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A GUIDE FOR ESTATE TRUSTEES

The Executor's Problem

When a Business Is in the Estate

A practical map for anyone administering the estate of an Ontario business owner.

FOR EXECUTORS, THE FAMILIES THEY SERVE, AND THE OWNERS WHO WILL ONE DAY NAME THEM

CONTENTS

What this guide covers

BEFORE YOU BEGIN

A note on who this is for

This guide is written for one specific reader: the person named as executor — estate trustee, in Ontario's language — of an estate that contains an operating business.

If that is you, you have probably already found the general guidance. There is a great deal of it, most of it written by law firms, and most of it is good: it explains probate, your fiduciary duties, the tax filings, the personal liability the role carries. That material is genuine and you should read it. This guide does not repeat it, and where it matters, it points you back to it.

What that material rarely covers is the thing that has likely brought you here: the estate is not just houses and bank accounts and a portfolio. There is a company in it. Perhaps you are part of it, perhaps you have never set foot in it — but either way it is now, in some sense, your responsibility, and a business behaves nothing like the other assets in an estate.

A bank account waits patiently while you get probate. A business does not. It has employees who need to be paid on Friday, customers deciding whether to stay, a bank watching its covenants, and a value that can evaporate in the weeks it takes to sort out who is in charge. The tax bill it generates can be large, and the cash to pay it is often locked inside the very thing being taxed.

This is a map of that terrain. It will not make you an expert, and it is not tax, legal, or accounting advice — administering a business-owning estate is work for a team of professionals, and much of your role is knowing which one to call, and when. The goal is narrower: that you finish it understanding the shape of the problem, the questions worth asking, and the order to ask them in.

Nothing here is tax, legal, or accounting advice. Every situation is different, and the stakes are high. Retain an estate lawyer and an accountant early — before you act, not after.

THE SHAPE OF THE PROBLEM

Why a business changes everything

An estate made of a house, some registered accounts, and a portfolio is, for all its emotional weight, administratively orderly. A business breaks that at once — on three fronts.

I It does not wait. Every other asset in the estate is patient; a company is not. Payroll runs whether or not you have probate. Suppliers want to know they'll be paid, customers that the lights stay on, and an unsettled key employee is fielding a call from a competitor. The value you are responsible for preserving can walk out the door while the paperwork is still being filed.

II It resists valuation. A bank balance is a number; a business is an argument — about earnings, goodwill, what a buyer would really pay. And that argued-over figure does two heavy jobs at once: it sets the tax the estate owes and what each beneficiary is entitled to. People who love each other can fall out over which number is right.

III The tax is real; the cash may not be there. The estate can owe a great deal of tax because the business is valuable, while having no way to pay it except by damaging the business. Value on paper, no cash in hand. This is the trap at the centre of everything that follows.

Hold those three in mind — the clock, the contested number, the liquidity trap. Almost everything ahead is a consequence of one of them.

SECTION ONE · 1

The clock you didn't know was running

The first thing to understand is that you may have less time than the legal process suggests.

Getting appointed takes weeks; probate takes longer. But the business runs on its own clock, and that clock started at the moment of death. In the gap between the two, a set of quiet questions is being answered whether or not anyone is answering them deliberately: Who signs cheques? Who talks to the bank? Who reassures the biggest customer? Who tells the staff what is happening? If the answer is "no one, yet," value is being lost that no plan can recover later.

The practical problems arrive fast. You may not have signing authority over the company's accounts until you are formally appointed — but the rent is due now. The bank's loan agreement may contain a clause triggered by the owner's death, quietly putting the company in default. The person who really holds the customer relationships may be deciding this week whether to stay. None of it waits for the estate to be tidy.

WHAT TO DO

Your instinct as executor is caution — act only once you have authority. That instinct is right for most of the estate and dangerous for the business. The reconciliation is not to act rashly, but to get in front of the right people at once: existing management, the company's lawyer and accountant, and its bank. Ask your estate lawyer early what you may and may not do before your appointment is formal — the answer shapes everything.

SECTION TWO · 2

The liquidity trap

If you take one thing from this guide, take this.

When a business owner dies, Canada's tax system generally treats them as having sold everything they owned the moment before death — a deemed disposition. A lifetime's gain in the business becomes taxable at once, and for a company that has grown, the bill can be very large.

The trap: that tax is owed in cash, on a deadline, but the wealth it is calculated on is locked inside a private company that cannot be sold quickly, in pieces, or perhaps at a fair price on the estate's timetable at all. The estate is asset-rich and cash-poor at the moment it owes the most — and without ready liquidity the business is sold in a hurry, and cheaply, or other assets are liquidated to save it.

So the first question is not "what is the business worth" but "where does the cash come from." Usually one of: life insurance arranged for exactly this (see the next section); liquid assets outside the business; a tax deferral or instalment election, if available; or no plan at all — in which case the job is damage control, done by moving fast with expert help.

WHAT TO DO

Establish the size of the tax exposure and the source of liquidity early, and together — they are one question, not two. This is the first thing to put in front of the estate's accountant. Everything else is shaped by the answer.

SECTION THREE · 3

Is there a policy — and does it work?

If there is life insurance connected to the business or the owner, you have likely found the intended answer to the liquidity trap. Your task is not to buy it — that decision was made, or wasn't, long ago — but to read it correctly, because the structure determines whether the money helps, and where it lands.

Who owns it? A personally owned policy pays its named beneficiary — the estate or an individual. A corporate-owned policy pays into the company, and getting the money out to where it is needed involves further mechanics.

Who is the beneficiary, and does it use the Capital Dividend Account? Proceeds to a named individual bypass the estate entirely — which may be right, or may leave the estate short for tax. When a corporation receives a death benefit, a large portion can generally be paid to shareholders tax-free through the CDA; done carelessly, that advantage is wasted. This is not a do-it-yourself calculation.

Is it funding a buy-sell? If the business has other owners, the policy may be tied to a shareholders' agreement requiring the survivors to buy the deceased's shares — in which case it is not free liquidity for the estate, but fuel for a transaction already agreed.

WHAT TO DO

Gather every policy document and put them before the estate's accountant and lawyer together, with one question: given how these are owned and structured, where does the money end up, and does that match where the estate needs it?

SECTION FOUR · 4

Whose company is it now?

If the deceased owned the business alone, ownership passes through the estate according to the will. If they owned it with others, a more urgent question arises: what happens to their share?

The answer may already have been written, and finding out is one of your first jobs. A shareholders' agreement — sometimes a separate buy-sell agreement — often governs exactly this event. It may specify that on an owner's death the survivors must buy the shares (or may), at a price or by a method it sets out, funded in a way it defines. Where such an agreement exists and is funded, much of the hardest decision-making has mercifully already been done.

Where it does not exist, or exists but was never funded, the estate can land in genuinely difficult territory: holding shares in a private company alongside survivors who did not choose you, with no agreed way to value the shares, no agreed buyer, and no cash to complete a sale even if one appeared. Disputes here can freeze a company for months.

Where a purchase does happen, the mechanics carry real tax consequences that turn on the structure — whether the survivors buy personally, whether the corporation redeems the shares, whether a hybrid applies. These are not choices to make by instinct; they change how much tax the estate and the survivors each pay.

WHAT TO DO

Find the shareholders' agreement early and read it with the estate lawyer. Two questions matter most: does its structure still match how the shares are actually owned today, and is it funded — is the money there to do what it requires? An agreement that has drifted out of date, or was never funded, is a problem to surface now, not when its clause is triggered.

SECTION FIVE · 5

Valuing a thing that resists valuation

Almost everything you must do — calculate the tax, treat beneficiaries fairly, satisfy a buy-sell, account to the court — depends on a single number that is genuinely hard to pin down: what the business is worth.

Unlike a listed security or a bank balance, a private business has no observable price. Its value is an estimate built from earnings, assets, goodwill, and assumptions about the future that reasonable people can dispute. Two qualified valuators can land on meaningfully different figures in good faith.

This matters to you beyond the tax bill. The valuation you use must be defensible — the CRA can challenge a figure it considers too low, and beneficiaries can challenge one they consider wrong in either direction. A casual or self-serving number is exactly the kind of decision that later exposes an executor to a challenge on their accounting.

WHAT TO DO

For any business of substance, engage a professional business valuator (a CBV) through or alongside the estate's accountant and lawyer. A proper independent valuation gives you a number you can stand behind with the CRA and protects you personally — you can show you relied on qualified, independent expertise rather than a figure you chose. The cost is an expense of the estate, and cheap next to the disputes it prevents.

SECTION SIX · 6

Fairness when one heir ran the business

Some of the hardest moments in a business-owning estate are not legal or financial at all. They are about family.

The classic situation: of the deceased's children, one worked in the business and is meant to inherit it; the others did not. The business is most of the estate. Now the will's instructions meet reality, and "equal" and "fair" turn out not to be the same word.

Splitting the business among all the children can force the one who runs it into an unwanted partnership with siblings who have no involvement — a well-documented recipe for conflict. Giving it entirely to the active child while the others receive far less can feel, to those others, simply unjust. As executor, you may be the one standing between these positions, carrying out a plan whose fairness is being questioned by people in grief.

Where the deceased planned for this, the tension is usually resolved by equalization — other assets, very often life insurance proceeds, sized and directed so the children not receiving the business receive comparable value another way. Where that was done, your task is to administer it. Where it was not, you may be carrying out a will that distributes an indivisible asset among people it cannot be divided fairly among, and clear communication, careful documentation, and the estate lawyer's guidance are your best protection.

WHAT TO DO

Read the will alongside any insurance and any shareholders' agreement, and ask whether they were designed to work together or merely coexist. Where equalization was planned, see that the pieces connect — proceeds reaching the intended child, shares reaching the intended child, will and agreement not contradicting each other. Where it was not, communication and documentation are your defence.

A WORKING CHECKLIST

Questions worth asking early

If this guide did its job, you have sharper questions than you started with. Here are the ones worth raising early with the estate lawyer and accountant — in the order the sections appeared.

CONTINUITY

Who is keeping the business steady — signing, banking, reassuring staff and customers — in the weeks before I am formally appointed?

LIQUIDITY

How large is the tax bill the business will generate, and where, precisely, is the cash to pay it going to come from?

INSURANCE

What policies exist, who owns them, who are the beneficiaries — and does the money actually land where the estate needs it?

OWNERSHIP

Is there a shareholders' agreement, is it funded, and does its structure still match how the shares are owned today?

VALUATION

Do we have an independent, defensible valuation of the business that will stand up to both the CRA and the beneficiaries?

FAIRNESS

If one heir inherits the business, how are the others made whole — and do the will, the insurance, and the agreement actually agree?

A WORKING METHOD

The team, and the order to call them

You will have noticed a refrain: talk to the lawyer, the accountant, the valuator. That is not evasion. Assembling and coordinating the right professionals is the executor's core competence in a business-owning estate — arguably more important than any single decision, because the decisions belong to the experts and the coordination belongs to you.

— **The estate lawyer, first and throughout.** Establishes what you may do and when, guides probate, interprets the will and any shareholders' agreement, keeps your administration defensible. Retain them before you act on the business, not after.

— **The accountant, immediately alongside.** Sizes the tax exposure, handles the deemed disposition and the estate's returns, advises on whether tax can be deferred, and works through the Capital Dividend Account mechanics on any corporate insurance.

— **The business valuator,** once a defensible number is needed — for tax, a buy-sell, or beneficiary fairness. Engaged through the accountant or lawyer.

— **The insurance and liquidity advisor,** to read what exists and where the money lands. With the accountant, works out exactly how any proceeds are owned, taxed, and routed — and whether that matches where the estate needs cash. If there is a shortfall, the options are a specialist question.

THE PRINCIPLE

Lawyer and accountant first and together, because they frame everything; specialists as the problems they solve come into view. Your job is not to be any of them — it is to convene them early, keep them talking to each other, and make sure no one solves their piece in isolation. In a business estate, every piece moves the others.

IN CLOSING

And a word for the still-living owner

Almost every difficulty in this guide traces back to a single fact: whether the business owner planned for this, and how well. The estate where the insurance was structured to land as the tax fell due, the buy-sell was funded, the equalization arranged, the valuation method agreed in advance — that estate is demanding but orderly. The executor administers a plan. The estate where none of that was done is where executors lose sleep, families fracture, and businesses are sold for less than they were worth, to pay a bill no one saw coming.

Which brings me to the second reader I hope has reached this page: not the executor in the middle of it, but the owner who is still here, still building, and has just recognized their own executor in these pages.

If that is you, the message is short. Everything that makes an executor's job impossible is something you can make manageable — but almost all of it has to be done now, while you are well and in control, not at the closing table and certainly not from beyond it. The freeze arranged two years early works; the one attempted too late does not. The policy structured deliberately lands where it is needed; the one never arranged leaves your family to improvise.

That is the work I do: mapping this terrain for owners while there is still time to change the outcome, and coordinating the team — lawyer, accountant, valuator, advisor — that puts the pieces in place in the right order. If this guide raised a question you cannot answer with confidence about your own business, that is usually a good reason to have the conversation.

ARRANGE A CONVERSATION

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ABOUT

Who you'd be working with

I'm Zachary Sikorski, Principal of Sheldrake Group, an independent insurance and business planning practice serving business owners and their families in Ontario.

Before founding Sheldrake Group, I spent my entire career in financial services, beginning in 2008 and most recently serving as a District Vice President at Sun Life, supporting independent advisory practices across Ontario and British Columbia. It was an unusual vantage point. Rather than building a single book of clients, I watched hundreds of planning conversations unfold, involving business owners, professionals, and families, close enough each time to see how hard it can be to connect otherwise sound investment, insurance, tax, and estate advice into one coordinated picture.

That mapping is the work I do now, independently. If something here raised a question you cannot answer with confidence, that is usually a good reason to talk.

LICENSING

Zachary Sikorski is licensed to provide life and accident & sickness insurance in the Province of Ontario. Insurance products and services are provided through Zachary Sikorski. Sheldrake Group is the practice name under which Zachary Sikorski conducts business.

DISCLAIMER

This guide is for general educational purposes only and does not constitute insurance, investment, tax, legal, or accounting advice. It does not recommend any specific product or strategy. The administration of an estate, the tax treatment of a deemed disposition, the structuring of insurance, and the interpretation of shareholders' agreements all depend on individual circumstances and current law, which is subject to change. Before acting on anything described here, retain your own qualified estate lawyer and accountant.