



Appointing an Estate Trustee For a Special Purpose

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Rather than have one person oversee the administration of a client's entire estate, sometimes it may be prudent to appoint a limited estate trustee to handle the administration of a special asset or group of assets. This month's Solicitor's Tip explores the circumstances under which it may be desirable to appoint an estate trustee for a limited or special purpose, how this can be completed, and other issues that a client should be encouraged to consider before doing so.

Circumstances warranting the appointment of a limited estate trustee

While there may be a number of scenarios in which a client could appoint a limited estate trustee, this Tip addresses five specific situations:

The client has a particularly valuable asset, or an asset that requires special expertise to administer: For example, if the client has an art collection, it may make sense to appoint a separate, limited estate trustee to handle this portion of the estate, depending on the size and value of the collection. Case law demonstrates that administering assets like original art work can be both expensive and complex, making this work potentially vulnerable to attack by beneficiaries.¹ The recent emergence of digital assets may also necessitate the appointment of an individual who is technologically savvy and is able to access and administer one's digital estate. To prevent discord after the client has passed away, or to ensure that such assets are handled with expertise, appointing a limited estate trustee may be wise.

The client has corporate assets: It is not unusual to deal with a client's property related to the operation of a business separately from his or her personal assets.² As part of a contingency plan, some lawyers may wish to consider appointing a "replacement lawyer" estate trustee (other than the person administering the other assets of their estate) to administer their law practice in the event of their death.

Part of the estate will take longer to administer than the rest of the estate: For example, if a client wishes to include a special trust in his or her will, it may be appropriate to designate a separate trustee to oversee that instrument, distinct from the estate trustee,³ particularly where the estate trustee appointed to administer other assets is older than the beneficiaries of a testamentary trust whose entitlements may not be paid out for several decades.

¹ For example, see [Cranston \(Estate of\), 2021 ONSC 1347](#).

² See [Gordon v Gordon et. al., 2022 ONSC 550](#).

³ The appointment of such a limited trustee was addressed in [Simms v Simms, 2017 ONSC 6624](#).

Appointing a limited estate trustee would prevent a potential conflict of interest: The Alberta Court of Appeal recently addressed a case where this was an issue⁴ – the executor put himself in a personal conflict of interest by having his wife continue to manage real property that she had managed previously for the testatrix, when she was alive. The court ultimately removed the executor with respect to the land and appointed a nominee put forward by the beneficiary of the land to administer that portion of the estate. Both decisions were confirmed on appeal.

The client is the executor of another estate: There is case law establishing that a limited estate trustee may be appointed if a testator appoints one person to administer his own estate, and another person to administer the estate of a third party which the testator had been administering prior to his death.⁵

Appointing a limited estate trustee

If a client wishes to have someone handle a specific part of his or her estate separate from the rest of the estate, it is crucial that this information be included in a valid testamentary instrument. There is a significant risk that an application to appoint a limited estate trustee will fail if there is no clause in the client's will demonstrating an intention to make such an appointment. In *Pollock v Manitoba*,⁶ for example, the Manitoba Court of Appeal held that a special reason must be shown for issuing a limited grant of probate, as the appointment of different administrators for different parts of one estate is not favoured by the courts.

A limited estate trustee can be appointed through either 1) the same will used to appoint the estate trustee responsible for the rest of the estate, or 2) using multiple wills. One potential advantage to using a secondary will, depending on the value of the asset being administered, is that multiple wills are a valid and recognized method of reducing the amount of estate administration tax payable on an estate.⁷ In comparison, if one will is used to appoint the estate trustee and a limited estate trustee, the estate will derive no benefit with respect to estate administration taxes. The ability to use secondary wills, tertiary wills, or further multiple wills effectively in this manner may be limited, however, if the limited estate trustee requires a certificate of appointment in order to effectively administer the assets intended to be under his or her control.

After the client's death, the general estate trustee may apply for a certificate of appointment of estate trustee for the whole estate subject to a carve-out for the scope of the limited estate trustee's grant, unless the limited estate trustee applies for probate first.⁸

Consent needed to appoint a limited estate trustee

⁴ [Wood's Home v Selock, 2021 ABCA 431](#).

⁵ *Laking, Re*, 1971 CarswellOnt 258 (Ont. Surr. Ct.).

⁶ [Pollock v Manitoba, 2006 MBCA 78](#).

⁷ See the [Estate Administration Tax Act, 1998, SO 1998, c 34, Sch.](#)

⁸ Ian M. Hull & Suzana Popovic-Montag, *Macdonell, Sheard and Hull on Probate Practice*, 5th ed (Toronto: Thomson Reuters, 2016) at 380.

If a client wishes to appoint a limited estate trustee to administer a special asset or assets, the client should first check that the chosen trustee will actually administer the asset, in order to prevent the estate from incurring extraneous fees for court applications. If the limited trustee named in the client's will does not accept the appointment, a court application may be necessary to appoint a substitute trustee.⁹

It would also be advisable to ensure that all those entitled to a general grant will consent to the appointment of a limited estate trustee. As noted in the current edition of *Probate Practice*:

... a limited grant will not typically be made unless all those entitled to a general grant consent, renounce, or are cited and fail to appear; nor will someone entitled to a general grant be permitted to take a limited grant.¹⁰

As with any other potentially-contentious estate planning issue, having open discussions regarding one's estate plan, whether it is relatively straightforward or may involve multiple wills and different estate trustees appointed to administer different types of assets, can assist in preventing issues and limiting confusion or uncertainty down the road. Exploring these options may assist in streamlining what may otherwise be a complex estate administration that a single estate trustee may not be able (or may not wish) to manage.

⁹ *Simms, supra* note 3.

¹⁰ *Probate Practice, supra* note 7 at 381.