

# ERAssure™ Executor Errors and Omissions Liability Insurance

## Important Coverage Information

Insurance policies are contracts that cover certain activities and exclude other activities. It's important to understand the terms and conditions.

When you understand what is not covered, or where special limitations apply, your solicitor can help develop a plan for activity that will reduce exposure to the Estate and Executor(s), and contain the risks to insurable areas, wherever possible or practicable.

### 1. Territory

Coverage territory is Canada. If there are foreign assets, coverage also applies provided the claim is brought in a Canadian court and the action is judged on its merits based on Canadian law, not the foreign jurisdiction.

### 2. Limitations

There are also limitations that apply in the case of foreign assets and business assets.

- a) Foreign Assets: if the foreign assets (outside Canada) of the estate are more than 15% of the total value of the estate, the policy limit is reduced to the less of \$100,000 or 15% of the limit of liability stated in the policy for claims arising out of such foreign assets.

Example: The policy limit is \$1,000,000

The overall estate value is \$800,000, and includes a condo in Florida valued at \$500,000. The policy limit in respect to a claim involving disposal of the Florida condo is \$100,000 (\$100,000 is less of 15% of the policy limit).

- b) Business Assets: If the shares in a private business comprise more than 15% of the overall value of the estate, the policy limit is reduced to 15% of the limit of liability stated in the policy for claims arising out of such business assets.

Example 1: The policy limit is \$1,000,000

The overall estate value is \$800,000 and includes a small business valued at \$500,000. The policy limit in respect to a claim involving disposal of the small business is \$150,000 (\$1,000,000 X 15%)

Example 2: The policy limit is \$1,000,000

The overall estate value is \$800,000 and includes a small business valued at \$60,000. The full policy limit of liability would apply to a claim arising out of the disposal of the small business asset.

### 3. Exclusion Highlights

Most exclusions are self-explanatory, but some are better understood with an example.

- a) Professional Services include Mortgage Brokers, Insurance Brokers or Agents, Financial Advisors, Solicitors or Public Accountants. Claims arising out of the Executor providing these services to the Estate, concurrent with being an Executor, are not covered.

Example 1: An Executor is employed as a Stock Broker and continues to personally manage a stock portfolio held by the estate. In the course of the dissolution of the estate, the Executor makes several bad stock trades, and the value of the portfolio is diminished substantially.

Should a claim for damages be brought by the beneficiaries against the Executor out of the performance of the stock portfolio as a result of the Executor's negligence as a stock broker, the policy would not respond.

Example 2: An Executor is employed as a Stock Broker, and has always handled the stock portfolio that is now part of the Estate. Because she is concerned about potential conflict of interest, she engages a third party broker to handle the portfolio while she handles the dissolution of the Estate. During the dissolution, the third party broker makes several bad trades, and the value of the portfolio is diminished substantially.

Should a claim for damages be brought by the beneficiaries against the Executor arising out of the third party broker's activities, the policy would respond since the Executor was not acting in her professional capacity as a stock broker for the Estate.

- b) Tax liabilities are not covered by the policy. Amounts due as tax owed in any respect are obligated to be paid out of the proceeds of the Estate. If the Executor engaged a professional accountant to prepare taxes before a claim is brought by tax authorities, the policy will respond to cover investigations and defence costs only for such claims.
- c) Failure to arrange and maintain direct damage and third party liability insurance on the estate assets is not covered by the policy. The Executor needs to identify assets, determine if insurance is in force, and if not, arrange to have it put in force and pay the necessary premiums to keep the insurance current.

Example: The Executor learns that there is a house, contents and an automobile in the assets of the estate. Assuming that the decedent had some insurance coverage in force, he elects to do nothing to verify that coverage is in force. The decedent's policy expires and the house burns down with the car in the garage.

Should a claim be brought against the Executor(s) by the beneficiaries, the policy would not respond to defend nor indemnify for the direct damage to the assets that were lost as a result of not being insured.

- d) Fraud, dishonesty and malicious acts or activities are excluded from coverage under the policy.

Example: Part of the estate is comprised of a house. The Executor conspires with a real estate agent to sell the house below market value to another party, with a plan to "flip" the property and split the proceeds between the Executor, real estate agent and the other party. The beneficiaries get wind of the scheme and bring an action against the Executor for the fraudulent activity.

The policy would not respond to this claim for damages.

- e) Occasionally the beneficiaries have objections to who the Executor is, or how much their services are worth:

Claims brought against the Executor in an effort to have the Executor removed are not covered.

Claims brought against the Executor by the beneficiaries to contest Executor compensation amounts are not covered.

Refer to the policy document for a complete description of all policy exclusions.