



Estate Accounting for Estate Trustees and Attorneys

If you are acting as an estate trustee (formerly “executor”) or an attorney under a power of attorney, this brochure provides some general information which may be of assistance to you. It is not intended to provide legal advice.

Definitions

In this brochure, **estate** means all of the assets and liabilities of a deceased individual or of a living individual who is no longer able, or no longer wishes, to manage their affairs. An **attorney** means a substitute decision-maker appointed by another person who has signed a power of attorney document. An attorney is not necessarily a lawyer, although a lawyer may act in this capacity. A **guardian** is a person appointed by the Court to manage the affairs of another person. Some of the information in this brochure may apply to a guardian; however, the guardian’s court order should be reviewed carefully to determine specific accounting and reporting requirements which must be met.

Who Needs to Know?

When you act as an estate trustee, you are accountable to the beneficiaries of the estate and its creditors. When you act as an attorney under a power of attorney, you are accountable to the grantor of the power of attorney, the person’s attorney for personal care (or guardian of the person), and the Public Guardian and Trustee. You must be prepared to provide, on request, an accounting of the receipts (all income, dividends, liquidated assets, etc.) and disbursements (payments made including payments to beneficiaries but not money transferred to an investment) for review. For this reason, it is important to keep

detailed records of all transactions on behalf of the estate, so that you can prepare an accounting report when needed.

A detailed accounting report also provides the basis for determining how much compensation you may be paid for the work that you do as an estate trustee, attorney, or guardian. The amount of compensation is subject to approval by certain individuals (such as beneficiaries, if it is an estate) or by the Court. If you submit your accounting report for the Court’s approval, you are said to be “passing your accounts”. If approved by the Court, you do not need the approval of the beneficiaries or anyone else.

If you wish, you can refuse to take any compensation for acting as an estate trustee or attorney. However, a detailed accounting must still be provided.

The estate trustee or attorney is also encouraged to keep a journal of all aspects of the Grantor’s affairs or the administration of the estate. Journal entries would include the date, the amount of time spent, a description of what was done, who the estate trustee or attorney met with and so forth. Such a journal can be of considerable assistance if a beneficiary or other interested party objects to the amount of compensation sought or questions the estate trustee or attorney’s actions. A journal should also include records of mileage and of disbursements incurred while carrying out the estate trustee or attorney’s duties. Such detailed records may be requested by a judge on a passing of accounts.

Keeping Detailed Records

When you begin to act as an estate trustee or attorney, make a detailed written list of all assets and liabilities of the estate. For example, if the asset is a bank account, include the name and address of the bank, the account number and type of account, and the account balance on the date of death or the date when you took over as attorney. If the asset is a stock, list the name of the company, the type and number of shares, and when it was acquired or bought. It is better to include too much detail than not enough. If you are not sure what information may be required, consult a lawyer or other professional who understands estate accounting.

Unless you will be holding funds in trust, it is important to ensure that all transactions are handled through a bank account which is reserved for that purpose. Never use cash received on behalf of the estate to pay bills or to re-imburse yourself for expenses. All cash must first be deposited to the bank account and use cheques drawn on the estate account to make all payments for the estate. It is not necessary for you to pay the individual's bills out of your own pocket; however, if you inadvertently do so, ensure you are paid back from the estate as soon as possible. You may also be paid for out-of-pocket expenses such as parking, mileage, and so forth, if such expenses are incurred as a result of carrying out your duties as an attorney or estate trustee and providing you document such expenses. Although it is possible to use more than one bank account for this purpose, it will simplify eventual reporting if you use one bank account exclusively for all incoming and outgoing estate monies even if some of it is invested in short- or long-term investment vehicles such as bonds or guaranteed investment certificates (GICs). It goes without saying that estate funds and your personal funds must never be mixed.

Contents of Accounting Report

Some estate trustees and attorneys prepare the estate accounting report themselves. Others prefer to have the report prepared by a lawyer with estate accounting experience,

particularly where it will be submitted to Court for a passing of accounts. Whether you choose to prepare the report yourself or have it done by a professional, here is a list of what is most commonly required:

- title page showing the name of the estate or the living individual whose affairs are being managed, the period of time that the report covers, and the name, address and telephone number of the person who prepared the report;
- table of contents with page numbers;
- summary of the receipts, disbursements and investments, and the balance at the end of the accounting period (if a trust is ongoing, it may also be necessary to separate receipts and disbursements into revenue and capital receipts and revenue and capital disbursements);
- detailed list of the assets at the start of the accounting period and whether or not the asset has been "realized" or turned into cash or other readily-negotiable form;
- detailed chronologic list of every receipt including date, source, sufficient information to identify the item clearly, and the amount (every item is also numbered individually for cross-reference purposes);
- detailed chronologic list of every disbursement (expenses, distributions) including date, source, sufficient information to identify the item clearly, and the amount (every item is also numbered individually for cross-reference purposes).

Who Approves the Accounts?

Although you can reimburse yourself for legitimate and reasonable expenses which you have paid out of your pocket, such as postage, photocopying, courier, mileage, etc., compensation (payment for work done) is not usually paid until you have prepared your

accounting report and obtained the appropriate approvals. In the case of an estate, a majority of the adult beneficiaries must approve the accounting. If any beneficiary is a minor (under the age of eighteen (18)) or mentally incapable, the estate trustee may be required to provide a full report to Ontario's Office of the Children's Lawyer or the Public Guardian and Trustee. If a beneficiary is not mentally capable, special approvals are required.

Other Information That May Be Required

Depending upon the complexity of the assets being managed, the time period covered, and the on-going necessity for reporting such as for a trust, the accounting report may also include:

- a list of unrealized assets;
- a list of investments being held at the end of accounting period;
- a list of liabilities, real (known but not yet paid) and contingent (estimated or expected but not yet certain).

Compensation for an Attorney

When acting as an attorney under a power of attorney, compensation is based on regulations under the *Substitute Decisions Act*, which set out the following formula:

- 3% of receipts;
- 3% of disbursements;
- 3/5 (three-fifths) of 1% of the average annual value of the assets as a care and management fee.

Compensation for an Estate Trustee

When acting as an estate trustee, you are generally entitled to slightly lower percentages (2½% of receipts (all value received by the estate including assets as of date of death), 2½% of disbursements (all payments out of the estate whether to pay liabilities or to

distribute to beneficiaries) and 2/5 (two-fifths) of 1% of the average annual value of the assets as a care and management fee). However, there is no legislation which sets this out. The percentages have been determined as a result of case law and precedent. If a judge reviews your accounting report, she or he will consider a number of factors which can be hard to define such as what is a "fair and reasonable" allowance for your "care, pains and trouble". A judge is likely to consider five important factors:

- the magnitude of the trust;
- the care and responsibility involved;
- the time occupied in performing the duties;
- the skill and ability displayed; and
- the success which has attended its administration.

Although many estate trustees seek payment of the care and management fee from the date of death, case law suggests that the care and management fee should not be paid to the estate trustee in the first year after the date of death. If the accounts are contested, it would be up to a judge to decide whether the care and management fee would be allowed in the first year of estate administration.

If the estate is very simple, compensation may be reduced from the usual percentage. If the estate is very complex, additional compensation may be awarded by the Court. Note that one of the factors which a Court may consider is the time occupied in performing the duties.

The actual amount of compensation must be approved by the beneficiaries or by the Court unless the amount is specified in the Will.

Compensation Calculations

If compensation is claimed by the estate trustee or attorney, the accounting report must show how the amount of compensation has

been calculated. If an estate trustee is requesting a care and management fee or a special fee for a complex estate, calculations for these must also be shown.

When an estate trustee or attorney enlists the assistance of advisors, such as a lawyer or accountant the professional fees paid for such assistance are generally deducted from the compensation for the estate trustee or attorney. In the case of an estate trustee, the Will may provide otherwise. However, the legal fees and Court fees relating to the application for probate are recoverable directly from the estate and are not deducted from compensation.

Please note that the amount of compensation you receive as estate trustee or attorney is taxable as income and must be reported to Canada Revenue Agency when filing your income tax return. It is recommended that you seek the advice and assistance of a tax accountant in that regard.

Summary

The information provided in this brochure is intended only as a general introduction to the topic of estate accounting and is not legal advice. There are many other issues to consider if you are acting as an estate trustee,

attorney or guardian. If you require legal advice or assistance with estate accounting, please consult a lawyer or other professional.

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