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ESTATES

Introduction: I have written this report based on questions often asked of me while in private law practice in British Columbia and Alberta, Canada, since 1975. Although my first hand experience is limited to those jurisdictions, wherever possible I have written in non-legal terms and with general principles in mind.

PERSONAL REPRESENTATIVE

When someone dies, their affairs are taken over by a personal representative. Acting as a personal representative is voluntary.

HANDLING THE ESTATE

Handling the estate of a deceased person is usually the combined effort of the personal representative and a lawyer acting for the personal representative, and involves three basic steps.

A. Facts:

In this step, full details of the assets, liabilities, income tax position, beneficiaries and family of the deceased are gathered.

B. Court Application:

In some situations, the appointment of the personal representative must be made by or ratified by the courts. There are various names for this Court Application depending on whether or not there was a Will and other circumstances.

C. Distribution of the Estate

In this step, the assets of the deceased, after payment of debts, are distributed to the lawful recipients. Before this distribution can proceed, however, consideration must be given to a number of items, including the following:

- *Publication of a Notice to Creditors.* These appear in local newspapers and have the effect of limiting the time within which creditors of the deceased can make a claim against the personal representative to get paid.
- *Receipt of Tax Clearance from Revenue Canada.* Obtaining Tax Clearance from Revenue Canada has the effect of ending the responsibility of the personal representative for any unpaid income taxes of the deceased.
- *Rights of Family.* Various legislation gives family members the right to challenge the distribution of an estate. An example is the Wills, Estates and Succession Act of BC.
- *Compensating the Personal Representative.* The personal representative is entitled to be paid for the work they have done in handling the estate.
- *Approval from the beneficiaries.*
Some beneficiaries of the estate have rights against the personal representative, particularly relating to the beneficiaries being satisfied that the estate has been distributed properly. These rights are addressed by the personal representative preparing a financial summary (called the Estate Accounts) and getting those Estate Accounts approved by the beneficiaries having those rights.

OTHER ASSETS

Some assets of the deceased can be moved to lawful recipients independently of the above process. These other assets include the following.

A. Joint Property.

Assets held in joint tenancy can be transferred directly to the surviving joint tenant.

B. Some life insurance.

If the deceased had life insurance that was payable to someone else who survived the deceased, these insurance proceeds can be paid directly to the life insurance beneficiary.

You wouldn't expect to read anything "legal" without some kind of caution - so here it is: This report is general information only and not to be relied upon without legal advice. For legal advice, call us.

I hope this helped answer your questions.

For more answers to common legal questions, please visit our website: www.salmonarmlaw.com

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