# I Have Been Named an Estate Trustee…Now What?

Date: September 09, 2015

Lawyers You Should Know: Margaret Rintoul

Original Newsletter(s) this article was published in: Blaneys on Business: September 2015

"Estate trustee" is the term used in Ontario to refer to an executor or administrator of the estate of a person who has died.

If you agree to serve as an estate trustee, you will be entrusted with many duties and responsibilities, such as making funeral and burial arrangements, collecting and liquidating assets of the estate, settling estate debts, and distributing the estate to beneficiaries.

Some of the tasks can be quite daunting, but the trustee's role is an important one, central to assuring that the holdings in the estate are distributed according to the deceased's wishes or, where there is no will, according to the law.

Acting as an estate trustee involves legal responsibilities and potential liabilities. Therefore, it is important for you as a trustee to acquaint yourself with the duties required of you and to obtain advice from experienced professionals.

Here are some key things of which you should be aware.

**Overview: Duties of the Estate Trustee**

These include:

- make funeral and burial arrangements;
- determine, locate and notify the beneficiaries;
- locate the estate inventory and identify the value of assets for tax purposes;
- retain professionals, such as a lawyer and an accountant, for advice;
- determine, settle and pay the outstanding debts of the deceased;
- file tax returns and pay taxes owing;
- distribute the assets as directed by the will or, where there is no will, according to the rules set out in Ontario's *Succession Law Reform Act*;
- invest assets for the establishment of ongoing trusts, if so directed by the will, and/or in accordance with the statutory investment powers set out in Ontario's *Trustee Act*;

- maintain proper accounting, and
- prepare statements periodically for the beneficiaries to keep them abreast of the progress of the estate administration.

**Dealing with the Estate Assets**

An estate trustee has the initial obligation to identify all of the estate's assets and liabilities properly and to make the necessary arrangements to ensure that he/she has the proper legal authority to deal with those assets. There may be an obligation on the estate trustee to keep the assets, liquidate them, and/or invest them, depending on what the items are and what the specific instructions are in the will. If not specified in the will itself, there are rules of law that also govern how estate assets are to be managed.

**Payment of debts and liabilities**

An estate trustee is required to ensure that all income tax returns are filed and all outstanding or future income taxes are paid until the estate is wound up or paid out. They are also responsible for identifying any debts owed by the deceased and arranging for their payment in full. If an estate trustee distributes all the assets without taking reasonable steps to ensure that all liabilities of the deceased have been paid, a creditor can look to the estate trustee to satisfy that debt to the extent of the value that was distributed to beneficiaries

**Account for Everything!**

One of your first orders of business as an estate trustee will be to create a separate bank account for the estate assets, as you cannot mix estate money with other money. This is important also because, as an estate trustee, you will be required to keep exact records of all assets you have control or management over, and all transactions of the estate over a certain period of time.

Before distributing the estate, the estate trustee should provide a full accounting of the estate's financial activities to the beneficiaries and obtain from them a Release confirming that they are satisfied with the accounting and the proposed distribution. If proper records are not kept, the estate trustee may face complaints by the beneficiaries.

**Will I be paid for my services?**

Estate trustees can be compensated by way of a fee for their services. Pursuant to section 61 of the *Trustee Act*, "a trustee, guardian or personal representative is entitled to such fair and reasonable allowance for the care, pains and trouble, and the time expended in and about the estate, as may be allowed by a judge of the Superior Court of Justice." However, there is no prescribed fee upon which compensation is based. Generally, the amount of compensation is based on the value of the property in the estate. A good rule of thumb for determining what might be considered reasonable compensation is:

- 2.5 per cent on all receipts and disbursements in respect of income/revenue account;

- 2.5 per cent on receipts and disbursements in respect of capital account; and
- an annual care and management fee equal to 2/5 of 1 per cent of the gross average value of the assets under administration

In some circumstances, the testator (the person who has made the will) has provided a compensation amount in the will itself. If compensation is not specifically provided for by the will, an estate trustee is not entitled to be paid compensation from the estate until the beneficiaries have approved the amount, or the amount has been sanctioned by the court.

## Role of your lawyer

In carrying out your duties as an estate trustee, you can gain great assistance from an experienced lawyer. For example, estate trustees can now purchase liability insurance to protect them from claims of beneficiaries, creditors, and others who may have a claim in the estate. This insurance is only available at the early stages of the administration process, so consideration as to whether this is an appropriate purchase for you should be done as soon as possible and is something a lawyer can help you appreciate.

A lawyer can also help you interpret a will, arrange for the registration of assets in your name, notify financial institutions, obtain valuations of assets in preparing the application for your appointment as an estate trustee, if necessary, and much more.