



## The Importance of Maintaining Estate Accounts

by Megan Connolly

Fundamental to the duties of any trustee is the obligation to maintain accounts in an appropriate format.

Beneficiaries under a Will or trust, or an individual whose assets are being managed by an attorney or guardian, are entitled to receive an accounting of how the trustee has administered the assets. When that information is not forthcoming the trustee can be compelled to pass accounts. In addition, the trustee may voluntarily bring an application to pass accounts.

Whether a trustee is compelled to pass accounts, or does so voluntarily, there are several benefits to bringing an application to pass accounts:

1. The trustee is released from liability for her administration of the assets (unless the trustee has committed fraud or failed to disclose material information);
2. A Judgment passing accounts is often preferable than a release signed by a beneficiary, because it saves the trustee from the possibility that an unrepresented beneficiary will later claim not to have understood the release;
3. The trustee can properly receive compensation, which she often cannot do absent the consent of the beneficiaries or a Judgment passing accounts; and
4. An application to pass accounts will often force difficult beneficiaries to come forward with their complaints, protect the trustee from the ongoing threat of liability, and allow the trustee to address and correct problems with the administration of the estate early in the process.

Irrespective of whether a trustee intends to bring a formal application to pass accounts or instead plans to circulate an informal accounting and seek releases from beneficiaries, the trustee must maintain accounts on an ongoing basis.

In addition, the trustee must be able to provide the value of all the assets at the date her appointment took effect; account for every asset, whether monetary or otherwise, received and distributed by the trustee; and account for how the money is invested by the trustee.

Rule 74.17 of the *Rules of Civil Procedure* provides a comprehensive list of the form a trustee's accounts must take, as well as the information that must be included in those accounts, namely:

- (a) on a first passing of accounts, a statement of the assets at the date of death, cross-referenced to entries in the accounts that show the disposition or partial disposition of the assets;
- (b) on any subsequent passing of accounts, a statement of the assets on the date the accounts for the period were opened, cross-referenced to entries in the accounts that show the disposition or partial disposition of the assets, and a statement of the investments if any, on the date the accounts for the period that they were opened;
- (c) an account of all money received, but excluding investment transactions recorded under clause (e);
- (d) an account of all money disbursed, including payments for trustee's compensation and payments made under a court order, but excluding investment transactions recorded under clause (e);
- (e) where the estate trustee has made investments, an account setting out,
  - (i) all money paid out to purchase investments,
  - (ii) all money received by way of repayments or realization on the investments in whole or in part, and
  - (iii) the balance of all the investments in the estate at the closing date of the accounts;

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(f) a statement of all the assets in the estate that are unrealized at the closing date of the accounts;

(g) a statement of all money and investments in the estate at the closing date of the accounts;

(h) a statement of all the liabilities of the estate, contingent or otherwise, at the closing date of the accounts;

(i) a statement of the compensation claimed by the estate trustee and, where the statement of compensation includes a management fee based on the value of the assets of the estate, a statement setting out the method of determining the value of the assets; and

(j) such other statements and information as the Court requires.

If the requirements of Rule 74.17 seem daunting, it is because in many ways they are. Keeping accounts will be relatively easy if the trustee keeps track of the required information. However, if well into the administration of the estate, the trustee is called upon to pass accounts, and she has not been keeping the appropriate records, then the task can be nearly impossible.

If you represent a trustee and want to avoid her being caught off-guard by an Order compelling her to pass accounts, here are some tips that might help you (and your client):

1. Ensure your client knows about her obligation to keep accounts as early in the administration as possible;

2. Determine what original assets will require appraisals – it might be easy to determine the value of a bank account, but it is not so easy to determine the value of “personal effects”;

3. Make sure your client keeps back-up documentation in support of everything she receives and disburses, including confirmation of investment forms, banking records, receipts, and appraisals; and

4. Encourage your client to start preparing accounts early and update them often. This way, if your client has to bring an application to pass accounts, no one will have to scramble to get the necessary information ready. If you or your law clerk can help the process by preparing the accounts for your client, even better!

The task of keeping accounts can be onerous, but it is an unavoidable duty of a trustee. By ensuring that your client is maintaining the appropriate records, and keeping draft accounts up-to-date, you will make your client’s life (and your own!) a whole lot easier.

## Breakfast Series

The Hull & Hull LLP Estate, Trust and Capacity Law Breakfast Series provides members of the bar with presentations by one of Canada’s leading Estate firms on topics of importance to estate practitioners.

The next Breakfast Series meeting, January 17, 2008, will be a presentation of “*Estate Law Remedies - What to watch out for when administering an Estate*” by Ian M. Hull, “*Can I encroach and, if so, how? Trust issues in an estates context.*” by Suzana Popovic-Montag and “*Considerations in Negotiating the Removal and/or Replacement of a Trustee*” by Craig Vander Zee.

The Breakfast Series meeting is being held at the Ontario Bar Association, 2nd Floor, 20 Toronto Street, Salon 2 & 3, Toronto, Ontario. Breakfast begins at 8:15 a.m. with the Presentation to follow at 8:30 a.m. A fee of \$30.00 (28.30 + 1.70 GST) is payable to Hull & Hull LLP upon registration by cheque, VISA or MasterCard. Materials included. **New for 2007: this series will now be offered via Webcast.**

A Compact Disc recording of the Breakfast Series will be available at a fee of \$20.00 (\$18.87 + \$1.13 GST).

To Register, please contact Diane Labao at (416) 369-1140 (press 0) or by e-mail to [dlabao@hullandhull.com](mailto:dlabao@hullandhull.com)



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