

# Lawyers acting as estate trustee, trustee for *inter vivos* trust, or attorney for property

## LawPRO's new exemption (h) explained

As you wind down your private law practice, it may be that you are named or act as, estate trustee, trustee for *inter vivos* trust or attorney for property, even though the rest of your practice is being wound down or turned over to one or more lawyers who remain in private practice.

If so, you can expect to have certain obligations to the Law Society, even though you may not be required to pay the Law Society's annual fee, including:

- having to declare to the Law Society such trusteeships or powers of attorney upon retirement (or changing to a non-practising status); and
- having to file the appropriate exemption forms each year with LAWPRO to confirm that you continue to be exempt from the payment of insurance premium levies.

### Interpreting the exemption

For this eligibility rule, provision is made not just for retirement, but also for lawyers electing a non-practising status.

Accordingly, this eligibility rule also applies to lawyers who otherwise qualify for exemption under LAWPRO eligibility rule (d) employed lawyer – employed in government or education, (e) employed lawyer – employed as in-house corporate counsel, or (f) employed and/or volunteer lawyer – legal aid clinic, and the lawyer shall also be entitled to engage in the practice of law in Ontario to the extent provided for under that eligibility rule.

This exemption is also available to you, regardless of whether you are acting on a single trusteeship or power of attorney, or a number of trusteeships or powers of attorney.

However, this exemption may not apply to every instance in which you act as estate trustee, trustee for *inter vivos* trust, and/or attorney for property.

For example, your role as estate trustee, trustee for *inter vivos* trust, or attorney for property, must be residual work from your past practice in Ontario, which would not be the case where you have only been named in retirement (or once you change to a non-practising status), as estate trustee, trustee for *inter vivos* trust or attorney for property.

As well, this exemption would not apply to any trusteeship or attorney for property, where you have been named or are acting in respect of a member of your own family. So, for instance, this exemption would not apply to a lawyer who has never been in practice and acts as estate trustee for a family member. For this purpose, members of the lawyer's own family means "related persons" as defined under section 251(2) of the *Income Tax Act (Canada)*. \*

If these are the only types of occasions in which you have been named or act as estate trustee, trustee for *inter vivos* trust, or attorney for property in relation to your retirement, you would not elect exemption on the basis of eligibility rule (h). Instead, you would simply look to apply for exemption on the basis that you are not engaged in the practice of law in Ontario, or under eligibility rule (d), or (e) or (f) as described above.

### Insurance coverage

If you have elected exemption on the basis of eligibility rule (h) estate trustee, trustee for *inter vivos* trust or attorney for property, you can apply to broaden your Run-Off Coverage protection to include protection for these services.

With regard to this expanded protection:

- your role as trustee or attorney for property must be residual work from your past practice in Ontario, and not where you have only been named in retirement (or once you have changed to a non-practising status);
- coverage may apply in respect of a single trusteeship or power of attorney, or in respect of a number of trusteeships and/or powers of attorney;
- coverage would not apply in the case of a trusteeship, or attorney for property, in respect of your own family members;
- coverage would not apply in respect of any dishonest, fraudulent, criminal or malicious act(s) or omission(s);
- availability and conditions may apply, based on individual underwriting.

For more information, see page 13 or visit the LAWPRO website at [www.lawpro.ca](http://www.lawpro.ca).

\* Proposed