



Foreign Executors and Trustees

If a person acting as an executor (also referred to as an 'Estate Trustee') or a trustee of a Canadian estate or trust is, or becomes, a non-resident of Canada for tax purposes, any trust which is administered by the executor becomes a non-resident trust and, as a result, will be taxed differently than it would be if the executor or trustee were a resident of Canada. The estate or trust may also be subject to the tax laws of the jurisdiction where the trustee is resident.

In addition to the concerns about income tax, when a non-resident or foreign executor of an Ontario estate is named, in most cases the Court will require that the executor obtain a bond from an insurance company before the Court will grant letters probate (referred to as a 'Certificate of Appointment of Estate Trustee'). The costs of obtaining such a bond are the estate's and will include the time and effort required to complete the bond application as well as payment of the bond premium. Some insurance companies require pre-payment of three years' worth of bond premiums.

The insurance companies require considerable information about an executor including detailed personal and financial information so that the insurance company can assess its risk in issuing the bond. Many executors are reluctant to provide such information; however in our experience, insurance companies will not accept a bond application without it. In some circumstances, we have had great difficulty finding an insurance company that will issue a bond. In fact, we are experiencing increasing difficulty in obtaining bonds at all.

An additional requirement for such bonds is the cost of discharging the bond when the estate administration is complete. The executor must file sufficient evidence to satisfy the Court in order for the Court to release the bond.

To avoid these problems and added costs, ensure that your executor or the trustee of any trust is a resident of Canada. Note that the estate itself is also a trust for tax purposes. Consider appointing a Canadian-resident friend or a professional such as a lawyer or an accountant. Trust companies will also act as an executor or a trustee but most will require that the estate or trust have a value of \$250,000 or more on an on-going basis.

Alternatively, if your concerns are regarding a trust in your Will, consider having your Will drafted in such a way that a trust is not necessary. For example, your Will may direct that an inheritance be used to purchase an annuity which does not require on-going administration. If your goal is to ensure that a beneficiary receives regular payments over a specified period of time, an annuity is a solution worth considering.

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