

Estate Administration Bonds

INFORMATION AND INSTRUCTION KIT

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The Executor of an Estate has access to and control of the assets of the Estate, with very limited supervision in the near term. This is a lot of responsibility, and involves a very substantial degree of “trust”, especially by the Court which is responsible for appointing the Executor (Estate Trustee).

As a way to protect the Estate and the Beneficiaries, the Executor is often required to post an Estate Administration bond. The bond is in place to protect the Estate while the Executor pays the debts of the deceased and distributes the Estate to the Beneficiaries.

WHEN AN ESTATE BOND IS ALMOST ALWAYS REQUIRED

A bond is usually required where an Executor appointed in a Will resides out of province, where there is no Will or where an alternate Executor is applying to the Court for appointment as Executor. But note that, (with very few exceptions) as a rule, no one out of the Province is entitled to even apply for Probate. Arranging for an Estate bond can be difficult, time-consuming and expensive. Accordingly, whenever possible, Executors try to have the Court order that a bond is not required.

DISPENSING WITH THE ESTATE ADMINISTRATION BOND (EXECUTOR’S BOND)

The Court may, on motion from the Estate Trustee, order that a bond is not required (“dispense with the posting of an administration bond”) if the Court is satisfied that a bond is not required to protect the Estate and the Beneficiaries.

The Estate Trustee must bring a motion to dispense with the administration bond. The motion must contain the following information, properly before the Court as evidence:

- the identity of the Beneficiaries of the Estate
- the identity of Beneficiaries who are minors or incapable persons, and the value of their interest
- executed consents from all Beneficiaries to the appointment and to the dispensation of the bond or an expla-

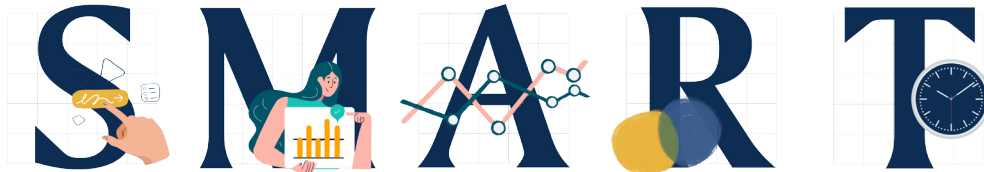
nation as to how the interests of those Beneficiaries will be protected

- the last occupation of the deceased
- evidence as to whether all debts of the deceased have been paid
- evidence as to whether the deceased operated a business at the time of death, and if so, information about the debts of the business.
- if all debts of the Estate have not been paid, information about the value of the assets of the Estate, and information about the debts including arrangements made with creditors to pay the debts

SECURING AN ORDER TO DISPENSE WITH A BOND TAKES TIME, EFFORT AND SKILL

Preparing and filing the motion to dispense with the Executor’s bond is one of the most difficult parts of an initial Probate application in Ontario, as it requires preparation of a Notice of Motion, draft Order, and proper submission by way of Affidavit of all evidence necessary to satisfy the Court of the issues that must be addressed before it can order that an Estate administration bond is not required in a specific case.

Our experience with this issue saves our clients time, grief, and hassle, and it is included as part of our normal Probate application services for Estate Trustees with a Will.



Want more information?

**ARE YOU INTERESTED IN A CONSULTATION WITH PETER R. WELSH?
CONTACT ME AT [PETER@SMARTWILLS.CA](mailto:peter@smartwills.ca) BY TELEPHONE 416-526-3121
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