



Passing of Accounts

Passing of accounts is a formal process to have the accounting of an Estate Trustee, attorney for property or guardian of property (generally referred to as the “personal representative”) reviewed and approved by beneficiaries and a Judge. This procedure is required when beneficiaries (estates only) either refuse to approve or cannot approve the accounting due to being underage or mentally incapable. The approval is necessary so that the personal representative can be released from further liability in terms of his or her accounting and to determine the compensation to be paid to the personal representative. If a passing of accounts is necessary, it is important that it be completed before the final distribution of an estate is made.

Form of the Accounts

There is a particular format in which the accounting information is to be presented to the Court. For an explanation about estate accounting, compensation and who must be involved, please review our brochure entitled “Estate Accounting for Estate Trustees and Attorneys”. If there are underage or unborn or undetermined beneficiaries of an estate, please see our brochure “Young Beneficiaries”. A personal representative may hire a professional to prepare the accounting in the proper format. Fees paid for such service are usually deducted from the compensation of the personal representative rather than being paid out of the estate.

Unopposed Passing

If all interested persons and a Judge approve the accounting, the process is considered to be “unopposed” or “uncontested” and the personal

representative does not need to appear in court unless someone asks for legal costs that are more than the amount usually allowed. The legal costs on an unopposed passing are generally paid out of the estate.

Opposed Passing

If the passing is opposed because someone, usually a beneficiary, does not approve, that person completes a “Notice of Objection”. If the objection cannot be satisfied by the personal representative and is not withdrawn by the objector, the case is “opposed” or “contested” and it becomes necessary to attend court to have a hearing before a Judge. At the hearing, the Judge has the power to review the estate’s administration as well as the claim for compensation and make decisions. The legal costs to be awarded are also decided by the Judge. Although it used to be common to have the estate pay everyone’s legal costs, this is no longer certain.

Compensation

The most common item to be questioned is the amount of compensation that the personal representative claims. Generally, a Judge will consider at least five factors to determine a fair and reasonable compensation to be awarded:

1. the magnitude or size of the estate;
2. the care and responsibility involved;
3. the time occupied in performing executor duties;
4. the skill and ability displayed; and,
5. the success which has resulted from the administration.

Summary

The end result of a passing of accounts is a court order called a “judgment” which details the receipts into and payments out of the estate during a certain period of time, the amount of compensation to be paid, legal costs of the passing and possibly an order as to when any future passings are to be carried out.

The information provided in this brochure is intended only as a general introduction to the topic of passing of accounts and is not legal advice. There are many issues to consider. If

you require legal advice or assistance, please consult a lawyer or other professional.

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