

Estate Trustee Liability Insurance – Information for Insurance Brokers

Protection for a complex role

Executors have many responsibilities to ensure the smooth transition of the estate according to the wishes of the testator. It's an important role – and one that can be challenging.

Naturally, the disposition of an estate is a highly stressful and emotional time for everyone involved, especially when considerations of money and family relationships factor in. Sometimes, despite the best intentions and efforts of the executor, the expectations of the beneficiaries are not – or, possibly cannot be – met.

That puts executors in a difficult situation. It could even mean legal action from a beneficiary or a creditor. ERAssure Estate Trustee Liability Insurance simply makes good sense, protecting both the estate and executor from liability and defense costs.

How much does it cost?

Premiums depend on the estimated value and complexity of the estate, type of assets, number and qualification of executors, and the amount of coverage required. Premiums for the three year policy start at \$2,000 for a basic estate and can be over \$10,000 for high-valued estates with complex assets.

Combine these premiums with your 10% commission rate and you can see that offering Estate Trustee Insurance to your clients makes sense for you too.

What can go wrong during the administration of an estate?

Here are some case examples of common things that go wrong during estate administration that can result in significant damages and legal expense for the estate and the executor despite best efforts:

- 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. Beneficiaries sue executor for negligence in the estate administration to recover the value of the portfolio prior to the investment decline plus legal expenses.
- Executor fails to properly value household assets which are subsequently sold privately through a garage sale. One of the assets is subsequently determined to have been a valuable work of Canadian art which sold at public auction for \$100,000. Beneficiaries sue executor for negligence in estate administration for the net proceeds that would have been achieved at auction plus legal expenses.
- Executor fails to investigate one beneficiary's claim of a debt due to them from the estate; executor distributes the proceeds of the estate to all beneficiaries without provision for the claimed debt. Aggrieved beneficiary sues executor successfully for the debt and legal expenses which executor is now obligated to pay out-of-pocket after an attempt to recover the incorrect disbursement from the other beneficiaries is unsuccessful.

- Executor distributes cash from the estate to the beneficiaries immediately following probate; a claim is brought under applicable family law provisions by the child of a former female friend of the deceased. Estate has been distributed and the executor is now responsible to defend and settle the action personally.
- Executor elects to sell real estate assets privately to avoid real estate commissions. Purchaser subsequently sues executor based on non-disclosure of material information required to be disclosed under applicable real estate law. Beneficiaries sue executor for awarded amounts for rehabilitation, repair and temporary living expenses incurred by purchasers plus their legal expenses.

Policy Highlights

1) Coverage Details

- Executor Insurance covers the executor for personal liability and defense costs should they face a claim regarding many of the decisions they make in the course of administering the estate
- claims-made liability coverage with a single occurrence and aggregate liability limit
- 3-year policy term
- First dollar coverage for legal expenses and indemnity
- no deductible

2) Territory

- The coverage territory is Canada (excluding Quebec). Coverage also applies for foreign assets 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.

3) Policy Limitations

- Foreign Assets: If the foreign assets of the estate are more than 15% of the total value of the estate, the policy limit is reduced to the lesser of 15% of the Limit of Liability or \$100,000 in respect of any claims arising out of such foreign assets.
- 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 any business assets.

4) Exclusion Highlights

- Claims arising out of the executor providing professional services for compensation (including mortgage brokers, insurance brokers or agents, financial advisors, solicitors or public accountants) to the estate, concurrent with being an executor.
- Tax liabilities in any respect are not covered by the policy.
- Failure to arrange or maintain direct damage and third-party liability insurance on the estate assets.
- Fraud, dishonesty and malicious acts or activities are excluded
- Claims relating to the Duties of the trustee pertaining to a Will that has not been admitted to probate
- Pollution

About ERAssure®

ERAssure is a registered trademark of Estate Risk Protection Plan Inc. and we provide errors and omissions insurance to executors, estate trustees, and estate administrators in Canada through independent brokers.

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