

## Who Signs for the Estate?



**By Brian Madigan LL.B.**

This is a somewhat troublesome issue. The quick answer is that it is the **Estate Trustee**.

Frequently, the appointment comes as a surprise to the Trustee and they are not ready to assume their responsibilities. Not all are ready, willing and able. In fact, in many circumstances, an individual appointed as Estate Trustee will decline the appointment. So too, will a professional trustee if the assets of the estate are insufficient or the deceased had not previously executed an appropriate compensation agreement.

The Will appoints an Estate Trustee. After the deceased has been dead for seven (7) days, the person appointed may make application to the Court for confirmation of the appointment.

The Court will issue a document called a “**Certificate of Appointment of Estate Trustee with Will Annexed**”. This is proof that the person is the correct Trustee. Third parties can rely upon this court document. They don’t need to rely upon the Will itself.

Formerly, the Estate Trustee was called the **Executor**, and that is still a term used in most other jurisdictions. The Estate Trustee is responsible to the Court for the administration of the estate.

Similarly, if someone dies without a Will, then a person (usually a close relative, and there is an order of priority) will apply to the Court to look after the estate. This time the Court issues a “**Certificate of Appointment of Estate Trustee without a Will**”. Formerly, this person was referred to as the **Administrator**, and that term is in common usage in jurisdictions other than Ontario.

However, this time the person has to file a bond or post security with the Court for the due performance of the administration of the estate. There is no bond for someone appointed under a Will, because the deceased chose that individual.

As for signing a listing agreement or an agreement of purchase and sale, it must be the Estate Trustee. No one else has authority to do so. If there is a Will, the

Estate Trustee derives their power from the moment of death. The risk is that there is more than one Will, or that the document offered as the Will is not valid for one reason or another.

But, this risk can be quantified. On the other hand, it would be rather foolhardy to sign a listing agreement with someone who intends to make application for appointment (without a Will) since their authority will only commence upon issuance of the Court Order.

The best way to cause family strife would be to have the wrong person sign the listing agreement or an agreement of purchase and sale. This is also a good way to get sued, if you are the real estate agent.

The correct way to describe a vendor would be:

John Smith, Estate Trustee of the Estate of William Smith (short version)

John Smith, Estate Trustee of the Estate of the late William Smith, deceased (longer version)

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