

New and Expanded Trust Reporting Rules (CRA)

WHEN DO THE CHANGES START?

- Taxation years after December 30, 2023
- The deadline for some of the new filings will be March 31, 2024

WHAT DO THE CHANGES MEAN?

More trusts will be required to file T3 Returns:

- All trusts, unless certain conditions are met, will be required to file an annual T3 Return with the CRA. Trusts that were previously exempted from filing under the old rules are now required to file unless one of a new set of narrow exceptions is met.
- Bare trusts are subject to the new reporting rules and will be required to file an annual T3 Return with the CRA. More on bare trusts below.

Many of the T3 Return filings will require additional disclosures:

- Trusts that are required to file a T3 Return, other than listed trusts, generally need to complete Schedule 15 in their annual T3 Return to report beneficial ownership information;
- The revised Schedule 15 includes the identity of all the trustees (who is on title or holds the asset), beneficiaries (who really owns the asset), settlors (who owned the asset originally) and anyone with the ability to exert influence over trustee decisions regarding the income or capital of the trust.
- The required information includes name, address, date of birth (if applicable), country of residence, and tax identification number (e.g. social insurance number, business number, trust number).

Potential for failure to file penalties:

- Failure to make the required filings and disclosures on time attracts penalties of \$25/day, to a maximum of \$2,500, as well as further penalties on unpaid taxes;
- New gross negligence penalties may also apply, being the greater of \$2,500 and 5% of the highest total fair market value of the trust's property at any time in the year.

LAWYER SPECIFIC ISSUES

- A lawyer's general trust account will likely still be exempt from the new filing requirements;
- Lawyers' specific trust accounts will now likely be required to file;
- Filing exceptions exist in some cases if the trust has been in existence for less than three months or if the total fair market value has not exceeded \$50,000 during the year.
- If there is a mismatch between legal and beneficial ownership of an asset, there is likely a bare trust arrangement, which will require the filing of a T3 Return. More on bare trusts below.

BARE TRUST ARRANGEMENTS

To determine if a bare trust arrangement exists, the following question should be asked:

- **Is the person on title or holding the asset the true beneficial owner?** For example, do they get the benefits of the asset (such as sale proceeds) and bear the costs or risks of the asset (such as property taxes)?

If there is a mismatch between legal and beneficial ownership, there is likely a bare trust arrangement, which will require the filing of a trust return.

There are several reasons why an individual, business or organization may use a bare trust arrangement. Many parties involved in a bare trust arrangement may not realize that they are, much less that there may be a filing requirement with CRA. No lawyer may have ever been involved, and no written agreement may have ever been drafted.

While there are countless possibilities of bare trust arrangements, the following lists some common potential examples.

Individual Reasons

- a parent is on title of a child's home (without the parent having beneficial ownership) to assist the child in obtaining a mortgage;
- a parent or grandparent holds an investment or bank account in trust for a child or grandchild;
- one spouse is on title of a house or asset although the other spouse is at least a partial beneficial owner;

Estate Planning Reasons

- a child is on title of a parent's home (without the child having beneficial ownership) for probate or estate planning purposes only;
- a child is on parent's financial accounts (or other assets) to assist with administration after the parent's passing;

Business Administration Reasons

- a corporate bank account is opened by the shareholders with the corporation being the beneficial owner of the funds;
- a corporation is on title of an individual's real estate, vehicle or other asset, and vice-versa;
- assets registered to one corporation but beneficially owned by a related corporation;
- use of a nominee corporation for real estate development purposes;
- a partner of a partnership holding a bank account or asset for the benefit of all the other partners of a partnership; a joint venture arrangement where the operator holds legal title to development property as an agent for the benefit of other participants;
- a cost-sharing arrangement where a person holds a business bank account, or other assets, to facilitate the arrangement while having no, or only partial, beneficial interest in these shared assets;

Industry-specific Issues

- a property management company holding operational bank accounts in trust for their clients, or individuals managing properties for other corporations holding bank accounts for those other corporations; and
- a lawyer's specific trust account (while a lawyer's general trust account is largely carved out of the filing requirements, a specific trust account is not).