



LAFRENIÈRE SANNA
— ESTATE LAW —
A B O U T I Q U E F I R M

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Passing of Accounts

A passing of accounts is a formal court process to have the accounting of an Executor or Estate Trustee, an Attorney for Property or a Guardian of Property ('personal representative') approved by a Judge. A passing of accounts is required when any of the estate beneficiaries, persons with an interest in the finances of an incapable person or the Public Guardian and Trustee either refuse to approve or cannot approve the accounting due to being too young or mentally incapable. Alternatively, a personal representative may decide to voluntarily submit his or her accounting to a judge for approval.

Once the accounts are approved or 'passed' and if there is no appeal, the personal representative is released from further liability for transactions reported in the accounting and the amount of the personal representative's compensation is approved. If a passing of accounts for an estate is necessary, it is important that it be completed before the final distribution of an estate is made.

Form of the Accounts

There is a particular format in which the accounting information is to be presented to the Court. For an explanation about estate accounting, compensation and who must be involved, please review our brochure entitled "Estate Accounting for Estate Trustees and Attorneys". If there are beneficiaries of an estate who are under the age of 18, unborn or undetermined, please see our brochure "Young Beneficiaries".

A personal representative may hire a professional to prepare the accounting in the proper format. Fees paid for such services are usually deducted from the compensation of the personal representative rather than being paid out of the estate. Preparation of the accounts is considered one of the duties of the personal

representative and thus payable out of compensation.

Preparation of the accounts in 'court format' is always preferable as judges are familiar with the order and layout of court-formatted accounts. However, if the assets, liabilities, and investments being reported are relatively uncomplicated and if the accounts are set out in a clear, comprehensive manner, a judge may approve the accounts without requiring that they be in 'court format'.

Unopposed Passing

If all interested persons approve the accounts and if no young children or incapable person are affected, a Judge may not review the accounts but simply sign off as everyone has consented. This results in an unopposed or uncontested passing and the personal representative may not need to appear in court. However, if someone asks for legal costs that are more than the amount usually allowed, a Judge must approve such costs and a court appearance is necessary. The legal costs on an unopposed passing are generally paid out of the estate or out of the assets of the incapable person.

Opposed Passing

If the passing is opposed because someone, such as a beneficiary, does not approve the accounts, the objector files a Notice of Objection with the Court. If all objections cannot be satisfied by the personal representative and are not withdrawn by the objector, the accounts are opposed or contested. It then becomes necessary for the personal representative to attend at a hearing before a Judge.

At the hearing, the Judge reviews the accounts and the claim for compensation. The Judge can approve the accounts as submitted or order

changes such as reducing or, rarely, increasing the amount of compensation. The legal costs to be awarded are also decided by the Judge. Although it was once common for everyone's legal costs to be paid out an estate, this is no longer the case. A certain modest amount of legal costs is always payable to the personal representative for preparation of the court application that starts the process. But this amount, referred to as the 'Tariff amount' has not been increased for quite some time and is usually inadequate to cover the costs of preparing the application. Any excess amount is generally payable out of the personal representative's compensation.

Attorney or Guardian Compensation

The most common item to be questioned on a passing of accounts is the amount of compensation that the personal representative is claiming. For a personal representative who is an Attorney for Property or a Guardian of Property, how to calculate the amount of compensation is set out in the Regulations to the *Substitute Decisions Act*. Generally, a percentage of all receipts and disbursements (what's received and what's paid out) is allowed at the rate of 3%. A care and management fee may also be taken based on 3/5% of 1% of the average annual value of the assets. Even if the formula set out in the regulations is used, a Judge may adjust the compensation amount. For example, the percentage allowed on a single, large transaction such as the sale of a house might be reduced.

Executor Compensation

For executor compensation there is no legislation that spells out how to calculate compensation. Instead, many judges over a long period of time have made decisions about how to calculate fair and reasonable compensation. Generally, a percentage of all receipts and disbursements (what's received and what's paid out) is allowed at the rate of 2.5 %. Although not available during the first year of the administration of an estate, a care and management fee may also be taken based on 2/5% of 1% of the average annual value of the assets.

In considering an executor's compensation, a Judge will usually consider these five factors:

1. the magnitude or size of the estate;
2. the care and responsibility involved;
3. the time occupied in performing executor duties;
4. the skill and ability displayed; and,

5. the success which has resulted from the administration of the estate.

Summary

The end result of a passing of accounts is a court order called a 'judgment' which details the receipts into, and payments out of, the estate during a certain period of time, the amount of compensation to be paid, legal costs of the passing and possibly an order as to when a future passing must be carried out.

The information provided in this brochure is intended only as a general introduction to the topic of passing of accounts and is not legal advice. There are many issues to consider. If you require legal advice or assistance, please consult a lawyer or other professional.

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