

CONSOLIDATION OF PRESUMPTION OF DEATH ACT
R.S.N.W.T. 1988,c.P-9

(Current to: January 31, 2013)

AS AMENDED BY:

S.Nu. 2010,c.4,s.27

s.27 in force March 23, 2010

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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PRESUMPTION OF DEATH ACT

Definition of "interested person"

1. In this Act, "interested person" means a person who is or would be affected by an order made under this Act and includes

- (a) the next of kin of the person in respect of whom an order is made or applied for; and
- (b) a person who holds property of the person in respect of whom an order is made or applied for.

Order of presumption of death

2. (1) On the application of an interested person by originating notice of motion, the Nunavut Court of Justice may make an order declaring that a person shall be presumed to be dead for all purposes or for the purposes specified in the order, where the Nunavut Court of Justice is satisfied that

- (a) the person has been absent and has not been heard of or from by the applicant or, to the knowledge of the applicant, by any other person, since a day named;
- (b) the applicant has no reason to believe that the person is living; and
- (c) reasonable grounds exist for supposing that the person is dead.

Date of presumed death

(2) An order made under subsection (1) must state the date on which the person is presumed to have died.

Variation, confirmation or revocation of order

(3) An interested person may, with leave of the Nunavut Court of Justice, apply to the Nunavut Court of Justice for an order to vary, amend, confirm, or revoke an order made under subsection (1).

Proof of death

(4) An order, or a certified copy of an order, declaring that a person shall be presumed to be dead for all purposes or for the purposes specified in the order, is proof of death in all matters requiring proof of death for those purposes. S.Nu. 2010,c.4,s.27.

Duty of personal representative

3. Where

- (a) an order has been made declaring that a person shall be presumed to be dead for all purposes or for the purpose of distributing the estate of that person, and
- (b) the personal representative of the person presumed to be dead believes or there are reasonable grounds for the personal representative to believe that the person is not dead,

the personal representative shall not deal with the estate or remaining estate unless the presumption of death is confirmed by an order made under subsection 2(3).

Distribution of property where person alive

- 4.** (1) Where a person presumed dead is alive, a distribution of his or her property that
- (a) was made in reliance on an order made under section 2, and
 - (b) does not contravene section 3,
- shall be deemed to be a final distribution.

Effect of distribution of property

(2) Property distributed in accordance with subsection (1) shall be deemed to be the property of the person to whom it was distributed as against the person presumed dead.

Direction of Nunavut Court of Justice

(3) Where a person presumed dead is found by the Nunavut Court of Justice to be alive, the Nunavut Court of Justice may, on the application of an interested person and subject to subsections (1) and (2), by order give the directions that the Nunavut Court of Justice considers appropriate respecting the property of the person presumed dead and its preservation and return. S.Nu. 2010,c.4,s.27.

Distribution of property where person dead

5. (1) Where a person presumed dead is found to be dead, a distribution of his or her property that was made in reliance on an order under section 2 shall be deemed to be a final distribution.

Effect of distribution of property

(2) The property referred to in subsection (1) shall be deemed to be the property of the person to whom it was distributed as against a person who would otherwise be entitled if the order made under section 2 had not been made.

Appeal

6. An interested person may appeal an order made under this Act to the Court of Appeal.