



Fleury, Comery LLP  
Barristers & Solicitors

## DUTIES OF AN ESTATE TRUSTEE

As the legal advisors to persons who have taken on the job of being an Estate Trustee, we hope this memorandum will assist such clients in appreciating the importance of their position and the duties involved.

### Terminology

In Ontario, the term "Estate Trustee" is now used to describe executors (persons who "execute" the deceased's wishes set out in a Will), administrators (persons who administer the estate of the person without a Will in accordance with the intestacy rules), and trustees (persons who carry-out the trusts that may be set out in a Will).

### The Five Major Duties of an Estate Trustee

The following are the five most important duties of an Estate Trustee:

1. To obey the directions of the Will;
2. To act impartially between beneficiaries;
3. To exercise ordinary care and prudence;
4. To place trust duties before his or her own interest;
5. To be ready to account.

Failure to perform any of these duties makes the Estate Trustee personally liable for breach of trust. Attitude is important. You are not like a company president, you are like a servant of the beneficiaries.

### Estate Accounting

One of the first things an Estate Trustee should do is to establish a special bank account for the estate. A bank will require a Notarial copy of the court-issued Certificate of Appointment of Estate Trustee ("Certificate"), photo identification and of course a signature card. A specific bank account makes it much easier and more economical to keep track of the estate receipts and disbursements. Our clients are welcome to use our trust account as a de facto estate account - even when it does not earn interest - because we are often asked to assist in providing an accounting and in the distribution of the estate.

### Debts and Taxes

The Estate Trustee must make sure that all of the deceased's creditors are paid. Similarly, it is technically illegal for the Estate Trustee to distribute the estate before satisfying all income taxes owed by the deceased and by the estate trust.

### Estate Administration Tax ("E.A.T.") - Look out!!

In May, 2011 the Ontario government enacted draconian measures to prevent avoidance of E.A.T. (formerly, "probate fees"), which come into effect for court applications for a Certificate as of January 1, 2013 and after. The most worrying aspect of this legislation is that an estate can be reassessed for E.A.T. up to four years after the day the tax became payable.

### Estate Inventory

The Estate Trustee must, as soon as possible, look into the deceased's documents and papers to determine the condition of the estate. Since the Estate Trustee must obtain fair market value for any assets to be sold, we recommend full appraisals where there is any potential for disputes by the estate beneficiaries, or now, by the

Ontario Minister of Revenue. In most cases, however, a "letter of opinion" from an independent qualified real estate agent should suffice for the valuation of real estate.

### Executor's Year

The Estate Trustee generally is allowed one year from the date of death of the deceased to realize the estate assets and prepare a proposed distribution. No beneficiary can insist on an earlier distribution.

### Investments

While in control of an estate the Trustee has a duty to manage the assets as would any reasonably prudent person. Again, there are rules to Trustee investments. If there are assets of any significant value, we recommend that the Estate Trustee invest the estate funds in conservative investments such as flexible GIC's.

### Distribution of the Estate

Before distributing the estate, the estate trustee should provide an accounting to the beneficiaries and obtain from them a Release confirming that they are satisfied with the accounting and the proposed distribution to them. If the Estate Trustee is satisfied that there will be no complaints or disputes in regard to the delivery of specific legacies, we recommend that the Estate Trustee pay out specific legacies as soon as possible after the date of death so as to avoid claims for interest on those legacies.

### Passing of Accounts

If even one of the beneficiaries is dissatisfied with the accounting and proposed distribution of the estate, the Estate Trustee has little choice but to prepare accounts in a special format and arrange for a "passing of accounts" by a Judge of the Superior Court. For most simple estates we can assist in the preparation of this type of accounts; but for complex estates we will direct the Estate Trustee to an accountant who is experienced in preparing this format of accounting for a passing of accounts.

### Summary

The lawyers at **Fleury, Comery LLP** are very experienced in assisting our clients in the administration of an estate. It is important however, that an Estate Trustee recognize that his/her duty above all is to carry out the wishes of the deceased as set out in the Will. We recommend that our clients contact us shortly after the death to discuss the specific circumstances of each estate since often we can suggest procedures which are both time saving and economical.

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