



# WILLS

# Matter

FULTON & COMPANY LLP

— celebrates 125 years —

## HOLDING EXECUTORS ACCOUNTABLE

An Executor doesn't have carte blanche in his or her dealings with an estate – the Executor has a legal or "fiduciary" duty to the beneficiaries to act reasonably and in good faith. Part of this duty involves the requirement to account. If an Executor is unable to account for all assets and monies of the estate then he/she will be liable for any loss and will have to reimburse the estate from his/her own pocket.

In British Columbia the accounting is usually accomplished by preparing a written document disclosing the following information:

1. an inventory of the estate at the time of death;
2. an accounting of any monies received since death (including income and interest);
3. an accounting of all payments made from the estate since death (such as income tax, debts, and legal, accounting or Executor fees,); and
4. the proposed distribution of remaining monies or assets to beneficiaries.

It is essential that Executors keep accurate and complete accounting records, to enable them to prepare Accounts.

The beneficiaries have the opportunity to review and approve the Executor's Accounts. At the same time, the Executor should ask the beneficiary to sign a Release, releasing the Executor from all liability in connection with administering the estate.

In most cases, beneficiaries are able and willing to approve Accounts, and so the process can be done informally. Sometimes, however, a beneficiary might refuse or be unable to consent to the Executor's Accounts. For example a beneficiary may feel that the Executor has dealt with the estate improperly or irresponsibly, or the beneficiary may be incapable of consenting (i.e., is a minor or mentally disabled).

If this occurs, it will be necessary for the Executor to apply to the Court to have the Executor's Accounts approved by the Court.

Estate lawyers are experienced in preparing Accounts in a manner that is both informative and fulfills the duty to account. If you are acting as Executor and have not retained a lawyer to assist you with the administration of the Estate, we recommend that you contact one when it comes time to preparing your Accounts and obtaining Releases from the beneficiaries.

### Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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