BMO Nesbitt Burns

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Financial Insights

from Quinn+Cardy Wealth Management
of BMO Nesbitt Burns

Estate Planning: Five Estate Executor Mistakes

If you have been appointed to administer an estate, being aware of these potential pitfalls may help as you contemplate the role. As you plan for your own estate, carefully choosing your potential executor is important to prevent these and other mistakes.

Administering an estate can be a time consuming and complex task, often challenged by what may be an emotionally difficult time. All too often, executors can make mistakes which have the potential to lead to increased tax liabilities, conflict with or between beneficiaries or, worse yet, escalation to potential litigation. Equally concerning, the executor risks personal liability for these mistakes. Here are five common errors:

1. Overlooking directives in the Will. Estate lawyers say that executors can sometimes ignore parts of the Will, such as forgiving loans that were to be collected, perhaps due to lack of knowledge or because it is easy or convenient. Others may choose to distribute assets differently than directed within the Will, under the belief that they have a more 'fair' idea for this distribution.[1] However, neither situation is within an executor's authority, exposing them to potential liability.

2. Failing to communicate. Sometimes executors become so involved in the process that they neglect to communicate. One of the executor's duties is to respond to reasonable enquiries from beneficiaries. Silence can often be misinterpreted as being secretive or suspicious, which can prompt estate disputes. Maintaining transparency and ongoing communication can go a long way in helping to prevent conflict.

3. Making distributions too early. If distributions are made too early, such as before taxes or other liabilities are paid, the executor may be held personally responsible. This can often happen when the executor succumbs to pressure from beneficiaries for distributions. However, any outstanding debts of the deceased must be paid before estate assets can be distributed to beneficiaries — and it is the job of the executor to identify these debts. Sometimes the executor overlooks

the importance of determining whether there are unknown creditors, which often involves a time-consuming process of creating a public notice. Advertising for creditors can protect the executor should a creditor make a claim after the estate has been distributed.

4. Trying to keep costs low. Some executors may act too prudently in trying to limit estate expenses. However, this may lead to higher eventual costs. For example, if an executor decides to do the tax returns without the help of an accountant, they may miss eligible tax credits or deductions. In the past, advertising for creditors in the newspapers of multiple cities was very costly, so some executors avoided this process to save money, only to be caught by surprise when creditors eventually made claims.

5. Treating estate funds as their own. Given the assets often available within an estate, some executors may wrongly use estate funds for their own purposes, such as to make loans to themselves or family members. Others may make more honest mistakes, such as using funds to cover travel costs for family members to attend a funeral. If estate funds are used incorrectly, the executor may be held personally liable. As well, if the executor acts unreasonably or in their own self-interest, they may not be entitled to compensation from the estate.[2]

For more perspectives, or for an introduction to an estate planning specialist who can provide greater information, please call the office.

1. http://estatelawcanada.blogspot.com/2010/07/top-five-mistakes-made-by-executors.html; 2. https://www.canlii.org/en/on/onca/doc/2016/2016onca521/2016onca521.html

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