

## 43. Naming Parties

Oct-15

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*This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.*

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This Policy Guideline addresses naming parties to an Application for Dispute Resolution.

### **A. LEGISLATIVE FRAMEWORK**

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation)<sup>1</sup> require Applications for Dispute Resolution to include the full particulars of the dispute that is subject to the dispute resolution proceedings.

Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named.

If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.

### **B. INDIVIDUALS AS PARTIES**

In order to enforce Residential Tenancy Branch orders, the applicant must use the correct legal name of an individual respondent.

The individual's full legal name should be used on the application. Individual names that include initials or titles may not be enforceable.

For example, the application should name John William Smith or John Smith, not John W. Smith or Dr. Smith.

When an individual uses an alias, it is best to include the full legal name as well as the alias. For example, the application should name Mei Chung also known as (AKA) May Chung.

### **C. BUSINESSES AS PARTIES**

In order to enforce Residential Tenancy Branch orders, the applicant must use the correct name of a respondent who operates as a business.

If the party is a limited liability company or a registered corporation, then the full legal name of the company should be used on the application, and include the designations

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<sup>1</sup> *Residential Tenancy Act* (RTA), s. 59(2); *Manufactured Home Park Tenancy Act* (MHPTA), s. 52(2).

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such as Incorporated, Inc., Limited, Ltd., Corporation or Corp. (and/or the French language equivalents).

If the party is doing business as a particular named entity, the application should read as follows: John Smith dba (or doing business as) Garden Apartments, or John Smith carrying on business as Garden Apartments.

An application that names a partnership will be enforceable against the partnership. If an applicant is seeking an order against the individual partners on the basis of the *Partnership Act*, the individual partners should be named and each served with a copy of the application.

It is up to the applicant to ensure that a party is properly named to ensure an enforceable order. Where the business is not properly named, for example Garden Apartments (only), the director may dismiss the application with leave to reapply unless the other party is present and consents to an amendment, or the director may issue the order using the name set out in the application.

#### **D. NAMING AN ESTATE OF A PERSON WHO HAS DIED**

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

#### **E. PARTIES NOT SERVED**

Where one or more parties named on an Application for Dispute Resolution has not been served with the original application and/or the Amendment to an Application for Dispute Resolution form, the arbitrator's decision and/or order should indicate this. With the applicant's consent, the arbitrator may continue the hearing solely against the parties who were served or dismiss the matter with leave to reapply.

Attendance at the hearing by a party may be viewed an admission of service.

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**F. UNCERTAINTY ABOUT HOW TO CORRECTLY NAME PARTIES**

If an applicant is not certain how to correctly name the respondent(s), they may wish to obtain independent legal advice.

**G. CHANGES TO POLICY GUIDELINE**

<b>Section</b>	<b>Change</b>	<b>Notes</b>	<b>Effective Date</b>
All	new	Portions of previous Policy Guideline 23: Amending an Application for Dispute Resolution related to naming parties created as new policy guideline	2015-10-26
B	new	Added for clarity	2015-10-26
D	am	Amended to reflect <i>Wills, Estates and Succession Act</i>	2015-10-26
F	new	Added for clarity	2015-10-26

Change notations

am = text amended or changed

del = text deleted

new = new section added