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Applications to Pass Accounts During COVID-19

While estates lawyers have been required to quickly acquaint themselves with the new procedure for the execution of wills and powers of attorney, commissioning of affidavits, the filing of probate applications, the issuing and filing of other court materials, and the hearing of urgent matters in light of the current health crisis, we are continuing to see developments in how the Estates Court is handling matters during this unprecedented time.

Under sub-rule 74.18(8.5) of the *Rules of Civil Procedure*, where no notices of objection to accounts are filed in response to an application to pass accounts, the accounts can typically be passed without the need for a hearing. The deadline for serving and filing a notice of objection to accounts is typically 35 days prior to the hearing date indicated on the notice of application (r 74.18(7)). Where no notices of objection have been received, we will typically file a judgment record consisting of the documents listed under sub-rule 74.18(9), which include an affidavit of service in respect of the application record to pass accounts, an affidavit sworn by the applicant or the applicant's lawyer confirming that the time for filing notices of objections to accounts has expired and that no notice of objection has been received (or that any such notice was received and subsequently withdrawn), and the draft judgment. Thereafter, the signed judgment is typically received from the court in due course.

However, as our readers are aware, all court dates after March 17, 2020 have been automatically adjourned and limitation periods and deadlines by which any step must be taken in any Ontario proceeding have been suspended as a result of the pandemic. Accordingly, notwithstanding that the typical deadline of 35 days prior to the hearing date indicated on the notice of application may have passed, it is possible that a beneficiary may still have the right to object to the accounts and the courts may not be willing to grant judgment passing accounts upon the filing of the judgment record alone.

From our recent experience, there appear to be several options currently available in respect of passings of accounts where no objections have been filed:

- Along with the normal materials, consents of the beneficiaries may be filed as part of the judgment record;
- If there is urgency to the matter, an urgent hearing date can be requested and the beneficiaries provided with written notice of the virtual hearing; and

- The passing of accounts can be addressed after the courts resume normal operations, most likely with a new hearing date to be set, and expiry of the time during which objections may be filed most likely 35 days before that new hearing date.

In any event, even if the court is prepared to grant judgment in the absence of the consent of the beneficiaries or a virtual hearing of the passing of accounts on notice to them, it may be prudent to obtain the consent of all beneficiaries wherever possible to avoid accounting issues being raised once the current state of emergency has passed.