

FOR MORE INFORMATION OR INQUIRIES



**Lori
Duffy**
416-947-5009
» [full bio](#)



**Pamela
Liang**
416-619-6284
» [full bio](#)

Important Amendments to Ontario's *Estate Administration Tax Act*

Back in 2012, we published an [article](#) forewarning about the proposed changes to the *Estate Administration Tax Act* in Bill 173 (*Better Tomorrow for Ontario Act (Budget Measures), 2011*). After much discussion and attempts by various organizations to obtain amendments to the proposed changes, the regulations giving effect to Bill 173 came into force on January 1, 2015 and the changes are as onerous as promised.

As a refresher on the estates administration process in Ontario, when a person dies, the individual(s) appointed to manage the deceased's assets are known as the estate trustee(s). However, some assets may not be accessible to the estate trustee until he, she or it provides evidence of their appointment. In these cases, the estate trustee must apply for a Certificate of Appointment of Estate Trustee ("**Certificate of Appointment**") from the Ontario Superior Court of Justice and pay an estate administration tax on the value of the assets of the deceased's estate.

Changes Effective January 1, 2015

Any application submitted on or after January 1, 2015 will be subject to the new regulation. A new information return must now be received by the Ministry of Finance within 90 days of issuance of the Certificate of Appointment. The form of the return and its contents are prescribed by regulation. One of the items an estate trustee must now provide to the Minister of Finance is a breakdown of the fair market value of each asset owned by the deceased on the date of death as well as a detailed description of the asset. This will require valuations and appraisals of certain assets and the collection and recording of more information, which will be a much more onerous process.

WeirFoulds LLP
66 Wellington Street West
Suite 4100, PO Box 35
Toronto-Dominion Centre
Toronto, Ontario, Canada
M5K 1B7
Office 416.365.1110
Facsimile 416.365.1876
www.weirfoulds.com

Follow us on:  

Records and documentation of each asset are a crucial part of the administration. If the estate trustee becomes aware that any information submitted in the estate information return is incorrect or incomplete or subsequently discovers another asset, a revised return must be filed no later than 30 days after the estate trustee becomes aware of this information.

There is also no mechanism in place for ending the ongoing liability of an estate trustee once the estate is ready to be wound up. The Ministry has four years from the date of the return to assess. The Ministry briefly considered the idea of providing a Clearance Certificate to estate trustees but this proposal did not materialize in the regulation.

Failure to comply with the regulation could result in a fine of not less than \$1,000 and up to twice the amount of tax payable by the estate, imprisonment for up to two years or both.

What Happens Now?

The additional work and potential liability may result in an increased reluctance to act as an estate trustee. On that note, greater consideration should be given as to who would be appropriate to appoint as estate trustee now that the task of administering an estate has become more complicated.

Testators may also want to consider arranging their estate plans so as to minimize the need for a Certificate of Appointment. Estate planning strategies that were once considered unsuitable for relatively uncomplicated estates are now under re-consideration as a result of the new regime.

For more information on how these changes can affect your estate, please contact us.

ESTATES, TRUSTS AND CHARITIES

Since the creation of the firm, our lawyers have been advising clients on all aspects of will preparation, family and business trusts, estate planning, business succession planning, capacity and guardianship issues, estate litigation, and estate arbitration and mediation. Our Estates, Trusts and Charities Practice is led by senior partners with a wide range of experience. Our practice members are active in the litigation, mediation and corporate and commercial areas of practice. Several of our members have been recognized as leading practitioners in their area of expertise in various legal directories. Our clients include trust companies, charities, not-for-profit corporations, independent business owners, executors, estate trustees and individuals.

ABOUT THIS NEWSLETTER

For over 150 years, the lawyers of WeirFoulds have been proud to serve our clients in their most difficult and complex matters. We are the firm of choice for discerning clients within our core areas of practice: (1) Litigation; (2) Corporate; (3) Property; and (4) Government Law. Within these core areas, as well as key sub-specialties, we address highly sophisticated legal challenges. We have acted in some of Canada's most significant mandates and have represented clients in many landmark cases. Reflecting the firm's focus, our lawyers are consistently recognized as leaders in their chosen areas of practice and in the profession at large. To learn more about our firm, visit www.weirfoulds.com.

Information contained in this publication is strictly of a general nature and readers should not act on the information without seeking specific advice on the particular matters which are of concern to them. WeirFoulds LLP will be pleased to provide additional information on request and to discuss any specific matters.

If you are interested in receiving this publication or any other WeirFoulds publication by e-mail, or if you would like to unsubscribe from this newsletter, please let us know by sending a message to publications@weirfoulds.com.

© WeirFoulds LLP 2015