

Rights of a Beneficiary of an Estate

Terms to learn:

ADMINISTRATOR is someone appointed by the Court to perform the same duties as an Executor, in the absence of a Will (or if the Will did not name an Executor or if the named Executor has already died). We shall refer to either the Executor or the Administrator as, simply, the 'Executor';

BENEFICIARY means someone who is entitled to receive a gift from an Estate when the owner of the Estate dies

ESTATE means all of the assets of someone who has died

EXECUTOR means someone – there may be more than one of them – named in a Will as the person whom the Testator wishes to gather the assets of the Estate, pay any debts including taxes, and then distribute the remainder of the Estate in the manner set out in the Will;

RESIDUARY BENEFICIARY means someone entitled to receive a part or all of the Estate that remains after all debts and expenses have been paid and all specific gifts have been distributed.

TESTATOR means someone who has signed a valid Will



Patience is a virtue

THERE ARE A NUMBER OF THINGS EXECUTORS MUST DO BEFORE THEY CAN DISTRIBUTE ASSETS. THEY MUST:

- make a list of all the assets of the Estate, with at least a reasonable estimate of their fair market values (household contents are usually shown as one lump sum);
- try to determine all the deceased's debts (often this includes placing a Notice to Creditors in a local newspaper);
- unless the Estate is quite small and simple, they may need to apply to the Court of Queen's Bench for a Grant of Probate – that is, confirmation by the Court that the Will is valid;
- if there was no Will, make an application to the Court for an Order appointing them as Administrators;
- cause Income Tax Returns to be filed for the period up to the date of the Testator's death (and a separate return for any income earned by the estate), and ensure that all taxes are paid;
- if necessary, convert into cash those assets that have not been specifically left to one or more individuals and that do not then consist of cash.

Only then may the Executors consider distributing assets to you and any other Beneficiaries.

Those preliminary tasks can sometimes be very time consuming. If the entire Estate consists of some bonds and bank account, the Estate should be quite easy to handle and pay-out to Beneficiaries should be relatively quick. If there are assets such as a house or, even more complicated, a business to be operated, valued and sold, the task could take much longer.

Executors are given a year of grace within which to get the affairs of the Estate into some reasonable order. After that, one should have some good reason for further delay in transferring assets to the Beneficiaries.

WHAT ARE YOUR RIGHTS?

If you were left a specific amount of money or some other particular gift, you are entitled to have that sent to you, as soon as the Executor is at liberty to do so.

If you are a Residuary Beneficiary, you are entitled to receive a copy of the Will and, in due course, a detailed accounting of all the assets and income of the Estate, the debts paid, the expenses incurred by the Executor, the fees if any the Executors may be requesting, the specific legacies and other gifts paid out, and the amount remaining in the Executors' hands. Executors are required to either obtain the consent or approval of all Residuary Beneficiaries to this accounting. If not all the Residuary Beneficiaries will provide their consent or if some of the Residual Beneficiaries are not adults or are otherwise incapable of consenting, then the Executors will be required to obtain the approval of the Court of Queen's Bench in a formal passing of accounts.

The Executors are entitled to ask the Court to award their compensation for their services to the Estate, unless all the Residuary Beneficiaries agree with them upon a particular sum. The amount of that compensation will also depend upon the nature and value of the Estate and the time spent by the Executor though there is no fixed tariff for Executor compensation.

The Executors' fees will also depend upon whether there are assets that require continuous management, such as a business or an investment portfolio which, obviously, require more of the Executor's care and attention.

If the winding up of the Estate seems to be taking more time than you believe to be reasonable, you are entitled to seek an explanation from the Executors. If you still get no acceptable explanation, you may ask the Court to intervene.

An experienced or well-advised Executors will not wait until Beneficiaries start asking questions; they will let you know at regular intervals what is going on. If you are a Residuary Beneficiary, you will probably find that the Executors will make an interim distribution as soon as they feel they can properly do so, but will want to hold back a certain amount in the Estate until they have received a Final Tax Clearance from Canada Revenue Agency.

Finally, you will not be surprised when we tell you that, if you have any questions during the course of the administration of an Estate of which you are a Beneficiary, and if you cannot get a satisfactory explanation from the Executors, you would be wise to consult your lawyer.