

# THE PROBATER

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## The New Rules of Practice for Estates: An Overview

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### I. AN OVERVIEW

On July 9, 2015, several amendments to the *Rules of Civil Procedure*<sup>1</sup> (the “**Rules**”) were filed with the registrar under the *Courts of Justice Act*<sup>2</sup>. These amendments, which came into force as of January 1, 2016, include various changes to the practice of estates under Rules 74 and 75. These include changes respecting passing of accounts; changes affecting certificates, including Court Status Certificates, Certificates of Grant, and Exemplification Certificates; new rules regarding proof of death requirements; and the expansion of the authority of the court to order mediation of estates disputes.

### II. PASSING OF ACCOUNTS

Among the recent amendments, the changes to the procedure by which an Application to Pass Accounts is to proceed before the court is perhaps the one that will have the greatest impact on daily practice. For instance, the changes affect service and filing deadlines for certain types of court documents, as well as the list of individuals who must be served in cases where there is a person under disability. There are also new mechanisms available to allow an interested person to remain apprised of the status of a Passing of Accounts, without the need to object to the accounting, which did not previously exist. Under Rules 74.18(8) and (8.1), an interested person now has the option of filing a Request for Further Notice in Passing of Accounts and will, accordingly, be entitled to receive notice of any further steps in the Application, receipt of any documents filed in respect of the Application, and will be able to seek costs and/or be heard at the hearing of the Application to Pass Accounts.

### III. CERTIFICATES

Another rule that has been introduced is Rule 74.14.1. This Rule allows a person to make a written request to the registrar for authentication of a Certificate of Appointment With or Without a Will that has been issued. The registrar will issue a “Certificate of Grant” for use within Canada and an “Exemplification Certificate” signed by a judge if the authentication is intended to be used outside of Canada. An Exemplification Certificate may be a more cost efficient manner of establishing one’s right to administer estate assets located in other jurisdictions, when compared to an application to reseal the Ontario grant or to have a foreign nominee appointed in the court of the foreign jurisdiction, if a document issued by the local court is not required.

Furthermore, Rule 74.14.2 has been implemented to address previous challenges that were associated with confirming the authority of an estate trustee. These might arise in situations where there has been a change due to the death of an estate trustee named in the will or as a result of the removal of an estate trustee by the court. Rule 74.14.2 can even apply when there has been no change of estate trustees at all but a confirmation of authority is sought nonetheless.

Rule 74.14.2 allows an interested person to make a written request to the registrar to obtain a Confirmation Status of Estate Trustee or Court Status Certificate. Upon filing the necessary documents, a Court Status Certificate, which confirms the authority of the estate trustee, can be obtained.

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This can be useful when there is any doubt as to who should be acting as estate trustee and may assist in avoiding situations where an individual is unknowingly acting improperly on behalf of the estate, potentially triggering personal liability.

#### IV. PROOF OF DEATH

The new amendments also affect the contents of an Application for a Certificate of Appointment of Estate Trustee, whether With or Without a Will. According to Rules 74.04(1)(a.1) and 74.05(1)(0.a), it is now mandatory to file proof of death as part of this Application. The Rules now provide us with a definition of “proof of death” to assist in determining what types of documentation will be acceptable to the registrar.

Pursuant to Rule 74.01, proof of death means, “documentary evidence of a person’s death, including a death certificate issued by the Registrar General, a certificate in respect of the death issued by a funeral director, or an order made under the *Declarations of Death Act, 2002* declaring that the person has died.”

The new requirements regarding proof of death and the related definition ensure that Certificates of Appointment will not be issued in the absence of documentation that confirms that the deceased is, in fact, dead. The incorporation of court orders declaring a person to be deceased under the *Declarations of Death Act* as an acceptable form of proof of death may operate to prevent any prejudice to beneficiaries of an estate that may otherwise result from the addition of these new sub-rules in circumstances where a death certificate cannot otherwise be obtained.

#### V. COURT-ORDERED MEDIATION

Another one of the major changes applies to the rules for mediation in estates matters. Mediation in estates matters is mandatory in Toronto, Ottawa, and Essex County under the terms of Rule 75.1, unless waived by a judge. However, in other parts of the province, mediation is not typically required. Despite mediation being optional in regions outside of those referred to under Rule 75.1, it can be an exceptionally useful tool that is often successful in resolving estate disputes.

When successful, it can help avoid unnecessary litigation costs and wasting of limited court resources.

Under the new Rule 75.2, the court now has the power to direct the parties to attend mediation in an Order Giving Directions sought under Rule 75.06 or on a contested Application to Pass Accounts under Rule 74.18. This is the case, even where the mediation is not mandatory under Rule 75.1. In practical terms, judges may now order that an estates matter proceed to mediation, with or without the consent of the parties, outside of Toronto and other regions in which mediation is mandatory.

The expansion of court-ordered mediation will likely prove to be highly beneficial to estates practices located in other regions of Ontario.

#### VI. CONCLUSION

These amendments to the Rules have only been in effect for a short while and so their practical effect still remains to be seen. As many of the changes deal with deadlines for service and filing, it is important to be mindful of these changes going forward. With respect to the changes affecting court-ordered mediation and the obtaining of certificates, these are now options of which estate practitioners should be aware and their clients should be advised, whenever applicable.

<sup>1</sup> *Rules of Civil Procedure*, RRO 1990, Reg. 194.

<sup>2</sup> *Courts of Justice Act*, RSO 1990, c. C. 43.



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