

- (a) a claim against the estate by a beneficiary or intestate successor of the deceased person to recover a beneficial interest to which that person claims to be entitled, or
- (b) a claim or proceeding under Division 6 [*Variation of Wills*] of Part 4 [*Wills*].

[am. 2011-6-39, effective June 2, 2011.]

**[Note: The cases noted below were decided under s. 66 of the former *Estate Administration Act*; the relevant provisions are similar but not identical to as those in the *WESA*.]**

Providing notice under s. 66 of the *Estate Administration Act* will not extend the time limits set out in the *Limitation Act*.

*Meldrum Estate v. Klassen Estate (Public Trustee of)*, 1998 CanLII 5563 (BC SC)

Section 66 does not extend beyond debt claims against an estate to claims in tort, breach of contract, or breach of trust.

*Battrum v. MacKenzie Estate*, 2008 BCSC 829

### When beneficiary cannot be found or does not claim gift [§1.144]

147 (1) This section applies only if

- (a) a deceased person died with a will leaving a specific gift of property to a beneficiary, and
- (b) the will does not expressly exclude the operation of this section or a predecessor of this section.

(2) If the personal representative of a deceased person, after making reasonable efforts, is unable to locate a beneficiary within 12 months of the date of the grant of probate or administration with will annexed, the personal representative may sell the property, deduct any costs related to the storage, transportation and sale of the property and hold the net proceeds in trust.

(3) Section 27.1 [*unclaimed money*] of the *Public Guardian and Trustee Act* applies to net proceeds under subsection (2) of this section that are held in trust by the *Public Guardian and Trustee* and are not claimed by a beneficiary within the applicable period prescribed under that Act.

(4) If net proceeds under subsection (2) are held in trust by a personal representative other than the *Public Guardian and Trustee*, the personal representative must promptly pay the net proceeds into court after deducting the costs of doing so.

(5) If a beneficiary described in subsection (1) has been located and notified of a specific gift but neglects or refuses to make arrangements to take delivery of the property within 180 days of the notification, the

personal representative may sell the property, deduct any costs related to the storage, transportation and sale of the property and send the net proceeds to the beneficiary.

(6) If a beneficiary referred to in subsection (5) does not accept the net proceeds, the personal representative must hold the net proceeds in trust, and subsection (3) or (4) applies, as the case may be.

(7) This section does not prevent an application by a personal representative to the court under section 39 [*distribution of estate under direction of court*] of the *Trustee Act*.

### **Disposition by executors who do not renounce or join application for grant of probate [§1.145]**

**148** If one or more of several co-executors named in a will

- (a) renounce probate, or
- (b) do not join an application for a grant of probate and their right to apply subsequently for a grant of probate is reserved by a representation grant,

a disposition relating to the estate by the executors who do not renounce or to whom the grant of probate is issued is as valid and has the same effect as if every executor named in the will had executed an instrument intended to give effect to the will.

## **DIVISION 8—PERSONAL REPRESENTATIVES— LEGAL LIABILITY AND LEGAL PROCEEDINGS**

### **Liability of personal representatives [§1.146]**

**149** (1) A personal representative is liable, to the extent of the assets belonging to the estate that come into the personal representative's possession or control, for the wrongful acts and omissions or breaches of legal duty of the deceased person, subject to this or any other enactment to the contrary.

(2) Subsection (1) does not make liable an executor who renounces probate or administration or whose rights are reserved by a representation grant and who has not intermeddled in the estate.

### **Proceedings by and against estate [§1.147]**

**150** (1) Subject to this section, a cause of action or a proceeding is not annulled by reason only of the death of

- (a) a person who had the cause of action, or