

A DISCUSSION PAPER FOR: FINANCIAL ADVISORS

Insuring Against Estate Administration Risk: Protecting
your Clients and Perpetuating your Portfolio!



“It has been estimated that Canadian baby boomers will inherit as much as \$1 Trillion in the next 15-20 years, and that massive surge of money is causing a new focus on how estates are settled.”¹

TARA PERKINS, GLOBE AND MAIL

“There is no doubt that this new insurance product will open a number of important estate discussions with clients and their children. The fact that ERAssure is a liability insurance product that I can’t sell, only adds to my credibility as an independent advisor, adding value without compensation.”²

DENNIS YANKE, CLU, CFP, CHFC

INTRODUCTION

Over the coming 15-20 years some \$1 Trillion is going to be passed between generations and the questions that every financial advisor should be asking themselves are: When my client dies what is going to happen to the portfolio I have helped them build? And more importantly, how do I make sure I am entrenched in the executor and beneficiary relationships so I can participate and grow from the opportunity generated by this transition of wealth?

This brief discussion paper has been created for financial advisors. It qualifies the significant issue of estate administration risk, and highlights a new insurance product designed to help mitigate this risk. Most importantly, this discussion paper illustrates how you can add value and build client trust through an effective dialogue focused on the issues of estate risk. This dialogue can open the door to executor and beneficiary communications, bringing you new clients and positioning you as a contributor and participant in this immense transfer of wealth.



ERAssure® is the exclusive Preferred Supplier of Executor Insurance for Canadian Bar Association members.

FINANCIAL ADVISORS: INSURING AGAINST ESTATE ADMINISTRATION RISK: PROTECTING YOUR CLIENTS AND PERPETUATING YOUR PORTFOLIO!

“Advisor value is delivered through the ability to demonstrate understanding, the competent assessment of problems, the transparent recommendation of solutions, the inspiration to take actions towards implementation, and the maintenance of trust through integrity, consistency and predictability.”³

ADVOCIS – BEST PRACTICE
MANUAL “CONCERNING ADDING
VALUE”

EXECUTOR RISK: TALK THAT BENEFITS YOU AND YOUR CLIENT

Executor risk is an issue for every client you have, whether they are in the process of estate planning, executing or updating Wills, facing a life change like a spousal death or marital breakdown, are named as an executor, are acting as an executor, or a beneficiary.

The unfortunate fact is that not only do most of your clients have limited, if any, understanding of the risks involved, there is simply no protection provided for them under typical insurance policies.

This challenge, concern and risk is real, but brings with it the opportunity for significant advisor value. As a liability insurance product requiring property and casualty licenses that are not held by the financial planner, ERAssure[®] offers you a truly high value risk solution. This protection brings peace of mind to your clients, and opens the door to extensive estate planning discussions within the context of advice, rather than another product sale.

Some of the key opportunities are in:

- 1) Expectations Management: As their financial advisor your clients expect a financial risk discussion to come from you.
- 2) Planning: For those expected to be an executor or actively in the executor role, bringing a practical risk solution to their attention will increase their confidence, remove fear, and manage their personal liability. It will also reinforce your credibility as a trusted advisor and professional, and open the door to in-depth estate planning discussions.
- 3) Preserving Portfolios: Protecting your client from executor risk and the potential for significant personal financial loss can preserve the very estates and portfolios that you manage, and on which your clients depend. This can lead to discussions on current and future capital needs, long term care, estate transfer wishes and life insurance opportunities.

“Longevity and a slew of changes that have transformed family relationships (ex-spouses, step kids, step grandkids, siblings living thousands of miles apart) are turning the already prickly matter of inheritances into a gargantuan challenge.”⁴

HAYA AL
NASSER, USA
TODAY

- 4) Executor Selection: Have a discussion with the testator about the need to protect the executor against risks associated with errors and negligence in administration of the estate. This opens the door to dialogue about estate transfer wishes with not only the client, but the executor and beneficiaries, as well.
- 5) Perpetuation: Estate risk discussions initiate beneficiary and executor communications allowing you to get a sense of, and manage the expectations and risk picture of the parties. Participate in the future movement of assets and solidify your relationship with the executor and beneficiary group – tomorrow’s clients.

Executor risk is real, but it’s also manageable with your guidance and the insurance protection of ERAssure.[®]

In most instances your clients are acting as executors for family members and friends and as such have a personal interest in the smooth transition of an estate. The challenge is they are personally liable for the decisions they make, and are accountable to beneficiaries that today are keenly aware and interested in their every decision. *Legal actions brought for negligence, or the perception of negligence, are common and growing, and they can have significant financial implications to both the executor and the estate.*

When estate-related conflict happens, the executor is almost always at risk of challenge. Whether the challenge is the result of a credible disagreement with the executor, dissension between two beneficiaries or the illogical claim of one unbalanced beneficiary, the executor may be called upon to personally fund a legal defense of decisions made and actions taken, let alone be called to indemnify the parties if found at fault.

Executor risk is not just for the rich and famous. Money, emotions, family dynamics, blended families, promises, black sheep, creditors, personal loans – these issues belong to everyone.

WHAT CAN GO WRONG?

Estates typically go off side because the executor and one or more of the beneficiaries are unable to communicate effectively. Expectations are not managed well or perhaps not at all . . . and at the worst possible time – when a loved one has died, emotions are elevated and even worse, money and greed may be involved.

While lawyers are often involved in administration, advice and probate, the bulk of the practical and communication chores are performed by the executor.

Here are some examples of common things that go wrong:

[The Financial Guarantee:](#) The executor fails to investigate a beneficiary's claim that there is a debt owed to them from the estate. The executor disburses the proceeds of the estate to each of the beneficiaries without making provision for the claimed debt. An aggrieved beneficiary sues the executor successfully for the debt and the legal expenses, which the executor is now obligated to pay out-of-pocket after an unsuccessful attempt to recover the amount from the other beneficiaries.

[The Investment Decline:](#) The executor postpones the liquidation of a stock portfolio and sustains a significant reduction in the value of the estate, when one of the major investments plunges. The beneficiaries sue the executor for negligence in the estate administration to recover the value of the portfolio, prior to the investment crash, plus legal expenses.

[The Private Sale:](#) The executor sells the estate home privately to avoid paying real estate commissions. The purchaser successfully sues the estate for the cost of correcting serious structural deficiencies that existed, which the executor knew about, but failed to disclose to the purchaser. However, the estate assets had already been distributed to the beneficiaries. The executor is now responsible to the purchasers for the award of damages, since there are no estate assets available to the executor.

These are issues of the executor, not the estate and the cost to the executor to defend can be significant, let alone the cost to indemnify if found responsible.

ERASSURE EXECUTOR PROTECTION

For the first time there is a product available for your clients that provides protection for them as *estate executors*. ERAssure, from Estate Risk Protection Plan Inc., covers executors for the (covered) costs of defense and indemnity for damages awarded against them that arise out of errors and omissions committed during the administration of an estate.

The benefits of ERAssure extend beyond the 'occasional' executors.

- ERAssure can also protect a *professional* who is appointed executor, provided he or she is not concurrently acting for the estate.
- Importantly, by insuring the estate's value against executor negligence, ERAssure offers *beneficiaries* protection of their inheritance.

ERAssure coverage is available for estates of any size. Policy premiums depend upon a number of factors such as the estimated size and complexity of the estate, type of assets, number and qualification of executors, and the amount of coverage. For a typical estate valued at less than \$1 Million, the approximate cost would be under \$2,000 for a three-year term.

PROFESSIONALS ARE SUGGESTING THEIR CLIENTS CONSIDER ERAssure

The cost/benefit of ERAssure is easy to digest. A specialist in Wills and Estates says (as compared to the cost of litigation);

“the cost of an ERAssure policy would barely cover the photocopies in a legal defense.”⁵

IAN M. HULL,
HULL AND HULL LLP

Recognizing that even estate lawyers are ill-equipped to predict which estate cases will become conflict-ridden, take the opportunity to talk to your clients about ERAssure as the first and only available source of executor protection, and why testators, executors and beneficiaries should all be aware of it.

Here's How: As a liability insurance product that must be sold through licensed property and casualty insurance brokers, there is no expectation on your behalf of involvement in the actual sale or fulfillment of an ERAssure application or policy.

Simply advise your clients of the risk and encourage them to:

- **As executors**, purchase protection for themselves by calling the ERAssure professionals at 1-855-636-3777 or instructing their estate lawyer to do so on their behalf.

Use the **Executor Guide** to open dialogue with the Executor and provide them guidance and support.

- **As testators**, instruct their lawyer to include provisions in their Will for executor insurance protection of their named executors (wording is available on the website at www.ERAssure.com).

Use the **Practical Guide to Inheritance Planning** to open dialogue with your client and provide them guidance and support.

Both Guides are available at:
www.erassure.com/resources-for-financial-advisors or call
our ERAssure resource team at 1-855-636-3777

SUMMARY

With executor risk both real and growing, ERAssure is a meaningful client solution and a critical component of your clients' financial risk portfolio. The benefit that extends to you, the financial advisor, is equally significant and it starts with leveraging ERAssure to firmly entrench yourself so you are a participant and not an observer in the transfer of assets.

ERAssure offers you:

- A risk discussion with a high value client solution.
- An in-depth estate review in the context of advice and service, not another product sale.
- A door opener to key planning issues and sales opportunities.
- An opportunity to dialogue with key estate constituents that are important persons to your clients, along with being potential clients of tomorrow.

ERAssure RESOURCES

Webinars:

ERAssure offers a free 1 hour webinar on the issue of estate administration and executor risk and how a new insurance product can help reduce that risk.

We can arrange informational sessions (sponsored by your firm) for your clients to highlight Executor risk. Contact us at 1-855-636-3777 for more details.

Materials and Resources:

Visit our resources page at

<http://www.erassure.com/resources-for-financial-advisors> or call our ERAssure resource team at 1-855-636-3777 for more information on:

- Communicating with your clients
- A step by step Marketing Guide
- Background papers
- Outreach letters
- A Practical Guide to Inheritance Planning
- Executor Guide
- A comprehensive review on the Emerging Risk of Estate Administration for the Non-Professional Executor
- Executor Liability Insurance Application form

END NOTES

1. Perkins, Tara. It's an honour and a curse, The Globe and Mail, July 5, 2011.
2. Yanke, Dennis. C.L.U.,C.F.P, CHFC.
3. Advocis – Best Practice Manual, Concerning Adding Value.
4. Nasser, Haya Al. Two exes, a spouse, kids, stepkids. Now try drafting a will; With more blended families, splitting the nest egg can get ugly, USA Today. March 14,2012.
5. Hull, Ian M. Hull and Hull LLP.

EXHIBIT A: ESTATE RISK PROFILE

The following questionnaire is a simple tool for executor risk assessment. Circle the number corresponding to your answer to each question, and total your score at the bottom of the page.

Family Dynamics

	YES	MAYBE	NO
Are there any unique family dynamics such as a second marriage, blended family, a history of acrimony between family members OR spouses; any financial issues with any of the beneficiaries or their children, or health or drug related concerns?	2	1	0
Has there been any unique handling of family members by such as unequal cash or property distributions or access to heirlooms; any potential 'black sheep' in the family OR extended family; have any beneficiaries held a disproportionate care-giving role that might be looking to be recognized for their efforts?	2	1	0

Executor Specific

Are there multiple Executors involved; do they share the same relationship to you; are they all in agreement in how best to involve the use of professionals for legal, tax, accounting, investments and real estate; are any of the Executors or service providers to the estate seen as potentially having personal conflict; is the Executor(s) also your Power of Attorney?	2	1	0
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Investments

Are there any significant financial assets of the estate that might be complex in nature; are there debts of the estate, or did you secure any unpaid loans on behalf of anyone including family members, beneficiaries or others and are they clearly documented; are there any charitable groups listed as beneficiary?	2	1	0
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Directives of the Will

Is there a legal Will, or is it handwritten or done by do-it yourself methods; are the instructions within the Will clear, logical and likely to avoid contest by any of the beneficiary group; do all the beneficiary group know the contents of the Will; has anyone been left out, or is there disproportionate allotment of the estate assets?	2	1	0
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Real Estate

Is there a cottage or family assets/antiques or heirlooms that might have significant emotional value to one or all family members; has any one of the beneficiary group or extended family been living in your principal residence or have primary use of the cottage; any foreign or rental properties?	2	1	0
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Non-Real Estate Assets

Is there a family business or other business assets that require management or sale; is there a clear succession plan in place; is it in harmony with the Will directions and expectations of the beneficiaries?	2	1	0
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TOTAL ESTATE RISK PROFILE SCORE:

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A moderate to significant profile score would suggest that Executor Liability Insurance protection would be advisable for the benefit of the estate and executors.

Score: **0** = low risk;
1-3 = moderate risk;
4 or over = significant risk

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