

PUBLICATION

Attention Trustees: Some things to be aware of as a result of the Covid-19 Pandemic

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Covid has changed the way a lot of us go about our business and being a Trustee is no exception. Here are some things to be on the lookout for:

1. Cyber crime - be careful to make sure that instructions for any payments to beneficiaries are made over the phone and that you are in fact speaking with the beneficiary.
2. Virtual Instructions - it can be more difficult to ensure that beneficiaries understand trustee decisions and that they are made with capacity and not under duress. Take extra steps to ensure that beneficiaries fully understand trustee decisions.
3. Losses Generated as a result of Covid - given the losses that occurred as a result of the crash in the markets, make sure that decisions are well documented and will stand up to later scrutiny. Given the atmosphere, the Courts may be more willing to give direction to trustees who require court approval for decisions.
4. Watch out for Anti-Bartlett clauses - trustees may be tempted to dip their toes in the water to ensure that corporations are making the best decisions but this can put the trustee at risk.

Over all, make sure that decisions are well thought out and risks taken are well documented and, when possible, have beneficiary approval in writing. There will likely be more litigation against trustees in the period following the pandemic but courts will likely also be more sympathetic to the trustees as times have been difficult.

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