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Estates & Wills & Trusts

Benjamin order can protect trustee if there's a missing beneficiary

By Kirsten McMahon, Associate Editor



When a beneficiary of an estate remains missing following reasonable searches, there are some approaches estate trustees can take to protect themselves, Toronto-area estates litigator and mediator [Charles B. Ticker](#) tells *Law Times*.

The article notes that a missing beneficiary puts pressure on estate trustees to do what is reasonable to find them before seeking relief through the courts to ensure they are not liable.

While they can turn to the courts for relief, which includes having the missing beneficiary declared dead or seeking an order declaring the beneficiary an absentee, there are other approaches, says Ticker, who practises estates litigation and mediation with [Charles B. Ticker Law Office](#).

“Where the absentee has an interest in the estate, rather than declaring the absentee dead and, therefore, the absentee loses the interest in the estate, the court can appoint a committee to manage beneficiary's interest,” he tells the legal publication. “It can be an individual or trust corporation. And, basically, that committee would manage that estate.”

Ticker says that preserves the missing person's right to the estate, and if that person later remains missing, an order can be sought to have them declared dead.

He tells *Law Times* that one useful but infrequently used solution is a Benjamin order, which came out of the 1902 British case *Neville v. Benjamin*, in which one of 13 children named in a will couldn't be found. The article reports that the court declared the missing person had predeceased the testator so that his share in the estate could be divided among the rest of the beneficiaries.

“The purpose of the order is it protects the trustee because if the beneficiary does show up down the road and says, ‘Hey, I’m back,’ if the trustee has already distributed the estate and has obtained this Benjamin order, the trustee is protected” from liability for the distributed estate, Ticker says.

“The beneficiary, in some circumstances, can go after the other beneficiaries and try to get it out of them, but that would not be an easy task,” he adds.

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