

ESTATES

ASSETS AND LIABILITIES: VALUATION AND INVENTORY

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Chapter 8

Assets and Liabilities: Valuation and Inventory¹

[§8.01] Introduction

This chapter discusses, in general terms, the valuation of assets and liabilities and gives some guidelines on the preparation of an inventory. Preparing an inventory to be used in the administration of an estate can be complicated. Please refer to Chapter 2 of the *Probate and Estate Administration Practice Manual* (Vancouver: CLE) for examples of an accepted format for the inventory and for accurate descriptions of particular assets.

[§8.02] Purpose of the Inventory

The personal representative will require an inventory and valuation of the deceased's assets and liabilities at the date of death. The inventory may be used by the personal representative for a number of purposes, including the following:

- (a) to assist in the preparation of the disclosure document submitted with the application for a grant of probate or administration;
- (b) as a checklist to ensure that the assets are gathered in, administered, and distributed;
- (c) to comply with the duty to pay debts;
- (d) to file an income tax return to the date of death and subsequent income tax returns until the estate is distributed;
- (e) to assist when preparing for the personal representative's accounts;
- (f) to consider the implications on the estate of claims under the *Wills Variation Act*, R.S.B.C. 1996, c.490 ; and
- (g) to assist in determining the solicitor's fees and the personal representative's remuneration.

The inventory should be kept up to date throughout the administration of the estate by recording sales, distributions, investments, and other changes.

[§8.03] Assets and Liabilities

The inventory should include every asset and liability of the deceased, although the final disclosure document that is submitted to the probate registry need not include assets passing outside the estate.

1. Property that passes to the personal representative

The inventory must include all real and personal property that devolves to the personal representative, whether the deceased held the property beneficially or in a representative capacity.

2. Property that does not pass to the personal representative

Property that does not pass to the personal representative includes the following:

- (a) property of which the deceased was a joint tenant and that passes by law to the surviving joint tenant;
- (b) property that by contract or will passes directly to a beneficiary other than a personal representative; for example, insurance payable to an assignee for value or a named beneficiary. Also included are the proceeds of a pension plan, RRSP, or RRIF payable to a named beneficiary (see *Granovsky*, at §8.05);
- (c) property that, although apparently belonging to the deceased, was the subject within his or her lifetime of a "triggering event" under the *Family Relations Act* or a community property regime; and
- (d) property held by the deceased as trustee.

The devolution of these forms of property is discussed in §9.02.

Note also that estate-planning vehicles may influence greatly what assets are included in the disclosure statement. For an interesting development in this area see a decision of the Ontario Court of Justice (General Division): *Granovsky v. Ontario* (1998), 156 D.L.R. (4th) 557. The testator, Granovsky, died leaving two wills: the "primary" will distributed the bulk of the estate and explicitly excluded corporate shares and capital; the "secondary" will directed the disbursement of the shares or capital in which the testator held an interest. The primary will was submitted to probate and received the grant subject to the condition that the trustee bring an application regarding the status of the second will. The main issue was whether the second will had to be submitted for probate at all such that the value inherent in the assets distributed under it would be included in the assessment of the value of the whole estate and subject to probate fees. Greer J. held that there was no need to prove

¹ Updated in June 2006 and January 2005 by **Kirsten H. Jenkins**, RBC Dominion Securities Ltd, Vancouver. Revised by Margaret H. Mason and Kirsten Jenkins, Bull, Housser & Tupper, in January 2001. Reviewed annually from January 1995 to January 2000 by Diana R. Reid of Lang Michener Lawrence & Shaw, Vancouver.

the second will or pay probate fees on the related assets; the directors of the companies in which the testator held shares or other interest were able to decide not to require a formal grant from the court and were able to deal with the distribution of assets. Accordingly, probate fees were not payable on these assets.

As well, the increased use of alter ego and joint partnership trusts has resulted in many assets that would traditionally form part of an estate falling outside the estate. Accordingly, these assets are not required to be included in the disclosure document, nor are probate fees payable in respect of them.

Property that does not pass to the personal representative need not be accounted for by the personal representative. Disbursements for dealing with that property should be kept separate from those associated with the administration of the estate and should not appear in the personal representative's accounts. It may be necessary for the solicitor to be separately instructed and retained by persons other than the personal representative who have an interest in the property.

3. Liabilities

A personal representative may be personally liable for the debts of the deceased to the extent of assets coming into the hands of the personal representative. Therefore, it is extremely important that the debts are properly listed and valued in the inventory of assets and liabilities. Debts should include not only those immediately payable, but also deferred debts, contingent liabilities, and guarantees outstanding. If the debt is or may be disputed, then it should be indicated that the validity of debt has not yet been determined. Particular care is necessary in describing liabilities in an application for a grant of administration because consents from creditors may be required or the existence of creditors may affect bonding requirements.

[\$8.04] Form of Inventory

There are many acceptable formats for inventories, but the form used should be simple and easy to read. It is also important to include in the inventory all assets passing within and without the estate.

The inventory is used primarily as an accounting record for the estate and the personal representative, and is not usually the document that will be submitted as a disclosure document with the application for the grant. If, however, the inventory is complete and carefully prepared, it can be of great help in preparing the disclosure document.

[\$8.05] Valuation

Valuation is part of the process of preparing the inventory. The assets of an estate should be valued for several reasons, including the following:

- (a) to determine capital gains and losses for income tax purposes;
- (b) to calculate foreign taxes arising as a result of the death of the deceased;
- (c) to resolve questions arising in the course of administration (for instance, regarding buy/sell agreements, the sale or distribution of assets, insurance against fire and other perils, and determination of option prices);
- (d) to comply with the requirement to disclose value in the disclosure document;
- (e) to calculate the amount of probate filing fees payable in an application for a grant; and
- (f) to determine what property transfer tax, if any, is payable.

This list is not exhaustive.

Valuation may be difficult and complex, depending on the nature of the assets and the particular circumstances. For instance, the value of a business interest may be affected by the terms of a partnership agreement, the articles of association, or a buy/sell agreement existing at the date of death.

If valuation is a problem, and if the estate is of significant value, it may be prudent for the personal representative to employ a professional appraiser or, in a case of company valuation, an accountant or other expert. Even in simple estates, a personal representative may be well advised to establish the asking price on a sale by means of one or more appraisals by experts. For example:

- (a) in a proposed distribution of personal goods to beneficiaries, it may be advisable to have an auctioneer's appraisal; and
- (b) if a house is going to be sold or distributed in specie, it may be appropriate to get an independent appraisal and valuation report from one or more real estate agents.

The general rule is that the relevant date for purposes of valuation is the date of death, although there may be other dates on which valuation is required for tax purposes.