e.asp.

Turning Point Law can help you understand and comply with your obligations in connection with firearms. Don't delay if you come into possession of firearms in your capacity as Personal Representative of an Estate. You must act quickly to avoid liability.

55. What about the Deceased's pets?

Pets are viewed by the law as property, although everyone recognizes that they are a very special form of property that is really part of the family.

What usually happens is that the Deceased's family gets together to discuss and decide who will take care of the pets. The Deceased may well have made arrangements around who is to get the animals, although these arrangements are seldom in the Will. In the event of a dispute that cannot be resolved by discussion, the Personal Representative has the final say.

If the Deceased owned and bred valuable registered show animals, you may find yourself involved in selling the animals to other breeders. You will then have to find out how the animals are registered and submit the appropriate documentation to transfer ownership to the new owners. For example, with dogs the registration agencies and the Canadian Kennel Club and the American Kennel Club.

If the animals are elderly, sick or injured, you can spend a reasonable amount of the Estate assets on veterinarian care. In suitable circumstances, you can consent to euthanasia.

Turning Point Law is committed to the well-being of animals. We can help you resolve issues involving pets.

56. Do I have to sell everything?

No.

You have the power to sell all or any of the Estate's assets.

If you have enough cash in the Estate to pay the expenses, debts, taxes and the general legacies, you don't have to sell anything. You will deliver the specific gifts in kind and divide the residue among the residuary beneficiaries.

If you don't have enough money to cover the Estate's cash requirements, you must sell enough assets to free up the cash you need. You sell assets that form part of the residue first; only when the residue has been depleted do you liquidate specific gifts.

Sometimes it is easier to sell everything and distribute cash. The beauty of cash is that everyone agrees on its value. On the other hand, there can be endless conflict about the value of items distributed in kind. If the beneficiaries don't agree on your proposals with respect to the value of such items, you may be well advised to liquidate.

Turning Point Law can help you with decisions about whether and what to sell.

57. What if I have trouble getting possession of the Deceased's property?

Sometimes, Personal Representatives have problems getting possession of the Deceased's property. The property may have been in the possession of a third party before the Deceased died and the third party resists returning it. Or the third party may have take advantage of the turmoil around the death to take possession of or steal property they were not entitled to.

If there is a Will, your authority commences at the date of death, but third parties don't have to deal with you until you have a Grant. If there is no will, there is a gap when no one has official authority to deal with the Deceased's property.

If there is an urgent need to get possession and control of property, an emergency application can be made to appoint a temporary Personal Representative with limited authority to seize the property and preserve it while the Estate is sorted out. You can make an emergency application at any time; you don't have to wait until you have all the information needed for the Application for a Grant. If necessary, you can also get an order directing the sale of the property (for example, a piece of equipment is about to be seized by a secured creditor or a crop or animals are ready to go to the market).

Once the Court has issued the Grant, you step into the legal shoes of the Deceased and have all the same rights to possession of the Deceased's property as the Deceased had when alive. Your possession of the Deceased's property is also subject to the same liens, charges and other defenses as were available against the Deceased. If the person who has the property refuses to respond to your demand for possession, you can get a Court order allowing you to seize it. You can also lay a complaint with the police and, in some circumstances, have the person charged with theft or fraudulent conversion.

Turning Point Law can help you take legal steps to recover the Deceased's property from third parties.

58. Who gets the Canada Pension Plan death benefit?

The Canada Pension Plan provides a death benefit of up to \$2,500, depending on the number of years and the amount of the Deceased's CPP contributions.

The Estate is responsible to pay the funeral expenses, and is therefore entitled to this benefit.

If there is no estate, the person who pays the funeral expenses, the surviving spouse or common-law partner, or next of kin gets the benefit, in that order.

The Canada Pension Plan also provides survivor benefits for spouses, common-law partners and children. These benefits are not the concern of the Personal Representative and the survivors must make the applications themselves.

For more information and forms, go to <http://www.hrsdc.gc.ca/en/isp/cpp/survivor.shtml>.

59. What if the Deceased had an Enduring Power of Attorney?

The first thing you need to determine is whether the Enduring Power of Attorney was in effect when the Deceased died. If it wasn't, nothing needs to be done.

If the Enduring Power of Attorney was in effect when the Deceased died, you need to know if the Deceased was mentally competent when he or she died. If he or she was mentally competent, the Attorney under the Enduring Power of Attorney may not have initiated any transactions on the Deceased's behalf, or may have initiated transactions only at the Deceased's direction, in which case, once again, nothing needs to be done.

However, if you determine that the Attorney was managing the Deceased's financial affairs while the Deceased was mentally incompetent, you are responsible for requiring the Attorney to account. This may simply be a matter of going over the relevant bank and other account statements with the Attorney to satisfy yourself that all transactions are proper. On the other hand, it may require a more extensive accounting.

If the Attorney has improperly appropriated money or other property of the Deceased, you are responsible for taking reasonable steps to recover it.

It is more complicated if you were the Attorney and are now the Personal Representative because you have to account to yourself. If you have the slightest inkling that any beneficiaries have issues with the way you handled the Deceased's finances, you should prepare your accounting and provide it to the other beneficiaries so no one can question how you handled the transition from Attorney to Personal Representative.

Turning Point Law can help you with all issues around the transition from being the Attorney under an Enduring Power of Attorney to being the Personal Representative of the Estate.

60. What if the Deceased had a Trustee under the Dependent Adults Act?

If the Deceased had a Trustee under the *Dependent Adults Act*, you are responsible for requiring the Trustee to account. This may simply be a matter of going over the relevant bank and other account statements with the Trustee to satisfy yourself that all transactions are proper. On the other hand, it may require a more extensive accounting.

If the Trustee has improperly appropriated money or other property of the Deceased, you are responsible for taking reasonable steps to recover it.

It is more complicated if you were the Trustee and are now the Personal Representative because you have to account to yourself. If you have the slightest inkling that any beneficiaries have issues with the way you handled the Deceased's finances, you should prepare your accounting and provide it to the other beneficiaries so no one can question how you handled the transition from Trustee to Personal Representative.

Turning Point Law can help you with all issues around the transition from a being a Trustee to being the Personal Representative of the Estate.

61. What do I do about the Deceased's bills and other debts?

One of your first jobs as Personal Representative will be to go through the Deceased's papers to look for outstanding bills. You should notify the creditors of the death and of the fact that you are the Personal Representative. Large institutional creditors like utilities and credit cards, deal with these situations all the time and have policies and procedures in place. They know they will eventually get paid if there is enough money in the Estate. They also know that there will be a delay while you get control of the Estate and apply for a Grant, so they are usually willing to cut you some slack. The key to keeping these creditors happy is open communication.

This is a good time to terminate payments that are longer needed, such as cable and newspaper subscriptions. In some cases you will receive a refund, which should go into the Estate bank account.

You may have to negotiate new arrangements for ongoing supply of goods and services, such as utilities.

When you go through the Deceased's bank and credit card statements, you should look for recurrent transactions that automatically go through the account, such as utility bills, cable, charitable donations, etc. When you notify creditors of the death, you should terminate the recurrent payment and make other arrangement to cover the ongoing supply of needed goods or services. You should do this as soon as you can so the payees of these amounts don't receive non-payment notices.

You should also look for court papers in case the Deceased is being sued.

Non-institutional creditors are harder to evaluate and deal with. For example, the Deceased may have borrowed money from a friend. You should ask the claimant for documentation of the debt, such as a promissory note or evidence that the money was advanced.

The hardest claims to deal with are so-called *quantum meruit* claims, which often arise when someone expects to get paid for providing care and support for an elderly person. These claims are very much driven by the specific facts. If a *quantum meruit* claim is made against the Estate you are administering, you will need to discuss it with Turning Point Law.

You should discuss whether to put a notice to creditors in the newspaper with Turning Point Law.

When you have your Grant and when you are satisfied that you have determined the correct amount of the Deceased's debts, you pay them out of the Estate account. A cheque and a statement are enough of a record for institutional debts like credit cards, utilities bills, etc., but you may have to get more documentation, such as a receipt and discharge, from personal creditors so there is no question that the debt has been paid in full. If you are paying a promissory note, you should get the note back.

Turning Point Law can help you determine whether bills or other debts are legitimate. We can also help you negotiate with creditors whose claims you question. Finally, we can advise you on what evidence of payment you should get when paying bills and debts.

62. Do I have to put an advertisement for creditors in the newspaper?

The purpose of the little advertisements for creditors you sometimes see in the newspaper is to notify creditors of the death. The notice gives the creditors 30 days after the last publication of the notice to make a claim against the Estate. After the expiry of the 30 days, the creditor has to apply to the Court for permission to submit the claim to the Personal Representative.

The *Administration of Estates Act* and the *Surrogate Rules* contain detailed rules that govern the submission of claims by claimants and their adjudication and contestation by Personal Representatives.

You don't have to put a notice to creditors in the newspaper. If you are confident that the Deceased did not have any creditors, or that you are aware of all of his or her creditors, you may decide not to advertise. However, if you don't advertise and the Deceased had creditors you were not aware of, they will continue to have claims against the Estate.

Turning Point Law can help you decide whether to put an advertisement for creditors in the newspaper. We can also assist with the adjudication of creditor's claims.

63. What if there isn't enough money to pay all the Deceased's debts?

You may find yourself administering an Estate where there isn't enough money to pay all the expenses and debts. These are always very difficult situations.

If the Estate is insolvent, the funeral expenses have first priority on Estate assets. After that, the creditors to whom the debts are owed are entitled to share the balance of the Estate proportionately. The beneficiaries have no interest in the Estate, and you are now holding it in trust for the creditors. You should contact Turning Point Law immediately. There is a good chance you will not get paid for your time and effort in settling the Estate. You may also be personally liable for our legal fees and disbursements. We will contact the creditors and try to work out an arrangement that will allow you to receive a reasonable compensation for your work. If the creditors are not cooperative, we may advise you to turn the Estate over to a bankruptcy trustee so you can file a claim for your compensation and legal costs as a debt of the Estate.

64. What is the difference between non-residuary and residuary gifts?

Non-residuary gifts include

- **Specific gifts:** gifts of specific items (eg, "I give my five diamond ring to my daughter, Rose.").
- **General gifts:** gifts that come from the Deceased's general estate (eg, "I give \$10,000.00 to my nephew, John.").

Residuary gifts are gifts of what is left after everything else has been the funeral expenses, debts, taxes, the expenses of administering the Estate and the non-residuary gifts have been dealt with (eg, "I give all the rest and residue of my Estate to children in equal shares.").

The priorities among gifts are as follows:

1. all gifts are subject to payment of the funeral expenses
2. all gifts are also subject to payment of the Estate's other expenses, debts and taxes
3. specific gifts have the next priority
4. general gifts are next
5. residuary gifts are last

Gifts may be:

- **Absolute:** gifts that belong to the recipient without any further requirements.
- **Conditional:** gifts that are subject to a condition (i.e., the beneficiary must attain a certain age before the gift is delivered). Conditional gifts are held in trust until the condition is met. If the condition is not fulfilled, the gift fails.

Turning Point Law can help you sort out who is entitled to what gifts under the will.

65. What if there isn't enough money to pay the gifts in the Will?

You may find yourself administering an Estate where you have enough money to pay the debts, taxes and expenses of the Estate, but because of optimism by the Deceased when making the Will and/or changed circumstances, there isn't enough money to pay the specific and general gifts, let alone the residuary gifts.

In this situation, the rule is that the specific non-residuary gifts are delivered, while general non-residuary gifts "abate rateably"—that is, they are reduced *pro rata*. The residuary beneficiaries get nothing.

66. What if I can't locate a specific gift?

If you cannot find the subject of a specific gift—perhaps the Deceased gave it away, sold it, threw it away or destroyed it before dying—the gift is said to "adeem" and its beneficiary gets nothing with respect to that gift. In other words, you do not make up the value of the gift from other assets.

67. What if I can't locate a beneficiary?

You need to know where the beneficiaries are so you can serve the required notices on them and so you can deliver their shares of the Estate to them.

If you can't locate a beneficiary after reasonable due diligence, you can ask the Court to declare the person to be a missing person. The Public Trustee will become the trustee of the missing person's property. You can then deal with the Public Trustee on a go-forward basis.

Turning Point Law can help you with the search for a missing beneficiary. We can also make the court application to declare a person to be a missing beneficiary.

68. What happens if a beneficiary died before the Deceased?

This is actually a fairly complex legal issue that is beyond the scope of this FAQ.

The general answer is that if a beneficiary predeceases the person who made the Will, the gift lapses. However, the wording of the Will, if there is one, may override this general rule. In addition, the *Wills Act* contains anti-lapse provisions that pass gifts to the heirs of predeceased children, grandchildren, brothers, sisters or other issue.

If there is no Will, the *Intestate Success Act* prescribes who gets the Estate.

Turning Point Law can help you with the legal expertise needed to sort out who is entitled to the share of a predeceased beneficiary.

69. What is the difference between a *per capita* and a *per stirpes* distribution?

In a *per capita* distribution, the gifts are divided equally among the beneficiaries alive at the time of the distribution. If one of the beneficiaries predeceases the time of distribution, that beneficiary's share goes to the other beneficiaries of the gift, *pro rata*.

In a *per stirpes* distribution, the gifts are divided equally among the first-level beneficiaries. If one of first-level beneficiaries has predeceased, that beneficiary's share is divided equally among the beneficiary's children *pro rata*. A distribution *per stirpes* therefore applies through any number of generations.

Turning Point Law has the expertise to help you sort out the shares of each beneficiary of the Estate.

70. When should I deliver or pay the non-residuary gifts in the Will?

You can deliver specific gifts when you are sure you will not have to liquidate them to pay expenses, debts or taxes. You also need to be sure that all conditions have been fulfilled.

You can pay general, non-residuary gifts when you are sure that there is enough money in the Estate to pay all the debts, expenses and taxes and all the specific gifts have been covered. You also need to be sure that all conditions have been fulfilled.

You should get releases from the recipients of the non-residuary gifts acknowledging that they have received everything they are entitled to under the Will.

When you pay the non-residuary gifts, you must make sure that you do not leave yourself short: if you don't have enough to pay the expenses, debts and taxes because you paid too much to the beneficiaries, you will be personally liable to make up the shortfall.

Turning Point Law can help you decide whether you are ready to deliver the non-residuary gifts in the Estate.

71. When should I make an interim distribution?

If you are sure that there is enough money in the Estate to pay all the debts, expenses, taxes, and non-residuary gifts, you may want to consider an interim (i.e., early, partial) distribution of the residue of the Estate. This may help relieve pressure from beneficiaries who don't understand why it is taking you so long to administer the Estate.

When you make an interim distribution, you must make sure that you do not leave yourself short: if you don't have enough to pay the expenses, debts, taxes and non-residuary gifts because you paid too much in the interim distribution, you will be personally liable to make up the shortfall.

Turning Point Law can help you decide whether it is time to make an interim distribution.

72. When do I make the final distribution of the Estate?

You will make the final distribution when

- all the expenses, debts and taxes have been paid or provided for
- all the beneficiaries have received, reviewed and approved your accounts and signed releases or the court has passed your accounts and approved the final distribution

Turning Point Law can coordinate sending out the final accounts and tracking beneficiaries' return of the releases. We can then make the final distribution from our trust account.

73. Do I need an accountant?

If you are the kind of person who is good at record-keeping, you shouldn't have much difficulty keeping track of the Estate with guidance from Turning Point Law. We know what is required and we have experience formatting financial information so it can be intelligently reviewed by beneficiaries and the court, should that become necessary.

However, if you don't like bookkeeping, or if the Estate is complex or has a high value, or involves a business or farming operation, you should definitely consider hiring an accountant to assist you. You should ask questions to make sure the accountant your hire understands estates work, which is very different from the business accounting most accountants are familiar with.

74. What paperwork should I keep?

You should have at least one piece of paper (a "source document") for every transaction. Whenever possible, these should be originals. See the Turning Point Law article on Estate Accounting for examples of source documents.

Your basic rule with regard to paper received in the administration of the Estate should be,

If in doubt, don't throw it out.

This means you will have to develop a filing system to keep all this paper organized.

75. How much should I communicate to the beneficiaries?

Theoretically, you don't have to give the beneficiaries detailed information on an on-going basis, though you do have to provide an accounting that documents and justifies all financial transactions.

Some Personal Representatives limit the amount of information they give to beneficiaries because they think that keeping the beneficiaries informed will complicate their administration of the Estate. This approach usually causes more problems than it prevents. It usually reflects long-term family dysfunction, and is rooted in conflicts deep in the past.

If there is a history of family dysfunction, adding death and money to the mix can make the situation highly volatile.

Most lay people have little idea about how complex the administration of an Estate can be. They don't understand why it takes so long. They don't understand why you can't tell them how much they will get and when they will get it. They may be counting on the money from the Estate to pay bills and reduce their own financial pressures.

Our experience at Turning Point Law has convinced us that full, regular, transparent communication is the best safeguard against suspicion and hostility on the part of residuary beneficiaries. The best way to reduce their frustration is to let them know what is going on. This can be done easily with regular email reports about what has been accomplished and what remains to be done.

You don't need to give as much information to beneficiaries of non-residuary gifts. All they should get is general information about how the administration of the Estate is proceeding and an estimate of when they will get their gifts.

Turning Point Law can help you to communicate effectively with the beneficiaries of the Estate you are administering.

76. What do I say to beneficiaries who are putting pressure on me to distribute the Estate?

It is not unusual for Personal Representatives to experience pressure from beneficiaries looking for their share of the Estate. They may be counting on the money from the Estate to pay bills and reduce their own financial pressure.

Most lay people don't understand why it takes so long to administer an estate. They have little idea about how long it takes to gather all the information, assess all the claims, process all the documents and sort everything out. They don't know about the many steps you have to take to make sure that all the interests you are responsible for are properly attended to. They don't understand that many of the delays are not your fault, but result from the failure of third parties to supply the information or services you need to complete the Estate. They also don't understand that you are personally liable if you make a mistake by paying out the Estate too soon.

Your rights and responsibilities are prescribed by the law. You have to follow the Will, if there is one. You have to follow the various statutes that apply to estates and the Surrogate Rules. You have duties to the court and creditors as well as to the beneficiaries.

Our experience at Turning Point Law has convinced us that providing lots of information is the best way to push back this pressure. Let the beneficiaries know what is going on with full, regular, transparent communication. This can be done easily with regular email reports about what has been accomplished and what remains to be done. You may also want to give them a copy of this FAQ or point them to the Turning Point Law website so they can inform themselves about what is involved in administering the Estate.

Of course, it is also important to keep the administration of the Estate moving forward as quickly as possible. This is one of your fundamental duties as a Personal Representative. If you neglect your duties in the administration of the Estate, your compensation may be reduced or eliminated and you may have to pay damages to the Estate.

If beneficiaries become too bothersome, you can ask us to talk to them. Sometimes getting the information from a lawyer helps them understand that their pressure will not make things go faster and may even slow things down.

You may also want to consider an interim (i.e., partial) distribution of the Estate. When you make an interim distribution, you must make sure that you do not leave yourself short: if you don't have enough to pay the expenses, debts and taxes because you paid too much to the beneficiaries, you will be personally liable to make up the shortfall.

Turning Point Law can help you resist undue pressure from beneficiaries.

77. What if there is a dispute among the beneficiaries?

An Estate often becomes the point of convergence of three emotional forces within a family—death, money and dysfunction. The dysfunction may have very deep roots in the family's history, and its combination with the emotional toll of the death of a loved (or hated) relative and expectations around money can explode into unreasonable, even irrational behaviour that has nothing to do with the actual Estate, but plays itself out by making the administration of the Estate difficult or even impossible.

As Personal Representative, your responsibility is to remain calm and neutral. You must treat all the beneficiaries fairly and consistently with the law. You can try to facilitate a resolution of a dispute, but you mustn't use your position as Personal Representative to help one side win.

If you are one of the parties to the dispute, you may have to resign as Personal Representative and let a neutral third party, such as a trust company, administer the Estate while the dispute is being resolved.

Turning Point Law can provide you with neutral, professional advice on how to manage disputes among beneficiaries.

78. What is my role regarding law suits by or against the Estate?

You step into the shoes of the Deceased with regard to law suits by or against the Estate.

If the Deceased was involved in a law suit before death, you take over the Deceased's position. You can continue the suit or settle it.

If the Estate is sued, or if you decide it is necessary to start a law suit on behalf of the Estate, you are responsible for giving instructions to the lawyer who is acting on behalf of the Estate.

Litigation expenses are normally paid out of the Estate. However, if the court finds that litigation was pursued or prolonged without a reasonable chance of success, you may be held personally liable for the expenses incurred by the Estate and even for part of the legal costs of the other side. Litigation also delays distribution of the Estate. You should therefore consult with Turning Point Law before starting or continuing any litigation involving the Estate.

Turning Point Law focuses on the administration of estates, not estate litigation. However, if you need a litigator, we can refer you to experienced, talented lawyers who specialize in this area.

79. What income tax returns do I have to file?

Under the *Income Tax Act*, you will have to file some or all of the following Income Tax returns:

- T1 Returns for any taxation year prior to the year of death that the Deceased did not file (due within 6 months of the date of death)
- a T1 Terminal Return for the year of death covering the period from January 1st to the date of death (due on the later of 6 months after death or April 30 of the following year)
- a Rights and Things return for the year of death (if required)
- a T3 Estate Return covering income received by the Estate from the date of death to either the end of the calendar year or the Estate year (365 days later), whichever period you elect (within 90 days of the end of the elected taxation year)

- in the year of final distribution to the named beneficiaries, a T3 Final Distribution Return for the period beginning with the Estate year to the date of distribution

The Terminal Tax return will include the income from two deemed dispositions:

- one half of the capital gains resulting from the deemed disposition of all capital properties on death
- the full amount of any RSPs and RIFs owned by the Deceased

If you don't file the returns, pay the tax and obtain a Tax Clearance Certificate from Canada Customs Agency, you may be personally responsible for payment of any tax, interest and penalties.

The tax impact of these deemed dispositions may be mitigated by roll-overs and exemptions.

It is prudent to have these returns completed by a qualified tax accountant. Turning Point Law can assist with a referral.

80. Am I entitled to compensation for my work as Personal Representative?

You are entitled to be reimbursed on an on-going basis for your reasonable out-of-pocket expenses. You should keep receipts for and a record of all out-of-pocket expenses that you incur.

You are also entitled to remuneration for your time and efforts. This is a complex topic that is dealt with in a separate FAQ.

Turning Point Law can help you prepare your claim for compensation, which you will present to the beneficiaries when you provide them with your accounting.

81. How much will the legal fees cost?

The Surrogate Rules contain provisions about how lawyers should determine how much to charge for the legal work on estates.

This is a complex topic that is dealt with in a separate FAQ.

At Turning Point Law, we are always willing to discuss our fees with our clients. We strive to provide a level of service that is commensurate with what we charge. If you ever have any questions or concerns about the legal fees on your matter, please don't hesitate to raise them.

82. What is my responsibility with respect to accounting?

When you are appointed as the Personal Representative of an Estate, you are required by law to account for all financial transactions you execute on behalf of the Estate. To do this, you must keep meticulous documentation of all transactions and produce records in a prescribed format to prove that you administered the Estate properly. You owe this duty to all persons who have a beneficial interest in the Estate.

We have prepared a FAQ that specifically addresses accounting.

83. When does my role as a Personal Representative end?

Your role as Personal Representative ends when there is nothing left to do. Usually, that means that all the property of the Deceased has been dealt with, all the expenses and debts have been paid, all the returns have been filed and the taxes have been paid, a Clearance Certificate has been received from Canada Revenue Agency, the accounts have been prepared and given to the beneficiaries, the beneficiaries have signed releases, and the Estate has been fully distributed.

You should retain all the records of the Estate for at least 10 years after completing the Estate.

Turning Point Law is a father – son Wills, Estates and Trusts law firm. Paul McLaughlin (father) and Andrew McLaughlin (son) are committed to helping our clients find peace of mind through plain language drafting of Wills, Enduring Powers of Attorney, Personal Directives and Trusts. We also assist our clients with Applications for Grants of Probate and Grants of Administration, and with the Administration of Estates.

Our office is located in Sherwood Park, Alberta, and we serve clients in Strathcona County, Fort Saskatchewan, Edmonton, St Albert, Leduc, Camrose, Tofield and Spruce Grove. We also serve clients in Red Deer and Calgary.

Please do not hesitate to contact our office with any questions you may have.