

# **Accounting: The Personal Representative's Duty and What Must Be Provided**

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Presented by:  
**Jason Sweeney**  
**Underwood Gilholme**  
**Calgary, Alberta**

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## **ACCOUNTING: THE PERSONAL REPRESENTATIVE'S DUTY AND WHAT MUST BE PROVIDED**

The duty of a personal representative (the “PR”) to account to those interested in the estate of a deceased is a central responsibility associated with the role. As important as the obligation is, there seems to be little understanding among the public and, by extension, new PRs as to what that obligation actually means for the PR when undertaking that role. It is your role as solicitor for the PR to ensure that the PR is forewarned with full information as to the nature of their responsibility.

### **A. DUTY TO ACCOUNT**

The duty to account has deep roots in the common law. It is often described as a duty on the part of a PR to account to those interested in the estate for the assets of the estate at the time of death, account for all monies received, together with an account of all monies remaining on hand. The PR must also be prepared at all times to provide those accounts.<sup>1</sup> Simply stated, the beneficiary of the estate is entitled to the information that allows that beneficiary to enforce the terms of the trust.<sup>2</sup> The duty to account is the key that allows the beneficiary to exercise that right.

This duty has been further detailed in our legislation. According to the *Estate Administration Act*, S.A. 2014, c. E-12.5, (the “EAA”) one of the core tasks of the PR for the estate is to “distribute and account for the administration of the estate.”<sup>3</sup> This duty applies to the PR regardless of whether that PR is an executor, administrator, or judicial trustee for the estate. The Trustee under a trust in the Will is also required to account for that trusteeship in the same fashion as the PR as defined in the Act.<sup>4</sup> It also applies to the executor regardless of whether the grant is issued.<sup>5</sup> As such, the duty does not change or is in any way relaxed when the PR is not acting under the authority of a grant. The PR must also comply with the Rules while undertaking that responsibility.<sup>6</sup>

### **B. FORM OF ACCOUNTS**

The general rule is, of course, that the PR must keep a complete record of the PR’s activities. What is that record to look like? The Alberta Surrogate Rules (the “Rules”) do state that the PR must provide “financial statements” showing “the property and money received and the property

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<sup>1</sup> Donovan W.M. Waters & Mark R. Gillen, ed, *Waters’ Law of Trusts in Canada*, 4<sup>th</sup> (Toronto, Thomson Reuters Canada Limited, 2016)( ch.19.IV.A)

<sup>2</sup> *Ibid* at ch. 19.IV.C.2

<sup>3</sup> *Estate Administration Act*, S.A. 2014, c. E-12.5, s.7(1)(d)

<sup>4</sup> *Ibid.* at s. 46

<sup>5</sup> *Ibid* at s. 1(g)

<sup>6</sup> *Ibid.* at s. 32

distributed and the money paid out respecting the administration of the estate.<sup>7</sup> There is not, however, any standard or prescribed form for those financial statements. While the financial statement can take many forms, the Rules do require, however, that certain information be part of those statements as follows:

- (a) an inventory of property and debts at the beginning and end of the accounting period;
  - The PR should also reference the NC7 Inventory that was filed with the original Application for grant of administration or probate as the starting point for the purposes of the financial statement. The more work that is put in at the outset in determining the actual nature and extent of estate assets will make the subsequent preparation of the estate financial statements that much easier. In the interest of full disclosure, additional asset information may also find its way into the NC 7. For example, in cases where the ownership of assets is uncertain or in dispute reference could still be made to those assets with a qualifying statement as to the nature of the uncertainty or dispute.
  - The values of assets that might be referenced in subsequent accounting materials may change over time. For example, an investment may have appreciated between the date of death and the time that it is liquidated. Furthermore, additional information received since the date death may result in a different estimate of value with respect to certain estate property. That new information should be noted on subsequent accounting materials showing reasons for the variance in value.
- (b) a statement of all property and money received during the accounting period showing whether it is capital or income;
  - e.g. proceeds of the sale of estate assets, assets unknown at the time of the preparation of the NC7 and discovered during the course of the administration of the estate
  - Assets that were listed as part of the original inventory and not yet disposed of or otherwise liquidated would also be listed. The value as shown on the original inventory would be used for these purposes unless newer more accurate information is available.

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<sup>7</sup> Alta Reg 130/95, s 97(1)(a)