

The Clearance Certificate: What it is, and why it matters

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February 2019

Advisor's Edge

Providing executors with peace of mind

One of an executor's most important jobs is to obtain the clearance certificate: written confirmation from the Canada Revenue Agency that the deceased (and the deceased's estate) has paid all taxes and associated interest and penalties up to the date the certificate is issued. How does the executor obtain one, and why is it so important?

Tying everything up

Michele Allinotte, founder of Allinotte Law Office in Cornwall, Ont., says the importance of the clearance certificate can be summarized in three words: peace of mind.

“In layman's terms, it ties everything up in a nice little bow,” she says. “It can provide you some comfort that you don't need to keep seven years of tax returns for the deceased in the event that something is re-evaluated. You know it's all finished.”

As Allinotte points out, a clearance certificate isn't a legal requirement. But the decision not to obtain one could lead to personal liability for the executor, who could be responsible for unpaid taxes if the estate has already been distributed to beneficiaries.

To obtain a clearance certificate, an executor needs to fill out Form TX19 and file it with appropriate documents, including a copy of the will, a statement of estate assets with adjusted cost base and proof that the executor is the legal representative.

Allinotte advises executors to plan on a six-month wait while the CRA processes the document. If the CRA hasn't responded after that time, she suggests executors contact the agency to see if the application has been lost or misfiled, or if additional information is needed.

Another reason to touch base with the agency is to give comfort to impatient beneficiaries.

“If it’s been a long period, the estate trustee probably has the beneficiaries saying, ‘What’s the problem? What’s going on?’” she says.

“If the executor calls CRA, makes a note of whom they spoke to on what day and what they said, then relays that information to the beneficiaries, then the beneficiaries can’t say that the executor sat on their hands for two years.”

A good goalpost

A clearance certificate is not necessarily required when a spouse is both the executor and the estate’s sole beneficiary, says Katharine Zhang, associate at Walsh LLP in Calgary.

“They’re aware of their spouse’s finances, and they’ve filed the tax returns, and they’ve filed the estate trust return, and they’re OK with knowing that nothing else will be distributed,” she says. “And more likely than not, if there is a reassessment, that spouse isn’t going to say ‘I’ve already distributed the assets,’ because they have the assets.”

Depending on the estate’s circumstances, Zhang often recommends obtaining the clearance certificate in two stages: first, when the deceased’s terminal return is filed; and second, when the executor files the final return for the estate itself.

The two clearance certificates can “serve as goalposts for both the executor and beneficiaries,” Zhang says.

“CRA is usually the top creditor with the top priority in terms of distribution of assets, so the clearance certificate gives the executor and beneficiaries more confidence to say, ‘OK, now we can do an interim distribution, or now we can do a final distribution.’”

If the executor wants to distribute assets before the certificate is obtained, Zhang typically recommends executors keep a “holdback” to pay any potential tax liability.

“We always say double or triple what you think the tax liability might be,” she says. “Leave a healthy reserve, and then, with blessing from the estate accountant, you can go ahead.”

Four common mistakes when dealing with clearance certificates

- **Making a distribution before obtaining a clearance certificate**
If estate assets have been distributed before taxes are paid, executors may be personally liable for any amount owed to the CRA.
- **Not keeping an appropriate holdback**
Experts typically suggest holding back two to three times the expected tax liability—enough to cover any taxes owed, reassessments, errors on prior returns and other potential issues.
- **Insufficient documentation**
Failing to provide the CRA with proper or complete documentation could delay the process by several months.
- **Assuming the clearance certificate is a sign-off for the estate**
The clearance certificate only confirms the deceased's tax liability—executors must also obtain approval from the beneficiaries before the estate can be considered closed.

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