

# ACTING AS EXECUTOR OR TRUSTEE FOR YOUR CLIENT

Author: Professional Advisory Services | July 2021

As a CPA in public practice, you may be approached by a client to act as their estate executor<sup>1</sup> or trustee.<sup>2</sup> Whether you can accept this request and how you perform the role depends on the type of professional services you currently provide to the client, the CPA Code requirements and the relevant laws or regulations.

## Prohibitions for assurance clients

As an executor or trustee, you can influence the financial direction of the estate or trust irrespective of your level of involvement or the number of executors or trustees who share this responsibility. You must consider the independence rules before assuming the role of executor or trustee for an assurance client.

The table below summarizes aspects of the role and the related prohibitions.

Responsibilities of the executor or trustee	Prohibitions applicable to assurance engagements
Similar to an officer or a director of an entity, you can exercise influence over the financial and accounting policies of the trust or estate.	You or your firm cannot perform an assurance engagement for an entity if you or an employee of your firm serves as an officer or director for the entity or a related entity. <sup>3</sup>

### Relevant rules in the [CPA Code of Professional Conduct \(CPA Code\)](#):

- Rule 204.4, *Independence, Specific Prohibitions, Assurance and Specified Auditing Procedures Engagements*
- 204.10, *Disclosure of Impaired Independence*
- 210, *Conflicts of Interest*
- 212, *Handling the property of others*

<sup>1</sup> An executor of an estate is the person who will help execute the wishes outlined in your will and distribute funds to your beneficiaries, and who can act on behalf of your business and financial interests when you die. The role ends once the estate administration process is complete.

<sup>2</sup> A trustee is a person or firm that holds and administers property or assets for the benefit of a third party. Trustees have a fiduciary duty to make decisions in the beneficiaries' best interests.

<sup>3</sup> Rule 204.4(18)(a)



Responsibilities of the executor or trustee	Prohibitions applicable to assurance engagements
<p>Because you can exercise authority over the estate or trust, or be actively involved in the decision-making, you may be viewed as having a management function.</p>	<p>You or your firm cannot perform an assurance engagement for an entity if you or a member of your firm makes a management decision or performs a management function for the entity or a related entity.<sup>4</sup></p> <p>Management functions or decisions include:</p> <ul style="list-style-type: none"> <li>• authorizing, approving, executing or consummating a transaction,</li> <li>• having or exercising authority on behalf of the entity,</li> <li>• determining which recommendation of your firm will be implemented, or</li> <li>• reporting in a management role to those charged with governance of the entity.</li> </ul>
<p>To a reasonable observer, holding a direct financial interest or a material indirect financial interest as a trustee may be viewed no differently than holding the interest beneficially.<sup>5</sup></p>	<p>You cannot participate in the engagement for an assurance client if you or your immediate family member holds a direct financial interest or a material indirect financial interest in the client as a trustee.<sup>6</sup></p>

## Assisting clients when acting as an executor or trustee is prohibited

If acting as an executor or trustee for your assurance client is prohibited under the CPA Code, your options are limited. You must decline the executor or trustee role in order to continue providing assurance services. However, for private company clients, you may be able to take on an advisory role to the trustee(s) that involves no decision-making on behalf of management.

Each situation must be assessed on its own merits within the independence framework and any restricted services must be avoided. In addition, you need to ensure threats to independence are considered and safeguards are applied as required to reduce threats to an acceptable level.

When providing additional services to assurance clients, always document in your engagement file the scenario facts and your evaluation as to why additional services are permitted, in accordance with assurance standards and firm policies.

## Acting as an executor or trustee for non-assurance clients

If you are providing non-assurance services to your client, such as a compilation engagement, tax compliance or advisory services, you may be able to act as an executor or trustee as well. Where not prohibited, you must still comply with the relevant CPA Code rules.

4 Rule 204.4(22)(a)  
 5 Rule 204.4(1), guidance paragraph 4  
 6 Rule 204.4(1)(b)

All members must adhere to the fundamental principles of professional behaviour, integrity and due care, objectivity, professional competence and confidentiality. There are also rules that govern how you should handle the property of others, disclose impaired independence and address any conflicts of interest that might arise.

*Handling the property of others*

If you are receiving, handling or holding money or other property in any capacity as a trustee, receiver, guardian, administrator or liquidator, you must handle the entrusted property with due care<sup>7</sup> and ensure the following requirements are met.

Rule	Considerations
Act in accordance with the terms of the engagement, terms of the trust and relevant law. <sup>8</sup>	<ul style="list-style-type: none"> <li>• Each trust relationship should be documented in writing.</li> <li>• Separate trust funds<sup>9</sup> and property of others from your firm’s assets.</li> <li>• Only use trust funds, and any interest earned, for their intended purpose.</li> <li>• Obtain legal advice.</li> </ul>
Maintain the records necessary to properly account for money or other property held on behalf of your client. <sup>10</sup>	<ul style="list-style-type: none"> <li>• Maintain records that clearly show how trust funds are received, paid or held.</li> <li>• Clearly distinguish each client’s funds from both those of other clients and your own.</li> <li>• Establish appropriate safeguards and controls over receipts and disbursements of trust accounts.</li> <li>• Render proper accounts of the trust funds or other property together with any income, dividends or gains generated, to those entitled.</li> </ul>
<p>Keep money related to the trust in a separate trust bank account(s).<sup>11</sup></p> <p>If property is received in trust instead of funds, establish appropriate safeguards and controls over the property as well.<sup>12</sup></p>	<ul style="list-style-type: none"> <li>• Deposit trust funds without delay to a separate bank account (i.e., a trust account), unless subject to written instructions to the contrary.</li> <li>• Include the word “trust” in the name of the trust account and consider including the name of the client as well.</li> <li>• Limit withdrawals or disbursements from a trust account to:               <ul style="list-style-type: none"> <li>▪ funds properly required for payment to or on behalf of the client, or</li> <li>▪ funds properly required for or toward payment of your firm’s fees for services rendered or disbursements.</li> </ul> </li> <li>• Obtain approval for disbursements from the client, preferably in writing.</li> </ul>

*Disclosure of impaired independence*

When acting as an executor or trustee and providing non-assurance services permitted by the independence rules to the same client (e.g., a compilation engagement), you must disclose the nature of the relationship in your report to the financial statements.<sup>13</sup>

*Conflicts of interest*

Before accepting the role of executor or trustee for your non-assurance client, consider whether taking on the role may trigger the conflict of interest rule in the CPA Code. This may arise when multiple beneficiaries of the estate or trust are your clients.

7 Rule 212.2  
 8 Rule 212.1(a), and guidance paragraph 2  
 9 “Trust funds” include all amounts received by a member or firm to be held or disbursed on the instructions of the person from whom or on whose behalf the amounts are received. Rule 212, guidance paragraph 1.  
 10 Rule 212.1(a) and guidance paragraph 2  
 11 Rule 212.1(a) and guidance paragraph 2  
 12 Rule 212, guidance paragraph 4.  
 13 Rule 204.10



You should not undertake or continue to provide any professional service to any client when there is a conflict of interest between two or more clients, unless you:

- can rely upon conflict management techniques that are generally accepted (whose use will not breach the terms of any agreement to provide professional services or any duty to another client),
- inform each affected party of the existence of the conflict of interest and the techniques that will be used to manage it, and
- obtain direct or implied consent from each affected party to continue the professional services engagement(s).<sup>14</sup>

## Risks to consider

In addition to complying with the CPA Code, you should also identify and address practice management risks. For example, there may be limitations on executor fees and trustee compensation, and complications could arise that result in less than a full recovery of your standard rates for professional services. Furthermore, an executor's role involves obtaining control of and managing property of the deceased. Since this might include dealing with previously unknown liabilities of the estate, you should consider whether you want to assume this level of responsibility.

Lastly, before assuming the role of an executor or trustee:

- check whether the role falls within the parameters of your professional liability insurance policy or whether you require additional coverage, and
- consider obtaining legal advice to ensure you are aware of all your legal responsibilities.

As no two situations are identical, you are responsible for ensuring that your own situation complies with the [CPA Code of Professional Conduct, By-law and Regulations](#). Please note that this article is considered to be non-authoritative guidance only.

---

<sup>14</sup> Rule 210.3

Have a question? Our Professional Advisory Services team is here to help, making first point of contact within 24 hours.

Call: **416 204.3106** or **1 800 387.0735 x4456**

Email: [professionaladvisors@cpaontario.ca](mailto:professionaladvisors@cpaontario.ca)

