

Monitoring Your Bequests: Estate Administration in a Nutshell

M. Jasmine Sweatman LL.M., T.E.P., C.S., E.P.C.
David R. Windeyer M.T.I., T.E.P.

SWEATMAN • WINDEYER •
CONSULTANTS

Estate Administration

- Person has died
- Leaving assets and/or debts (estate)
- Need to be administered (dealt with)

- There is always an estate that needs to be administered upon death

Process

- Meet with lawyer
- Is there a will
- Who is the estate trustee (executor)
- What and where are the assets
- What are the liabilities
- Who are the beneficiaries
- What does the will say to do
- Give notice

Probate

- Probate is the process whereby notice is given to the beneficiaries by the estate trustee that application has been made and the court confirms the will is the last will of the deceased and that there are no challenges
- Authority of the estate trustee is derived from the will; not from the grant of probate
- Estate trustee applies for probate
- Document issued by the court: Certificate of Appointment

Steps in the Process

- Obtain Certificate
- Realize, secure and manage assets
- Determine liabilities
- Pay legacies
- Pay liabilities
 - Attend to income tax returns
- Make an interim distribution or set up trusts
- Holdback
- Obtain Clearance Certificate
- Final distribution and releases

Estate Trustee

- Types
 - Corporate
 - Individual (lay person)
 - Professional (lawyer)
- Profile of an ideal estate trustee

Duties of Estate Trustee

- Attend to funeral arrangements
- "Read the will"
- Find beneficiaries
- Give notice to beneficiaries
- Deal with assets
- Advertise for creditors
- Deal with liabilities

Duties of Estate Trustee

- Deal with claims
- Retain professional advisors if necessary
- File income tax returns on time
- Respond to inquiries
- Make distributions
- Provide accounting

- "Executor's Year"

Duties of Estate Trustee

- A fiduciary with rules of conduct
 - Cannot delegate authority
 - Cannot profit from position
 - Cannot act in conflict of interest
 - Must act prudently and honestly
 - Must do as the will says
 - Must maintain an "even hand" unless otherwise directed
 - Must account

Duties of Estate Solicitor

- Advisor to the estate trustee only
- The client is the estate trustee
- The client is not the beneficiary
- Prepare legal documents
- Advice on the issues that come up during the administration
 - Duties of estate trustee
 - Advice on claims

Duties of Charitable Beneficiary

- Keep records of donors and donor intentions
- Keep copies of testamentary documents received during donor's lifetime
- Regular follow up on with donors
- Review obituaries
- Review notice documentation when received
- Respond to the notices appropriately
- Update records
- Implement "bring forward" system

Types of Beneficiary

- Legacy
- Specific bequest
- Contingent bequest
- Life interest bequest
- Residuary bequest

Duties of Charitable Beneficiary

- Legatee/Specific bequest
 - Review gift acceptance policy
 - Confirm acceptance if necessary
 - Receive bequest
 - Issue income tax receipt and appropriate recognition
 - Sign receipt (not release)

Duties of Charitable Beneficiary

- Contingent bequest/Life interest
 - Monitor administration
 - Wait for contingency to happen
 - Accept annual or periodic payments of income
 - In perpetuity
 - Wind up

Duties of Charitable Beneficiary

- Residual
 - Monitor administration by regular follow up
 - Ask questions & get answers
 - Review accounts
 - Coordinate with other beneficiaries
 - Seek legal advise or assistance from the court
 - Receive share of residue
 - Issue income tax receipt and appropriate recognition
 - Sign release

Duties of Charitable Beneficiary

- To protect charitable status
 - Evaluate gift
 - Issue proper receipt or letter of undertaking
- To protect donor's intentions
 - Monitor administration
 - Ask questions if and as required
 - Retain counsel if necessary
 - Properly review estate accounts and releases
 - Litigation

Duty to Account

- Informal or formal
- Formal means in court format
- Process means an Application to Pass Accounts
 - Notice of Objection

- Beneficiaries entitled to retain counsel to assist in reviewing the accounts – if formal passing then tariff for fee recovery

Estate Accounts

- Court Format:
 - Statement of original assets
 - Capital receipts
 - Capital disbursements
 - Revenue receipts
 - Revenue disbursements
 - Investment account
 - Cash summary

Estate Accounts

- Statement of unrealized original assets
- Statement of trustee's compensation
- Statement of trustee's investments
- Statement of liabilities
- Statement of trustee's compensation

Estate Accounts

- For a specific period of time
- Purpose is to report to the beneficiaries on:
 - the starting point of the administration or period of time of the accounts
 - receipts received
 - disbursements made
 - investments made
 - what is left to be done
 - the fee claimed

Reviewing Accounts

- Reread the will
- Review all of the schedules
- Follow through on the assets
- See what liabilities have been paid
- See what liabilities should have been paid
- Review income taxes
- Review legal fees
- Review claim for compensation
- Check the math

Trustee Compensation

- No statutory imposed rate for estate trustees
- If not otherwise dealt with by a compensation agreement then the custom is a mathematical formula compared to the circumstances
 - 2 ½% of receipts
 - 2 ½% of disbursements
 - 2/5 of 1% of average value for care & management fee if appropriate
- Pre-taking compensation

Legal Fees

- No statutory rate
- No tariff or schedule
- "Reasonable in the circumstances"

- Watch for "double dipping"

Role of Charity

- Duty to monitor and review
- Develop systematic review process
 - Audit checklist
 - Categorize estates
 - Levels/types of response
- Being diligent and maintaining balance

- Role of Public Guardian and Trustee

Litigation Management

- Different kinds of litigation can impact the administration of an estate
 - Claims:
 - spousal
 - dependant support
 - services rendered
 - attorney compensation
 - Challenges
 - to testamentary documents
 - interpretation

Litigation Management

- Duty to be informed
- Make a decision as to degree of participation
 - Submission of rights
 - Party in the litigation
- Defending the intention
- Understand philosophy of organization
- Consider "public relations"
- Consider cost/benefits

Releases and Indemnities

- At time of interim and final distribution could be asked to sign a release or a release and indemnity
 - Release: to give up, relinquish, discharge the estate trustee from his duties as estate trustee and from his administration of the estate
 - Indemnity: to agree to make the estate trustee whole if there is a loss or shortfall

Typical Problems

- Non-communicative
- Slow response
- Delays
- Un or ill informed / Lack of understanding
- Failure to invest
- Failure to make an interim distribution
- Holdback too large

Typical Problems

- Tax issues
- Inattention to detail
- Poor record keeping
- Failure to account
- Failure to realize assets properly
- Excessive or pretaking of fees
- Inappropriate use of funds
- Theft and fraud

Why It Is SO Important

- Risk of leaving money on the table
 - Risk of exposing organization
 - Letting the donor down
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- But remember it is a job that can be onerous time consuming and complicated

Summary

- Estate administration is a process
- Variations to the process
- Duties never change
- Obligations remain the same

So, be informed and vigilant –
it is your right and your obligation

THANK YOU

SWEATMAN • WINDEYER • CONSULTANTS
11-1400 Cornwall Road
Oakville, ON L6J 7W5
T: 905.337.3148

jasmine@bequestconsulting.com
david@bequestconsulting.com
