

It is an honour to be chosen as an executor of an estate; you have been entrusted with carrying out an individual's wishes as set out in his or her will. As executor, you will administer the estate which means that you will identify and sell assets, pay off debts and distribute the remaining property to the beneficiaries.

This can require a lot of time and effort and as a result, executors are entitled to be paid for their services. They are also required to pay tax on this income. The amount an executor receives is sometimes set out in the will; if not, the executor's pay should be fair and reasonable and based on the work performed to properly administer the estate. Determining "fair and reasonable" compensation is not an easy task and can sometimes lead to a dispute between an executor and the beneficiaries.

Before an executor can be paid compensation the beneficiaries must approve the amount the executor proposes. In most situations, beneficiaries are asked to approve executor compensation when they are given copies of the estate accounts, which set out the assets and expenses of the estate.

If a beneficiary does not agree with the proposed amount of executor's compensation, he or she can require that the estate accounts be approved by the court in a procedure known as a "passing of estate accounts". In such situations, a court will decide the amount an executor receives.

In Ontario, there is a guideline that helps to determine executor compensation. It is generally 5% of the value of the estate and is calculated as follows:

- 2.5% on capital receipts of the estate;
- 2.5% on capital disbursements of the estate;
- 2.5% on revenue receipts of the estate;
- 2.5% on revenue disbursements of the estate; and
- an annual care and management fee of two-fifths of 1%, if the estate administration requires special work because of ongoing tax issues, trusts or litigation.

Therefore, for an estate worth \$1 million, the guideline amount provides that executor compensation will be approximately \$50,000. Because the guideline does not consider the actual time and efforts spent by the estate trustee, it can result in disproportionate compensation. If the \$1 million estate required very little administration, the executor would be overpaid if he or she was paid \$50,000. On the other hand, if the \$1 million estate required substantial administration, the executor would be underpaid at the guideline amount.

Because the guideline can lead to unreasonable compensation calculations, the courts in Ontario have created a five factor approach. The five factor approach is a factual analysis of the actual work done by the executor which should be considered alongside the guideline approach.

The five factors are:

1. The size of the estate (the value of the assets);
2. The care, responsibility and risks assumed by the executor;
3. The time spent by the executor;
4. The skill and ability required and displayed by the executor; and
5. The results obtained and the success associated with the efforts of the executor.

Executors should consider both the guideline and the above five factors before proposing his or her compensation, to ensure the amount truly is fair and reasonable.

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For over 75 years, Houser Henry & Syron has helped entrepreneurs and private companies of all sizes grow and prosper. We provide a range of business law services - from assisting with day-to-day legal requirements to providing strategic counsel on highly complex transactions. We are uniquely positioned to provide high-quality legal advice, tailored to the specific needs of our clients, at a reasonable price.