

When your executor resides out of province



When choosing an executor (or “liquidator” in Quebec), there are many factors you will want to consider. One important factor is where the executor resides. If you choose an executor who resides in a different province from you and your estate, there may be additional practical and legal hurdles involved in the estate administration. This is particularly so if the executor resides outside of Canada.

Estate administration bond

An estate administration bond is a sum of money that must be paid into court by the executor as assurance that the executor will properly administer the estate in accordance with the will and the laws of the province. It also acts as a surety that the executor will pay all claims and debts owed by the estate throughout the course of the administration.

In many circumstances, out-of-province executors will be required to post a bond before a provincial court will issue a grant of probate. This is because it is difficult for a creditor or claimant of an estate to pursue an executor who resides in another jurisdiction in the event that the executor mismanages the administration of the deceased’s estate.

The amount of the estate bond required may vary by province. In Ontario, for example, it is common for a court to require a bond equal to twice the estimated value of the estate. An executor may be able to obtain a bond from an insurance company offering this type of service. However, there is no guarantee that the executor will qualify for this bond and the premiums create additional cost to the estate.

Estate tax residency

When an individual passes away, their estate becomes a tax payer in its own right. For tax purposes, an estate is considered “resident” wherever the executor resides.

Tax residency becomes a particular issue when the executor resides outside of Canada. The estate will no longer be considered resident in Canada and will therefore lose out on very favourable tax treatment available to Canadian resident estates. In addition, the estate may be subject to taxation in the country where the executor resides. Finally, the estate may be subject to departure tax because the residency of the estate has changed from Canadian to foreign.

Practical concerns

It can be very impractical for an executor to administer an estate when they do not reside in the same province, or country, as the deceased. Some aspects of the estate administration can be very difficult to accomplish if the executor is not physically present. For example, if the executor needs to deal with household items, prepare real estate for sale, or access a safety deposit box or storage unit, it is generally much simpler to accomplish these tasks when the executor can present themselves in person.

If the executor chooses to travel, they must account for time taken away from work, and family, and must justify the travel cost to the estate or bear the cost themselves. The executor may be unable to travel for health or other reasons. At times, there may even be travel restrictions that prevent the executor from travelling to the province where the estate assets are located.

The executor may choose instead to hire agents to act on their behalf to administer the estate because of the difficulties involved with travel. This can be a suitable solution provided that the executor is careful in choosing a professional and trustworthy agent.

Additional concerns for an executor outside of Canada

As a rule of thumb, the executor(s) should always be Canadian residents. In addition to the tax issues discussed above, an executor who resides outside of Canada is likely to encounter other issues while administering the estate.

The executor may have reporting requirements in the country where they live. For example, an executor resident in the USA is required to report all assets over which they have control to the Internal Revenue Service (IRS). Most USA residents may be less than thrilled at the idea that the IRS may audit their estate administration.

In addition, Canadian financial institutions and other professionals may have restrictions imposed upon them, under legislation or under their governing body, with respect to taking instructions from non-residents. For example, this means that an executor who is seeking to give investment instructions to the deceased's investment firm may find that the firm cannot accept those instructions. Equally, a bank may not be willing to release funds to a non-resident without more rigorous vetting. These restrictions can be impractical at best and insurmountable at worst.

Choosing an executor

Residency is one of many important considerations when choosing the executor(s) of your estate. For more information, and to learn about options available to you in planning for the administration of your estate, reach out to your investment advisor.