

## What is Probate?

– By Léony deGraaf



## Can I Avoid it?

**A**s an Estate Planner I get asked this question all the time. I find that most people know a little bit about probate, but don't really understand the entire process and the costs involved.

Probate is the Provincial Court's process for validating a Will and verifying the appointment of the Executor. When one spouse passes, all assets and liabilities usually become that of the surviving spouse, therefore the probate process is not necessary. However, when a widower or single person passes, probate process is required. At this point, all assets are frozen until the probate process is complete and the Court issues a Certificate of Estate Trustee to the executor.

When submitting a Will for probate, the lawyer must also submit a summary of the estate's assets and its approximate market value, in order for the probate fees to be calculated. The assets to be reported for probate are: home, cottage and other property, bank accounts, mutual funds, GIC's, shares, savings bonds, and any valuable art or jewelry collection. An estate valued

at \$10,000 or less does not need to be probated and an estate with a value of \$50,000 or less only pays a 1% probate fee. Most people don't realize that a probated Will becomes a public document, which can unwant-edly expose personal and financial information.

For estates that exceed the \$50,000 valuation, a 1.5% probate fee is payable to the province. Again, what many people don't realize is that all other estate fees will be based on the value submitted for probate. The lawyer is entitled to charge up to 5% of the value submitted for probate. The accountant – who needs to file the terminal tax return, is entitled to charge up to 5%, and the executor is entitled to 5%. At the end of this lengthy estate settlement process, the estate can be reduced by a total of 16.5% in fees before any funds reach the intended beneficiaries.

A common strategy used to avoid probate is adding a joint owner to an asset, such as a home or a bank account. While this may avoid the fees, it could open up a can of worms in terms of liability and intent, which can

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end up costing the estate much more than the avoided probate fees. A deemed disposition of the asset is also to be reported to Revenue Canada, which could also create a tax issue for the owners.

The simplest strategy I know of in order to avoid much of the probate process and the fees associated with it, is to hold your savings and investments at a life insurance company who offers Segregated Funds. With a named beneficiary on the account, proceeds are usually paid out within two weeks, directly to the beneficiaries and do not form part of the Will or the estate value submitted for probate. This would keep financial matters private and eliminate the fees of up to 16.5% (which equals \$82,500 on \$500,000 GIC's).

If you find the right segregated funds, the management fees inside the fund are the same as the average mutual fund – so it's like you are getting the added benefits for free. You have a wide variety of funds to choose from, such as term deposits, bond, dividend, balanced and equity funds, and they also include principal guarantees of either 75% or 100% of your deposit.

The probate process can't be avoided completely, but by structuring your savings correctly, you can save your executor and beneficiaries a lot of time, and your estate a whole lot of fees. The next time you are talking to your Financial Advisor, ask if he or she can offer you the estate-friendly benefits of segregated funds. ■

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