



**Affaires autochtones et
Développement du Nord Canada**

**Aboriginal Affairs and
Northern Development Canada**



Planning and Administering an Estate



WELCOME

Purpose:

- To provide an overview of administering Estates under the *Indian Act*
- To provide an overview of things to consider when planning an estate (writing a Will)



Definitions

- **Administrator** – A person appointed (by the Minister) to administer an estate and to handle legal and financial matters related to the estate
- **Assets** – everything of value (ie. vehicles, land, contents of house, cash, bank account, pension, jewellery, etc.).
- **Beneficiary** – persons named in a Will, or in an insurance policy to receive a gift when a person dies.
- **Bequest** – a gift in a Will of personal property.
- **Executor** – The person named in a Will to administer the estate.
- **Heir** – Person(s) who may inherit from an intestate estate of a relative (spouse, children, parents, and other relatives)
- **Intestate** – An individual who dies without leaving a Will.
- **Residue** – The remainder or part left over.
- **Revoke** – To cancel.
- **Testator** – A person who makes a Will.



Indian Act

- **Section 42 (1)** Powers of Minister with respect to Property of Deceased Indians –
”... all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister...”
- The Minister of Aboriginal Affairs and Northern Development Canada (AANDC) has exclusive jurisdiction and authority over the estates of deceased First Nation individuals who were ordinarily resident on reserve at the time of their death. All other estates fall under the jurisdiction of the provinces/territories.



What Should I Do When A Loved One Dies?

- Take the Death Certificate to the Indian Registration Administrator at the Band Office or to an AANDC office;
- Provide a listing of all heirs/beneficiaries including their address and telephone numbers to AANDC; and
- Forward the original Will to AANDC.



Determining Jurisdiction

- The individual must be deceased;
- The deceased must have been registered or entitled to be registered as an Indian under the *Indian Act*; and
- The deceased must have been ordinarily resident on a reserve or crown lands.

- If the deceased was residing off reserve at the time of death, the Provincial/Territorial Court will have jurisdiction for their estate and the family should contact the Public Guardian and Trustee office. The number listed on their website for the Province of Saskatchewan is 1-877-787-5424.



If Minister Has Jurisdiction AANDC will:

- Contact all heirs/beneficiaries to inquire if the deceased had a Will or any assets;
- Confirm with the Indian Land Registry System if the deceased held interest (CP or other) in reserve land; and
- Confirm with Indian Monies if any money is being held in trust for the deceased; and
- Determine which process the estate falls under Testate or Intestate.



How each process works

• Testate



- Once the **original will** is received by AANDC, it is evaluated against the criteria for an acceptable Will listed under the *Indian Act*
- If the will is found valid then the Minister may approve and confirm the appointment of the executor named in the Will
- If there is no executor named in the Will, all beneficiaries will have the opportunity to apply or nominate someone to administer the estate, however they still have to follow the wishes of the deceased.

• Intestate



- If there is **no will** and there are assets, an administrator will be appointed and Section 48 of the *Indian Act* will determine the distribution of the estate
- The department will make a **preliminary** list of heirs
- The heirs will be informed in writing that they have the opportunity to apply to be the administrator, nominate someone else, or request a transfer of jurisdiction
- Once an administrator is proposed, all heirs are notified and have the opportunity to object
- If no objections are received, an Administrator is appointed

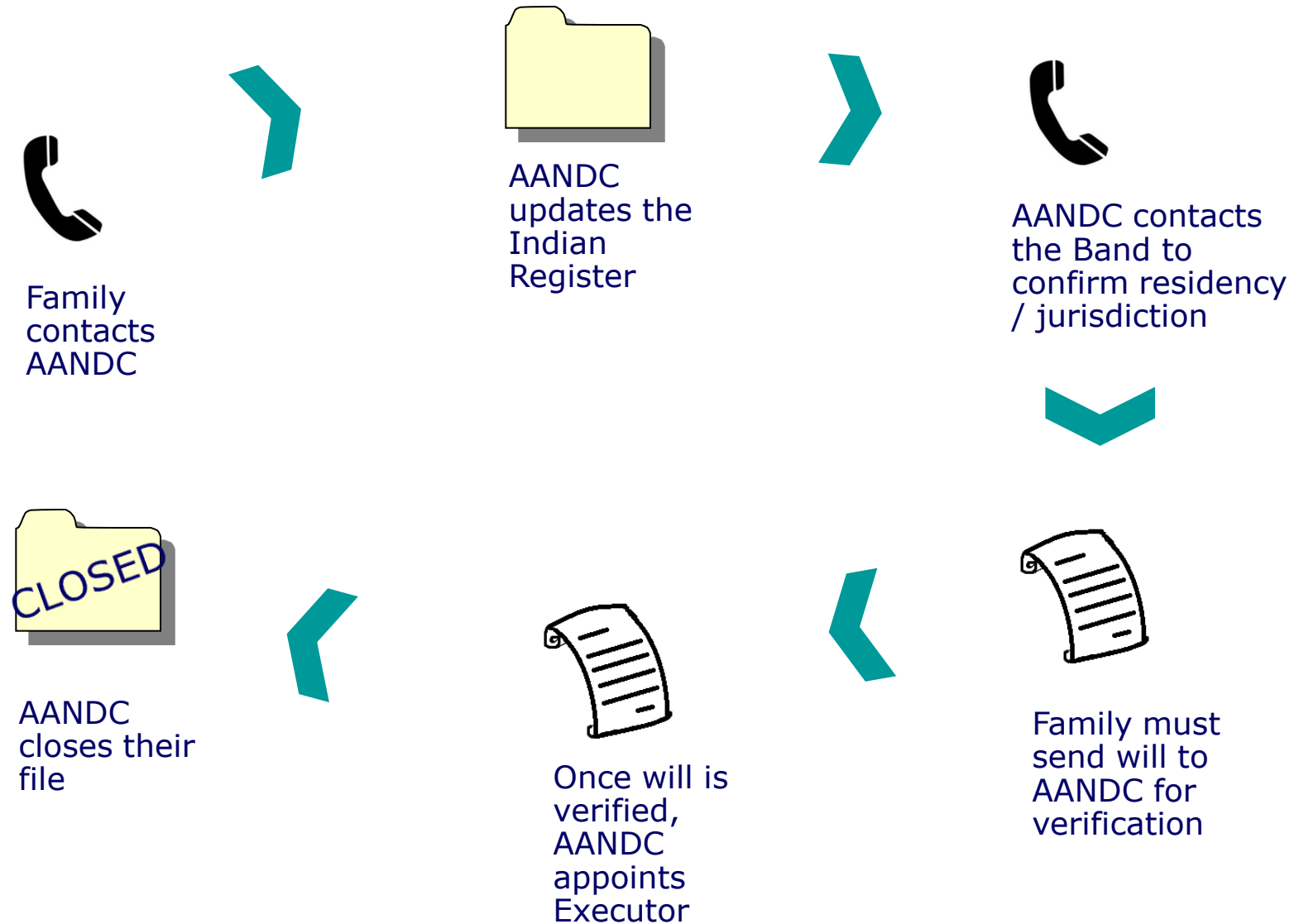


File Closure

- Once an Administrator or Executor is appointed to administer an estate, AANDC will close the estate file
- All further activities of the estate must be carried out by the Administrator or Executor
- However AANDC's file may be re-opened at any time.

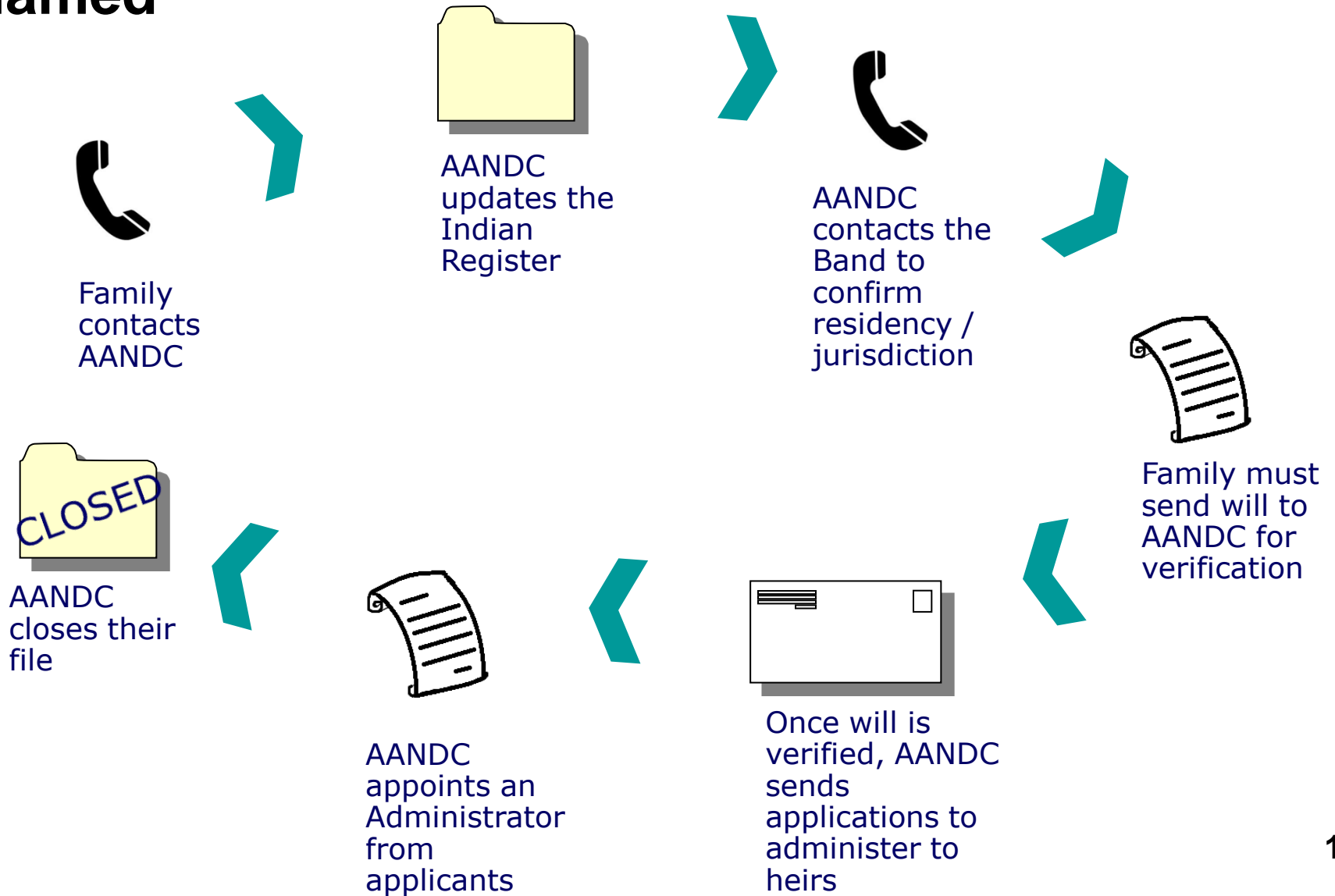


AANDC Estate Process – Testate





AANDC Estate Process – Testate, No Executor Named

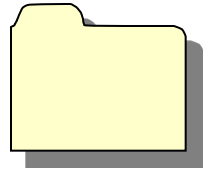




AANDC Estate Process – Intestate



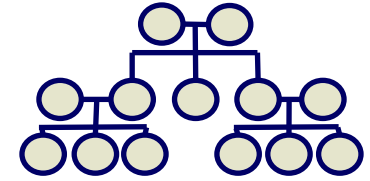
Family
contacts
AANDC



AANDC
updates the
Indian
Register



AANDC
contacts the
Band to
confirm
residency /
jurisdiction



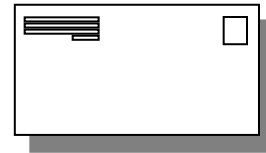
AANDC
creates
preliminary
list of heirs



AANDC
closes their
file



AANDC
appoints an
Administrator
from
applicants



AANDC sends
applications to
administer to
heirs





Responsibilities of Executor or Administrator

- **Executor** – including but not limited to:

- Collecting and protecting assets
- Filing Income Tax
- Posting notices to creditors, heirs and other claimants
- Paying estate debts from estate assets
- **Distributing assets according to the Will**
- Transferring land interests
- Maintaining a full accounting of the estate and providing reports to beneficiaries

- **Administrator** – including but not limited to:

- **Determining the final list of heirs**
- Collecting and protecting assets
- Filing Income Tax
- Posting notices to creditors, heirs and other claimants
- Paying estate debts from estate assets
- **Distributing assets according to Section 48 of the *Indian Act***
- Transferring land interests
- Maintaining a full accounting of the estate and providing reports to the heirs



The Beneficiaries/Heirs

• Testate



- A will states the beneficiaries and what they are entitled to.

• Intestate



- A preliminary list of Heirs is made according to Section 48 of the *Indian Act*
- According to the *Indian Act* heirs can include some or all of the following: Spouse, Children, Grandchildren, Parents, Siblings, etc.
- Each heir according to their relationship to the deceased is entitled to a share or a portion of a share regardless of their personal relationship with the deceased.

The final list of Heirs must be made by the Administrator and it must follow the *Indian Act*.



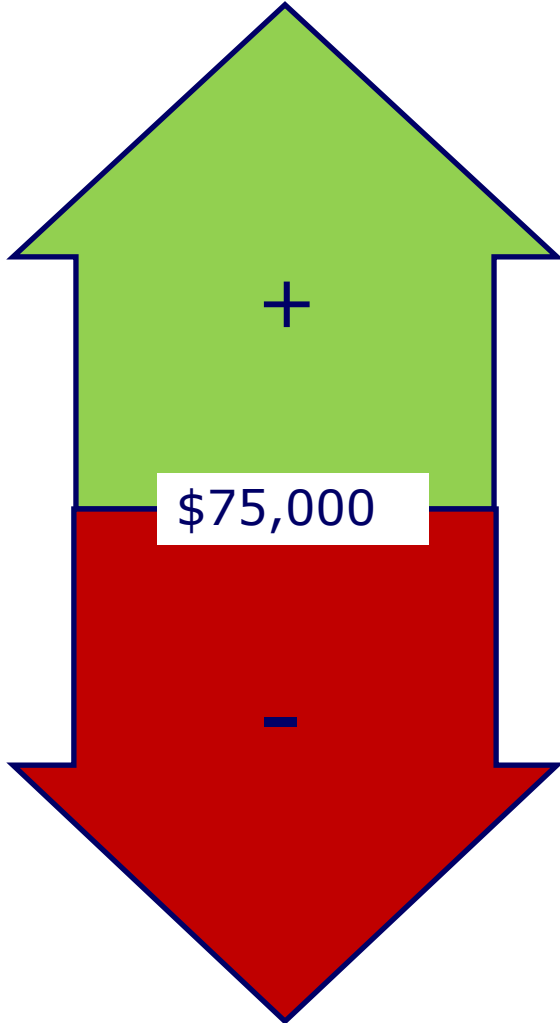
Estate Distribution for Intestacy

- Heirs are determined as of the date of death.
- List will include all heirs who are alive and those in utero.
 - Exception: children who predecease their parents will pass their shares onto their children (if they had any)
- If an heir has passed since the date of death for the deceased, their share of the inheritance will pass to their estate



Estate Distribution for Intestacy continued...

When there is a spouse (legal or common-law):



- The spouse inherits the first \$75,000.
 - If the deceased had no children, the remainder goes to the spouse.
 - If the deceased had one child, the remainder is split in equal shares between the spouse and the child.
 - If the deceased had more than one child, 1/3 of the remainder goes to the spouse, the remainder is split equally among the children.
-
- The spouse inherits the entire estate.



Estate Distribution for Intestacy continued...

When there is no spouse (legal or common-law):



- The child or children of the deceased will share the estate equally.
- If a child died before their parent, their share of the parent's estate would be passed on to their children (the deceased's grandchildren)



Estate Distribution for Intestacy continued...

What if there is no spouse and no children?

➤ Then the estate passes to the parents of the deceased.

What if there is no spouse, no children, and no parents?

➤ Then the estate passes in equal shares to siblings of the deceased. If any sibling died before the deceased, their share would go to their children (the deceased's nieces or nephews).



Estate Planning



What is a Will?

- The *Indian Act* defines a Will as any written instrument signed by an Indian in which he/she indicates his/her wishes or intentions with respect to the disposition of his/her property on his/her death.



Why Make A Will?

With A Will, a Person can...

- Decide who will inherit their personal possessions and land
- Protect their loved ones by making arrangements for their well being
- Name someone to administer their estate (carry out their wishes)
- Name someone to look after their dependent children
- Be specific about who should have their personal belongings and keepsakes
- Make arrangements for their business
- Leave instructions for funeral wishes
- Leave a gift to someone outside the family



Why Make A Will continued...

A Will may:

- Lessen the involvement of departmental officials in their private affairs
- Avoid delays in settling their estate
- Make the settlement of their estate a more personal matter
- Help to avoid family conflicts by expressing their clear intentions
- Protect any customs or traditions that should be passed on to their loved ones



Who Can Write A Will?

- Anyone can write a Will as long as they are the age of majority and are of sound mind
- Individuals may wish to seek the assistance of a professional when making a Will, especially for those who may have significant and/or complex assets in their estate



What is acceptable as a “WILL” under subsection 45(1) of the *Indian Act*?

A Will:

- Must be signed by the testator;
- Must be in writing;
- Must indicate the person’s wishes or intentions as to the disposition of their property;
and
- Must be intended to take place upon death.



Things to Consider When Writing a Will

- A Will should be dated
- A Will should be witnessed by 2 individuals who are not beneficiaries
- Ask the intended executor if he/she would like to administer the estate prior to writing your Will
- Choose an alternate executor
- Be very specific with the assets that the are being left to people: clearly identify the asset (ie. Policy # and location of bank account) as well, note the full name and address of the person to whom the asset is being gifted
- If burial instructions are in the Will, advise the executor so that the Will can be read before funeral arrangements are made
- Band owned houses do not become part of an estate
- In order to inherit a Certificate of Possession (land) the heir must be a band member
- Always include a residual clause



Sample Scenarios

- *Scenario #1 – Testate*

- Stan – 87 years old – No spouse, has 5 kids, 10 grandchildren, and a couple of close nieces and nephews in his will
- Leaves a will and appoints his 2nd oldest daughter Jane as executor.
- Jane provides the will to AANDC
- Will is found valid by AANDC and jurisdiction is confirmed
- AANDC writes Jane and provides application to be executor
- She responds within 30 days with a completed application accepting the appointment
- Minister appoints her as executor and closes file
- Jane then proceeds to settle the estate according to the will



Sample Scenarios

- *Scenario #2 – Testate*

- Stan – 87 years old – No spouse, has 5 kids, 10 grandchildren, and a couple of close nieces and nephews in his will
- The will does not appoint an executor
- Jane provides the will to AANDC
- Will is found valid by AANDC and jurisdiction is confirmed
- AANDC asks Jane for addresses of all beneficiaries named in the will
- AANDC writes all the beneficiaries and asks them to apply or nominate someone.
- Jane applies and a majority of the other heirs nominate Jane.
- Minister appoints Jane as executor and closes file.
- Jane then proceeds to settle the estate according to the will.



Sample Scenarios

- *Scenario #3 – Intestate*

- Stan – 87 years old – Has a common law Spouse who he has been living with for 3 years, has 5 Adult children who are not the Spouses children. Estate value is less then \$75,000.00
- Oldest daughter contacts AANDC and wants to be appointed the administrator of her father's estate.
- AANDC confirms jurisdiction
- AANDC contacts the Spouse and provides application to be administrator or to nominate someone else
- Spouse applies within 30 days to be the administrator
- Minister appoints Spouse as administrator and closes file.
- Spouse determines she is the only heir and proceeds to settle estate.



Sample Scenarios

• *Scenario #4 – Intestate*

- Stan – 87 years old – Has a common law Spouse who he has been living with for 3 years, has 5 Adult children who are not the Spouses children. Estate value is estimated at \$100,000.
- Oldest daughter contacts AANDC and wants to be appointed the administrator of her father's estate.
- AANDC confirms jurisdiction
- AANDC contacts the spouse and each of the five children and provides applications to be the administrator or to nominate someone else
- Spouse applies within 30 days to be the administrator
- Two of the children reply within 30 days and each apply to be the administrator
- AANDC contacts the children indicating spouse will be appointed and gives an opportunity for any objections
- If no objections received, Minister appoints spouse as administrator and closes file.
- Spouse determines estate distribution based on the *Indian Act*. She inherits the initial \$75,000. The \$25,000 remaining is split in the following manner: \$8,333.33 to the spouse (1/3 of the remainder), and \$3,333.33 to each of Stan's children (5 people sharing 2/3 of \$25,000).



Sample Scenarios

• *Scenario #5 – Intestate*

- Stan – 87 years old – No spouse. Had 5 kids but two of them, Sue and Lynn died before him. Sue and Lynn each had 3 children. Lynn's children are all under 18. Estate value is \$100,000.
- Oldest daughter Jamie contacts AANDC and wants to be appointed the administrator of her father's estate.
- AANDC confirms jurisdiction.
- AANDC asks Jamie for the names and addresses for all of Stan's children including any that may have died before him and the names and addresses of Sue and Lynn's children.
- Because Lynn's children are under 18 property guardians must be appointed. Once that is complete:
- AANDC writes to the 3 living children of Stan, Sue's 3 kids and the property guardian's for Lynn's 3 kids.
- Most respond within 30 days nominating Jamie as the administrator.
- Minister appoints Jamie and closes file.
- Jamie proceeds to settle the estate according to the *Indian Act* which would have 1/5 of Stan's estate going to his 3 surviving children and 1/15 of his estate going to each of the children of Lynn and Sue.



Indian Act Estates

Questions?

AANDC Regina Office

306-780-5392

AANDC Prince Albert Office

306-953-8677