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Trust Experience™

Options in Responding to an Application to Pass Accounts

Historically, when served with an Application Record to pass accounts, beneficiaries had two real options: (1) to object to the passing of accounts by the filing of a Notice of Objection to Accounts, or (2) doing nothing. With the second option, the beneficiary was both allowing the accounts to be passed on an unopposed basis and effectively waiving any right to further notice in respect of the status of the proceeding and related costs.

More recently, the *Rules of Civil Procedure* were amended to introduce a third option: the opportunity to serve and file a document known as a Request for Further Notice in Passing of Accounts. Sub-rule 74.18(8.1) provides as follows:

Unless the court orders otherwise, a person who serves and files a request for further notice in passing of accounts is entitled to,

- (a) receive notice of any further step in the application;*
- (b) receive any further document in the application;*
- (c) file material relating to costs under subrule (8.6), (11) or (11.2); and*
- (d) in the event of a hearing, be heard at the hearing, examine a witness and cross-examine on an affidavit, but with respect only to a request for increased costs under subrule (11). O. Reg. 193/15, s. 12 (4).*

Like a Notice of Objection to Accounts, a Request for Further Notice in Passing of Accounts must be filed at least 35 days prior to the hearing date indicated in the Notice of Application to Pass Accounts. However, unlike a Notice of Objection, the filing of a Request for Further Notice does not in itself necessitate a hearing. If no Notices of Objection are filed, the passing of accounts may proceed by the filing of a Judgment Record even in the face of a Request for Further Notice on file.

Filing a Request for Further Notice may be appropriate in scenarios such as the following:

- A beneficiary does not wish to object to the accounts, but anticipates that another beneficiary may do so;
- The beneficiary may wish to respond to another party's Request for Increased Costs depending on how the Application may unfold; or
- The beneficiary simply wishes to be apprised of any meaningful developments in the progress of the Application.

When assisting clients in responding to Applications to pass accounts, it is important to remember that, in addition to objecting or choosing not to participate in the proceeding, there is a third option that preserves certain rights of the beneficiary without interfering with what may otherwise proceed as an unopposed passing of accounts.