AFP 2004 CONGRESS CURRENT LEGAL ISSUES IN FUNDRAISING

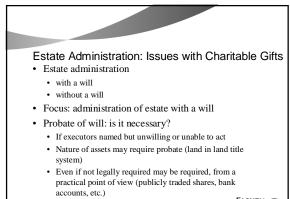
Toronto – December 2, 2004

Estate Administration Issues With Charitable Gifts

(Power Point Presentation)

By M. Elena Hoffstein, LL.B., M.A. Fasken Martineau DuMoulin



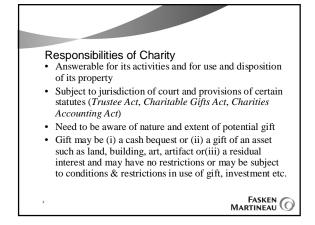


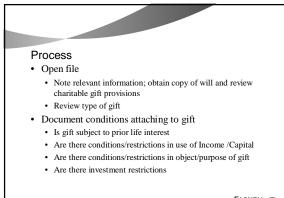
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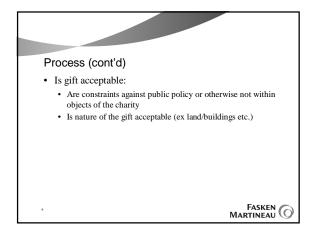
Notice

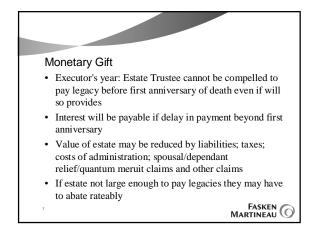
- If will probated:
 - notice of application for Certificate of Appointment of Estate Trustee sent to beneficiaries
- If will not probated:
 - · obligation of Estate Trustee to notify beneficiaries
- Charitable beneficiary may have prior notice (from testator) or may have copy of will
- If so, check records against notice given by Estate Trustee

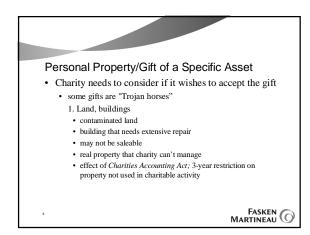


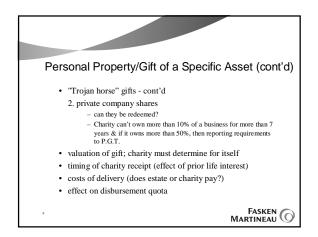


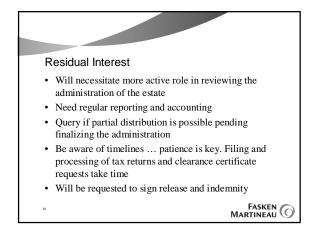




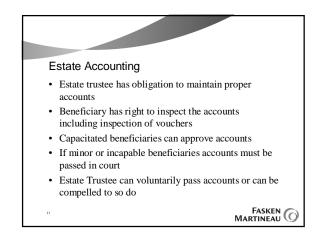


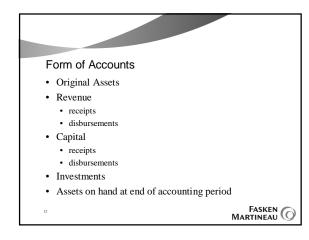


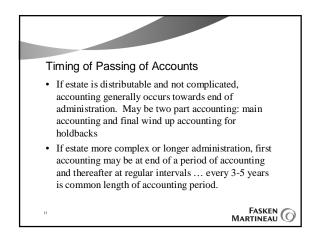


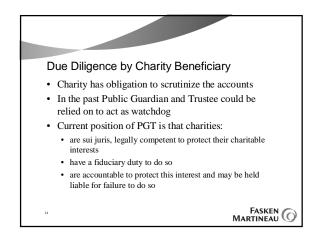


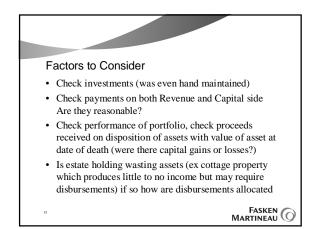
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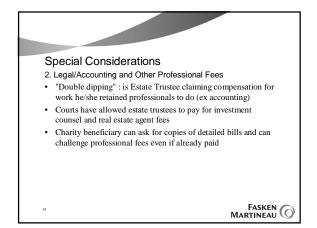


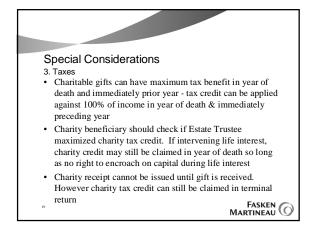






Special Considerations 1. Compensation Fee Agreements Terms of will Trustee Act "fair and reasonable allowance" mathematical formula: customary rate factors developed in case law include complexity of estate administration, difficulties arising in the administration, size of estate etc care and management fee and sometimes a special fee may be justified Pre-taking of compensation generally pretaking is not allowed some softening of this position in recent cases ... if reasonable and within range normally allowed by court.

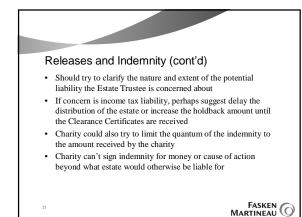


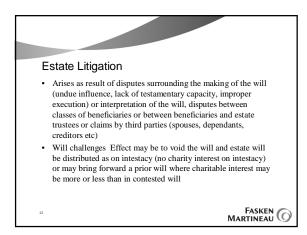


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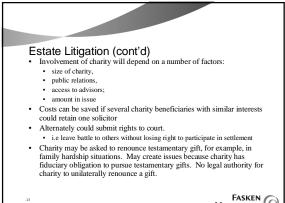
Releases and Indemnity

- Release is desired by Estate Trustee to protect him/her. It binds the beneficiary's acceptance of the administration of the estate
- If charity beneficiary is a recipient of money or property, should only sign a document acknowledging receipt of the gift and that it represents full satisfaction of what the charity is entitled to under the will
- If charity beneficiary is a residual beneficiary will likely be asked to sign a release and indemnity. Indemnity generally provides that the charity agrees that if in the future the Estate Trustee determines there are further estate liabilities and no estate assets left in the hands of the Estate Trustee, the charity beneficiary will reimburse the Estate Trustee for that liability.





FASKEN MARTINEAU



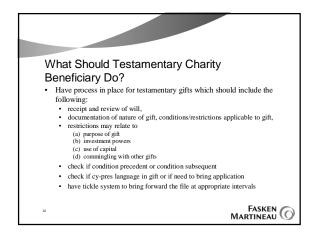
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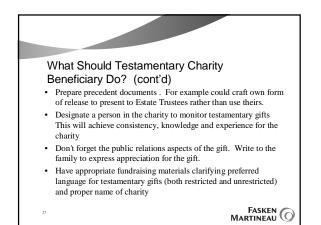
Cy Pres Applications

- Unique application relating to charitable gifts allows charity to seek advice and direction of court in circumstances where charity misnamed or misidentified or to clarify purpose of gift that is impossible or impractical to administer
- Court will try to uphold charitable gift intentions where possible but to do so must find that deceased had general charitable intent Types of cy-pres applications
- · where charity named is non existent and never existed
- · where charity named in will has transferred its assets and operations to another charity or charity named has merged its operations with another charity
- · where the extent of the gift is not clearly spelled out in the will · where terms of the gift are contrary to public policy
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Cy Pres Applications (cont'd)

- · Court has inherent scheme approval power to modify terms of a gift. · where limitation is too precise
 - · to modify administrative terms of a charitable trust in order to further its charitable objects (Killam estate)
- · If court will not invoke its authority, gift might fail and the property reverts to estate to be distributed in accordance with the will
- Of interest to hospitals and foundations will be the Re Baker case. Testamentary gift to Northwestern General Hospital. Hospital incorporated a foundation after death of testator for purpose of holding funds for advancement of medical research and education. Estate trustee sought permission of court to transfer estate funds to the foundation and court refused to invoke its jurisdiction. FASKEN MARTINEAU





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