



**PGgrowth**  
WELCOMES YOU TO

**PEACE OF MIND**  
ESTATE ADMINISTRATION EXPLAINED  
FROM 'THE OTHER SIDE'

WEBINAR

PRESENTER



**Colleen DeJager**  
PGgrowth Senior Consultant

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## AGENDA

### Today we will cover the following:

- Executor's steps in an estate administration
- General things to know as a beneficiary
- Releases & Court Passings
- A word on executor's fees
- Tips on working effectively with executors and lawyers

### What we're not talking about:

- How to review executor's accounts (that's half a morning)
- GRE's (that's the other half of the morning)

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## CAVEATS AND DISCLOSURES

- This presentation is mostly Ontario-based. Some BC information is included where I'm familiar with it
- Please do not construe the information herein as legal advice; always confirm any questions or confusion with legal counsel as each situation is different

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

## EXECUTOR STEPS IN ESTATE ADMINISTRATION



### EXECUTOR STEPS INITIAL STEPS

#### Preliminary steps:

- Review Will/Meet with family/understand deceased's affairs /attend to funeral/ obtain death certificates

#### Secure & Protect Estate assets:

- Insurance/property checks in place for all assets
- Appraise/inventory household goods
- Remove obvious valuables from real property
- Redirect mail, cancel subscriptions, advise utility & other billing companies, notify bankers/financial advisors

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## EXECUTOR STEPS VALUE ESTATE

### **Assemble/Value Assets:**

- Review tax returns – ID financial assets & confirm taxes up to date
- List SDBox (need Notarial of Will & Death Cert. proving authority)
- Value assets @ Date of Death:
  - Assets from Financial Institutions
  - Appraisals (jewellery, art, collectables, real estate, vehicles, private co shares)
- Advise government agencies
  - SIN/Passport/DVA/ODSP/Drivers License/apply for CPP death benefit (& survivor benefits if applicable)
- Complete/Submit insurance claim forms with death cert

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## EXECUTOR STEPS VALUE ESTATE

### **Determine Liabilities:**

- End of life expenses
  - Funeral bill
  - Medical bills
  - Utilities
  - Accounts
  - Mortgages
  - Loans

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## EXECUTOR STEPS APPLY FOR APPOINTMENT

**Apply for Probate** (*Certificate of Appointment of Estate Trustee With a Will...or...“Without a Will” for intestacies*):

- Prepare inventory of assets @ date of death (*AKA Estate Summary*)
- Solicitor applies for probate/pays probate tax
- Serve all beneficiaries named in the will (*in ONT: Notice of Application for Certificate of Appointment of Estate Trustee with a Will Form 74.7*)
  - Rules differ by province (eg: BC's WESA requires service as on intestacy)
  - In ONT - only Residual Beneficiaries receive a copy of the Will – Legatees are only *entitled* to see the wording relating to their gift but Executor *may elect* to send them the entire will too (BC is very different with complex rules and the probate process takes much longer than other provinces)
- Send completed Estate Information Return (“EIR”) & inventory of estate assets to Ministry of Finance within 90 calendar days of receiving grant of probate

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM ‘THE OTHER SIDE’**

---

## EXECUTOR STEPS ADMINISTER ESTATE

**Administer estate:**

- Close bank & brokerage accts to estate account (transfer cash and/ or assets, selling as appropriate)
- Close SD Box
- Collect in/arrange for payout of insurance policies
- Register all assets into estate name
- Deal with real estate (sell/re-register) and household goods/ personal effects as per will
- Deal with private company shares if applicable

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM ‘THE OTHER SIDE’**

---

## EXECUTOR STEPS ADMINISTER ESTATE CONTINUED

### Administer estate:

- Advertise for Creditors if appropriate
- Pay all debts/claims
- Pay specific legacies
- Interim distributions to residual beneficiaries
  - Timing varies with executor's comfort level, tax planning due to GRE status & distributions can be in cash, in kind, or a combination of both)
- Set up testamentary trusts if required
- Finalize estate

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## EXECUTOR STEPS FINALIZE ESTATE

### Finalizing the estate:

- Ensure all tax returns filed (penultimate T1 if needed / T1 to Date of Death /Final T3 Estate return) & obtain related Notices of Assessment (NOA)
- Do further distribution to residual beneficiaries – holdback for further potential tax, executor fees, and any o/s expenses (legal/tax prep fees, etc)
  - Note: again, timing and # distributions depend on executor's comfort level and any GRE tax-related considerations
- Present accounts to residual beneficiaries/obtain final releases
- Upon receipt of Final T3 NOA, Request Final Tax Clearance Certificate (can take several months or 1 year + .....depends on CRA)

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

## POTENTIAL DELAYS

### In General:

- An average estate should take about 16-24 months to administer but could be delayed by:
  - Difficulty locating beneficiaries or assets
  - Illiquid assets
  - Real estate issues (eg: environmental problems, insurance claims)
  - Beneficiaries or assets in other countries
  - CRA tardiness in assessing returns/issuing tax clearances
  - Tardy, inexperienced or death of executors
  - Will challenges (options: mediation/med-arb/litigation)
  - Timing of distributions for GRE purposes

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

## ADMINISTRATION – MILESTONES TO DIARIZE

### Specific Bequests:

- Diarize 6 months from your acknowledgement letter to look for your legacy payment
- If not received in 6 months, re-diarize for another 3 months
- If nothing by 9 months, write your contact (lawyer/executor)
- Even better, **call them** (*you will get better results than a letter*)
- In BC, be cognizant of longer time frames due to WESA – clarify with estate solicitor or executor if not sure

**NOTE:** if dealing with a corporate executor/trustee deal with them directly, not the lawyer

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## ADMINISTRATION – MILESTONES TO DIARIZE

### Residual Gifts:

- Diarize 6 months from your notification letter for initial distribution
- If not received in 6 months, re-diarize for another 3 months
- If nothing after 9 months, send follow up letter or call
- If nothing by 11 months, call the lawyer or executor as appropriate, for an update
- Again, in BC, be cognizant of longer time frames due to WESA – clarify with estate solicitor or executor if not sure

### What do I say?

- *“It is our usual practice to see an interim distribution by this point in the administration so I just wanted to check in for an update on your progress”*
- Option: Blame it on the auditors
- Don't be pushy/condescending; remain professional – there may be a good reason for the delay

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## IN GENERAL

### Residual Beneficiaries have rights:

#### The Right to:

- An accounting & approval of estate transactions
- Approve executor's compensation (court passing vs. release)
- Ask questions & request additional information
- Object to/question executor's actions
- Approve executor decisions if not specifically authorized in the will (eg: paying POA compensation)

**But – practice THE GOLDEN RULE:** “Do unto others as you would have them do unto you”

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**



---

## IN GENERAL

**Be aware – the cost of being right is not always worth it!**

- Perceptions (executor, estate solicitors, general public)
- What hill are you willing to die on (\$\$ value of the issue at hand vs. reputation)?
- Sugar is better than vinegar
- United front - ok to confer with other charitable beneficiaries
  - Best not to advise executor - appears mercenary and like you are ganging up

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## GENERAL PRINCIPALS

- Specific bequests to executors (tax free) are generally considered to be in lieu of compensation (taxable) - but not always!
- Thank you letters from charities to family members - not always welcome - be empathetic to family's position. Offer up thanks in new estate acknowledgement letter
- Do NOT put executors on your organization's mailing or calling lists!
- Watch for double dipping - lawyers who are also executors
- Trustee Act (ONT): Trustees can't benefit from their office (conflict of interest – eg: buying assets from the estate) – however, some wills may specifically authorize it

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**



## RELEASES

### Informal way to save the time & expense of a court passing

- *Residual beneficiaries only* - review accounts/sign release if in agreement
- Without signed release/court passing - executor remains personally liable indefinitely

### Key Contents of a Release:

- Correct name of residual beneficiary/charity
- Releases executor for all actions, approves compensation
- May be partial (*with interim distributions*) or final (*approving entire administration*)
- Some executors/lawyers request for specific bequests
- Usually includes an indemnity – be careful (limit your agreement)
- Binding on Successors & Assigns
- Signed & usually witnessed – corporate seal may be requested

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## RELEASES

- Executor's decision whether to close file without all signed releases (their risk, not yours)
- If you're not comfortable with wording:
  - Pick up the phone...call the executor/lawyer and discuss
  - Discussion always wins over letters that may appear curt or condescending
- Ok (especially if you're uncomfortable/unsure) to confer with other charitable residual beneficiaries – united front, some may notice things you missed
- Remember THE GOLDEN RULE

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## COURT PASSINGS

**Only guaranteed way to approve executor's fees (but less common):**

- Formal accounts, prescribed format
- Ontario Rules of Civil Procedure outline the process/cost/service requirements (who is served/timing/objection process)
- If objections are filed - court date set to hear in front of a judge
- If no objections filed, basically a basket motion; judge reviews & approves

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## COURT PASSINGS

### Caveats:

- Costs are involved:
  - putting accounts in prescribed format
  - Court fees/legal fees/participant fees (PGT, Children's Lawyer, objectors)
    - amounts are set out in the Rules
- Time delays
- Not all judges understand estate accounts/unfamiliar with E&T law

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## COURT PASSINGS – PRESCRIBED FORMAT

- list of original assets
- listing of capital receipts and disbursements
- Listing of income receipts and disbursements
- List of remaining assets
- Statement of Proposed Compensation

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## A WORD ON EXECUTOR'S FEES

- Governed by common (case) law, absent a fee agreement
- General practice today – up to 5% on the inventory value
- Alternatively, you may see common law rates/detailed compensation calculations:
  - 2.5% on capital receipts & disbursements, 2.5% on income receipts & disbursements and 2/5 of 1% (aka 0.4%) care & management (these rates especially common if residual beneficiaries are charities)

*However;*

- Courts *will* approve as high as 3% on capital & income receipts & disbursements and 3/5 of 1% (0.6%) on care and management if they feel it is justified

NOTE: Care Management fees not chargeable in first year of administration

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## FEE AGREEMENTS ARE GOOD THINGS...

**Most common with corporate executors (Trust Companies):**

- Locks in fee, sets tiered compensation rates, additional costs (eg: co- executor fees, tax filing fees, investment fees, legal fees, etc)
- Usually provides discounts to existing clients
- Must be incorporated by specific reference into the will to be binding
- Eliminates confusion and clarifies roles and responsibilities of executor
- Clarifies Testator was in agreement / eliminates fee disagreements
- Probated along with the will

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## FIVE FACTORS DETERMINING FAIR EXECUTOR'S FEES

“In determining whether (executor compensation) is in fact “fair and reasonable”, the courts will generally have regard to the five factors set out in *Re Toronto General Trust v. Central Ontario Railway Co.* (1905), 6 O.W.R. 350, which provides a factual analysis of the actual work completed by the executor or trustee\*\*:

- the size of the trust,
- the care and responsibility involved,
- the time occupied in performing the duties,
- the skill and ability shown by the executor or trustee, and
- the degree of success resulting from the administration”

\*\*SOURCE: <https://hullandhull.com/2015/04/executor-and-trustee-compensation/>

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM ‘THE OTHER SIDE’**

---

## FEES IN ADDITION TO EXECUTOR'S FEES

Legal fees (sale of real property, filing for probate, etc)

- If legal fees appear high (some lawyers still try to charge “tariff”....these are no longer appropriate – violation of the [Federal] Competition Act):
  - Request a time docket at their hourly rate
  - Ultimate Solution if needed: have the legal bill taxed by court
- Tax preparation/filing fees
- Investment Management fees
- Court Passing fees (court & other fees chargeable under the Rules)
- Real estate commission

NOTEWORTHY: fees to prepare accounts in prescribed format should rightfully be deducted from the Executor's compensation as they are part of discharging them from their duties

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM ‘THE OTHER SIDE’**

---

## TIPS ON DEALING WITH LAWYERS & EXECUTORS

### Watch your tone with lawyers and trust companies

- Be respectful of their role, education and experience
- Do not give the impression you presume to know more than they do
- Do not condescend – you will just get their back up
- Give them a chance to explain

### Don't be a pest

- They may be very busy, short staffed or inexperienced in estate matters/ unfamiliar with procedures & timing (Plus–calls to lawyers cost the estate money!)
- Attitude is everything!

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**

---

## DIFFICULT LAWYERS & EXECUTORS

### Problem executors/lawyer who won't respond to you, despite reasonable efforts:

- Send a letter and give them a deadline. If still no response, a second letter with a further deadline and a risk of further action
- You may have a board member who knows them or has more influence who can call them
- If other charities involved, work with them in your follow ups if necessary
- Last resort - contact the Law Society.

**PEACE OF MIND: ESTATE ADMINISTRATION EXPLAINED FROM 'THE OTHER SIDE'**



QUESTIONS AND THANK-YOU

Colleen Dejager  
colleen.dejager@pggrowth.com