



REVIEWING ACCOUNTS: WHAT LAWYERS NEED TO LOOK FOR – TIPS & TRAPS

A fiduciary (which includes an Estate Trustee, Trustee, Guardian for Property or Power of Attorney for Property) has a duty to maintain continuous, comprehensive, detailed and accurate records of their management of assets. If a fiduciary chooses or is compelled to apply to court to pass accounts, the *Rules of Civil Procedure* mandate the format of the accounts (Rule 74.17ⁱ) (Reg. 100/96 for Attorney Accounts). The Rules are very specific as to the form of the accounts and the duty to account is a high standard, particularly if compensation is being claimedⁱⁱ. Not only must the accounting be accurate, thorough and complete, the fiduciary must keep all vouchers (receipts/supporting records) and these must be available for inspection. When reviewing fiduciary accounts you must thoroughly review the transactions and ensure that they fully account for all assets and make sense. Below are some tips and traps to look for when reviewing accounts.

General Review of Accounts – What to look for

- Accounts in passing format? Rule 74.17 (Reg. 100/96 for Attorney accounts)
- Do the numbers add up? Do the math!
- Review the governing documents. In compliance with terms? (i.e. Management Plan, POA, Will, Codicil, Trust, Orders)
- Vague entries – investigate further, ask questions, ask to review vouchers
- Opening and closing balances – is there unexplained erosion of capital, unacceptable growth rate?
- Missing Vouchers
- Co-mingling of Funds
- Non-arm's length transactions

- Has trustee delegated duty/authority? Express provision to do so in governing document? Common business practice? Nature, location and size of asset? Did trustee monitor?
- Even hand rule among beneficiaries. Is Trustee favouring capital or revenue beneficiaries?
- Is there a list of liabilities at open and close? Reasonable? Supporting documentation?

Summary page

- If not the first accounting, check the carry forward balances – do they match?
- Does the total net amount of the capital and revenue accounts equal the investments and cash on deposit?

Original Assets

- Is there a Statement of Original Assets at the opening and closing of accounts, any digital assets? verify against vouchers (ie. Investment/bank statements, appraisals, etc.)
- If not the first passing, review previous Judgment and original assets remaining (do they match the opening statement?)
- If original assets have been sold/redeemed/transferred, can you track in capital receipts?

Capital Account

- Can you track the sale/disposition of each original asset?
- Real estate transactions – gross or net values reported? Review supporting material (statement of adjustments, etc.)
- Capital gains/losses – recorded properly? Do the figures seem reasonable?
- Expenses/disbursements – reasonable? Supporting vouchers available for inspection?
- Any capital encroachments? Permitted? Reasonable?

Revenue Account

- Check original asset and investment list – have interest and dividends been recorded in a timely fashion and recorded properly?
- Are income distributions mandatory or discretionary? Trustee to consider factors?
- Dividends – be mindful that not all dividends are revenue, depends on the form of the dividend declared (“Form Rule”). Rolling back of profits into the corporation (i.e. options to purchase shares, issue of new shares, payments to redeem or retract would be considered capital, whereas profits are considered income and recorded in revenue)
- Expenses/disbursements – reasonable? Supporting vouchers available for inspection?

Investment Account

- Lack of investments over long period of time (duty to convert)
- Does it balance, including number of shares and units at the end of the accounting period?
- Mutual funds – reported correctly? (reinvestment of income to purchase units)

Compensation

- Pre-taking?
- Fees to be deducted from compensation?
- Review legal accounts to ensure that no executors duties included in legal account, if so, they should be deducted from compensation
- Other fees paid to professionals? Fees to prepare accounts?
- Fees being calculated on transfers? Large assets?
- Care and management fee claim? Entitled?
- Is HST payable on compensation? (commonly only if a corporate trustee OR if the estate trustee is in the “business of estate administration”)

BEST PRACTICES:

- Read all governing documents (Will/Codicil/Trust/POA/Management Plan). Are there any earlier Orders or Judgments amending the governing document? Is there a previous Judgment on Passing of Accounts?
- Be thorough. Review all transactions and vouchers. Ask questions.

This checklist is intended for the purposes of providing information and guidance only. This checklist is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive.

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MORE RESOURCES:

<http://welpartners.com/resources/WEL-on-fiduciary-accounting.pdf>

ⁱ Rule 74.17, Rules of Civil Procedure, R.R.O. 1990, Reg. 194

ⁱⁱ Zimmerman v. Fenwick (indexed as Zimmerman v. McMichael) 2010 ONSC 2947