



## Why You Should Consider Appointing an Estate Trustee During Litigation

During the untimely passing of a friend or family member; the complexities and nuances of managing a contentious estate can be both overwhelming and highly stressful—especially if there is no will already in place. To avoid the stress and confusion, **Allan Nackan** suggests appointing a neutral estate trustee during litigation might be the right move.

---

When it comes to writing a will, it's common practice for people to appoint a family member, trusted friend, or neighbour as the executor or trustee of their estate. The trouble is, this route can lead to numerous challenges—including the appointee being unsophisticated in business matters, an abuse of power, misappropriated assets, unpaid taxes, or anxious creditors.

A contested will or estate typically involves a complex court-driven process where the distribution of assets of significant value, are being challenged. Assets such as real estate, stock portfolios and high-end vehicles, for example. With that in mind, a contested estate may turn into a disconcerting scenario that should be approached with caution and care.

In many cases, the appointed trustees or executors have little-to-no experience performing this type of role and frequently find the entire process daunting. They may not understand each of the formal steps that go into the distribution of estate assets, such as the proper forms to file with the Canada Revenue Agency or the best way to capitalize on the assets of the estate.

In other situations, the individual appointed may not be well-equipped to carry out the job—perhaps because they are suffering from mental health challenges due to the death of the family member, have financial issues of their own, or have just too much going on. In these situations, money may go missing or assets may start disappearing before they have a chance to be distributed, which can lead to court action, deep family rifts or a lengthy will execution.

If you find yourself amid an intractable estate dispute, or, if you're an executor or trustee who's in over your head, you may be uncertain how to proceed. Often, this indicates that the appropriate step to take is to appoint a professional firm such as Farber, who is skilled in dealing with contentious situations—to act as an impartial estate trustee during litigation (also

knows as ETDL). Should you feel that the current estate trustee is not dealing with the assets in a timely manner or may be negligent, causing the value of the assets to dissipate, you may attend court and have the estate trustee replaced.

## How do you appoint a professional?

To go this route, you must first have a court officer appointed—a professional that will typically be a trustee in bankruptcy, a lawyer, or an accountant.

Once you've completed this step, the officer will take control of the deceased's assets. Essentially, these assets will be put under the control of the ETDL who will have the authority to sell them, file the associated tax returns, deal with any pending litigation or contentious issues, pay from the proceeds any income tax owed by the estate due to capital gains and or income, or identify creditors and distribute the remaining funds in accordance with the individual's will, if there is one.

In other words, they take control of the situation and act on behalf of the estate, so you don't have to. The complexities and nuances of managing an estate can be both overwhelming and highly stressful.

## When does it make sense to hire a professional?

Sadly, family feuds, improper actions by one of the beneficiaries and disputes are more common than may be imagined. During our work, we have seen estate trustees gambling away a deceased's assets or misappropriating those assets for their own use. We have also worked with overwhelmed family members, such as a widow whose partner died without a will and who was having trouble navigating the complex number of the deceased's businesses, real properties, unpaid taxes, and creditors left behind.

Apart from executor and trustee-related issues, it's also common to get help when resolving disputes with an insurance company. Generally, insurers will pay out on life insurance—that is, unless the death was under unusual circumstances or not due to natural causes.

In one example, a young man with no will died under highly unusual circumstances. The insurers claimed the catastrophe was the deceased's fault. The man's family retained the GlassRatner team to represent them in attempting to reach a settlement with the insurance company. Thereby avoiding delaying settling the estate and more significantly, costly litigation against the insurance company.

## Avoid added stress in challenging times

Losing a loved one is stressful enough before you add the daunting task of estate asset management and distribution. As you navigate these difficult times, it's important to recognize that emotions are running high for everyone—and your best

option is to communicate openly, honestly, and compassionately.

Given the role emotions play during this period, hiring a trusted professional can be one way to ensure the process runs smoothly. They can help you avoid family quarrels, pressure from certain family members and, potentially, litigation. If you've already found yourself in a legal battle, an ETDL can help you preserve the estate's assets, obtain the required documentation, and disseminate information to all parties.

In other words, they act as a neutral, responsible, non-partisan third party—and can help alleviate the stress and burden of managing a loved one's estate.

## Estate Trustee During Litigation

Help reserve assets, obtain the required documentation, and disseminate evidence to all parties. [Read more](#)

---

## Our Contributors

*Allan Nackan is a Senior Managing Director at GlassRatner and co-leads the firm's Restructuring practice. His practice focuses on corporate insolvency and restructuring, financial advisory services, cross-border restructuring, fraud investigations, and forensic accounting. Allan can be reached at [anackan@glassratner.com](mailto:anackan@glassratner.com) or at 437.294.4602*

---