

Strategies to Minimize Probate Fees

Applying for probate is the formal process of having a deceased person's Will validated and the executor's appointment confirmed by the courts. Probate may be required prior to a transfer of legal ownership of real estate, or upon request from a financial institution prior to the settlement of a particular asset or account.

Part of the estate planning process

Probate planning is often incorporated as part of the estate planning process, particularly in jurisdictions where probate fees are relatively high. A grant of probate may also protect an executor or third parties acting upon the executor's instructions in settling an estate.

Probate fees¹ are typically based on a percentage of the value of the estate that is dealt with under the terms of the Will. These fees can be as high as 1.4% in British Columbia and 1.5% in Ontario. There are no probate fees for notarial Wills in Quebec and the maximum probate fee payable in Alberta is \$525.

Strategies to Minimize Probate Fees:

- Gift or donate assets during your lifetime
- Use joint accounts
- Designate beneficiaries
- Transfer assets to a trust
- Use multiple wills

Where probate fees are significant, a number of strategies may be considered to minimize the cost of probate. These include the following:

Gift or donate assets during your lifetime

By gifting or donating assets to your beneficiaries during your lifetime, these assets will not form part of your estate and therefore will not be subject to probate. However, there may be income tax consequences as a result of the disposition that is deemed to occur (generally, at fair market value) when you gift or donate assets.

Use joint accounts

Assets held in joint accounts with right of survivorship may pass to the surviving joint owner(s) upon the death of one joint owner. The asset will generally not form part of the deceased joint owner's estate. However, there are potential risks associated with owning assets in this manner, in particular with respect to assets that are held jointly between parents and children. Some of the risks include potential income and capital gains tax consequences associated with transferring assets to a joint account and

¹ The term used for probate fees/taxes may vary by province/territory. For example, in Ontario, probate fees are known as "Estate Administration Tax".

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possible claims by creditors of the new joint owner(s). Please note that the concept of joint tenancy is not recognized in the province of Quebec.

Designate beneficiaries

Individuals may designate beneficiaries of registered plans (such as RRSPs, RRIFs, and TFSAs) and life insurance policies on plan and policy forms or in their Wills. When a named beneficiary (other than the estate) is designated on registered plans or life insurance policies, the proceeds can be paid directly to the named beneficiary and do not form part of the deceased plan/policy holder's estate.

As the rules in the province of Quebec do not recognize beneficiary designations on registered plans, these assets would normally be distributed through the deceased's Will.

Transfer assets to a trust

Transferring assets to a trust would remove those assets from your ownership and estate (as they now belong to the trust). Again, there may be income tax considerations as a result of the disposition that typically arises when you transfer assets to a trust. If you are 65 years of age or older, you may be able to transfer certain assets to a trust without triggering immediate tax consequences by using an alter ego or joint partner trust.

Use multiple Wills

This strategy involves preparing two Wills — a primary Will that provides for the disposition of assets that would require probate (such as bank, investment accounts and real estate) and a secondary Will that provides for the disposition of assets that may not require probate (such as personal effects and shares of a private company).

The executor can submit the primary Will for probate and include in the calculation of probate the value of assets under that Will, but exclude the value of assets under the non-probated (or secondary) Will of the deceased.

It is important to note that multiple Will planning may not be recognized in all jurisdictions, and a legal advisor should be consulted to determine if this strategy is valid in your province/territory.

Consider

The appropriateness of each of the strategies highlighted above should be considered in the context of your overall situation and objectives, keeping in mind the overall impact probate fees may have on your total estate.

Contact your TD Wealth advisor to help you better understand the strategies that may suit your particular circumstances and needs.



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