

Estate Administration Non-Resident Executor (Estate Trustee)

By Alexander Levy & Jane Shpolska

When planning your estate, you should consider who you would like to appoint as your executor (estate trustee) and where that individual lives. If you chose to appoint someone who is not a resident in Canada or one of the Commonwealth countries, and if your Will requires probate in Ontario, your estate trustee will need to take additional steps to administer your estate. This will likely increase the time, cost and complexity for your estate.

Probate is the process whereby an estate trustee applies to the Ontario court for a certificate confirming his or her appointment. This is used as proof to third parties that the estate trustee can deal with and sell the deceased's assets. As part of this application, the estate pays tax on the value of the assets subject to the relevant Will. Probate is not always necessary in Ontario. It is usually required for assets which are owned alone by the deceased such as bank or investment accounts, real estate and some other kinds of assets.

When the estate trustee or even one of the several estate trustees appointed is not a resident of Canada or one of the Commonwealth countries, a bond must be filed with the court according to the *Estates Act*. Estate trustees may apply for an order to dispense with the bond requirement with certain supporting documents and evidence. All the beneficiaries need to consent and the estate trustee would need to swear a statement regarding the assets and liabilities of the deceased and there may be other supporting documents.

If the bond is not waived, then it would need to be for an amount which is double the value of the assets of the estate, and the judge may direct that more than one bond be given.

The bond can be cancelled by a judge after the estate trustee(s) have produced satisfactory evidence that the debts of the deceased have been paid.

To avoid the costs, time and the added complexity of dealing with a bond for estate trustees, you should carefully consider your selection of estate trustee(s). If you plan to appoint several estate trustees, the non-resident trustee may choose to renounce, thus simplifying the process of estate administration. Should this happen, it is also a good idea to name alternate estate trustees.

Please bear in mind that there are other situations involving estates where bond could be required and is not discussed in this article.

Houser Henry & Syron LLP is happy to assist you with simplifying your estate planning and administration of estates.

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