

## **SOME INFORMATION FOR WILLS AND ESTATES RELATED TO FIRST NATIONS PERSONS ORDINARILY RESIDENT ON RESERVE**

### **TERMINOLOGY**

Indian Affairs changed to Aboriginal Affairs and Northern Development Canada then to Indigenous and Northern Affairs Canada [INAC]. Wills and estates now come under **Indigenous Services Canada** (ISC).

This information applies to a First Nation Person who is '**ordinarily resident on reserve.**' This would include a First Nation Person who might be in hospital or receiving cancer treatments at a facility located off reserve (in another city).

### **FIRST STEP WHEN A FIRST NATION PERSON ON RESERVE DIES**

1. The executor (if there is a Will) or family member or the band contacts Indigenous Services Canada – BC Region – BC Estates Unit (number below).
2. If there is a Will, you must send the original Will (it will be returned but it must be the original).
3. Indigenous Services Canada has to approve the Will and the executor – or if none, they will identify who to approach to be the administrator of the estate. If no one, the staff of ISC will do it.

Contact: **Indigenous Services Canada**, contact the BC Region Estates Unit in Vancouver at (604) 775-5100 or 1-888-917-9977 (toll free in BC), or email us at [BCestates@canada.ca](mailto:BCestates@canada.ca)

### **MAKING A WILL AND SETTING AN ESTATE**

For the most part, a First Nation Person On-Reserve in BC is advised to follow the requirements of BC legislation (the Wills, Estates and Succession Act – WESA).

WESA applies to Non-First Nations Persons and to First Nations Persons Off-Reserve.

However, a **key difference for On-Reserve** is how land/real estate is owned and who can inherit. Some information is provided below; it is not legal advice.

Indigenous Services Canada, BC Region Estates Unit, does workshops and has some resources on this topic. They are also involved in settling estates. As noted above, they must be contacted on the death of a First Nation Person Ordinarily Resident On-Reserve.

## Land ownership is different for on-reserve – who owns it and who can inherit

After a person dies, ISC will do a search of the Indian Land Registry to determine if there is an interest in reserve land registered in the name of the deceased and will advise the appointed executor or administrator of the results.

- Is there a Certificate of Possession for on-reserve land?

*A Certificate of Possession, or CP, is a document that shows that a person's parcel of land on reserve has been surveyed and registered in the Indian Land Registry. Most parcels registered in the Indian Land Registry have a certificate, but some don't have a certificate because they haven't been surveyed. CP land can only be held by a person who is a member of the band. A person with a CP has the right to decide what happens to their CP land. They can sell it or give it away while they are alive, and they can choose who will inherit it in their Will.*

*If the deceased had an interest in reserve land (for example, a Certificate of Possession) and has left that interest to heirs or beneficiaries who are NOT members of the deceased's First Nation, section 50 of the Indian Act prohibits the non band members from inheriting the deceased's interest in the reserve land, and requires the Superintendent of Indian Affairs to sell the non band members' interest in the land to the highest bidder in a sale process open to all members of the deceased's First Nation. The executor or administrator of the estate may NOT sell or transfer the land privately.*

*To get around this, sometimes the will-maker leases the land to a non-band member. Then in their Will they leave the land to a band member – the lease is binding on the band member who received the land in the Will. The lease has to be done before the Will is made and it can have negative effects on the will-maker. Be cautious.*

*The problem arose most often because a spouse (married or common law) was not from the band and could not inherit the land. Now there is legislation about Matrimonial Real Property to address this issue – the Family Homes on Reserves and Matrimonial Interests or Rights Act.*

- Is the land owned by the band? Is the house on band land?

*If the will-maker occupies a traditional land-holding on reserve (also known as a custom allotment), that land probably cannot be given in a Will, because the band legally owns the land, not the will-maker.*

*If your house is built on band land, rather than CP land, you should check with your band to find out if you are allowed to decide who will occupy your house after you die.*

- Is there a lease or business on the CP land?

*If you have CP land that is already leased or has a business on it, you should consult a lawyer [or the band or ISC?] about your options, before you make your Will.*