

Understanding the Probate Process in Manitoba

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When a person dies, their spouse and family are often uncertain about the requirements for handling that person's estate. In addition to dealing with the loss of a loved one, attempting to navigate the legalities of administering an estate can feel complicated and sometimes overwhelming. Often, one of the first questions that arises is whether "probate" of the estate is required.

What is probate? Probate is an application to the Court of King's Bench (Manitoba) for two purposes. First is to validate the deceased's will and second is to obtain a court order (the "Grant of Probate") that authorizes the named executor(s) and/or administrator(s) to receive and deal with the deceased's assets.

When is probate required? Depending upon the nature and legal ownership of a person's assets at death, probate may or may not be required. Certain assets fall into probate requirements while others do not. For example, assets owned in joint names such as land titles, bank accounts, motor vehicles and joint investments typically do not require a Grant of Probate.

Likewise, life insurance policies registered accounts and investments such as RRSP/RRIF and TFSA do not require probate provided there is a named beneficiary. Often when a spouse dies and all their assets are owned jointly or designated to each other, probate is not required. If there are assets owned in the deceased's name (sole owner) such as land titles, bank accounts, investments, registered accounts (where there is no designated beneficiary), life insurance (where the beneficiary is the estate), such assets typically require probate. The above is certainly not an exhaustive list of assets and/or ownership – each asset should be considered individually to determine whether the asset falls into probate.

Why is probate required? Most assets requiring probate are held by third-party institutions. For example, title to your home or other real properties are held and controlled by the Land Titles Office. Your bank accounts and investments are typically held and controlled by banks or investment brokerages. While the assets belong to the estate, these third-party institutions have inherent liability when releasing assets to the estate. It is important to remember that just because you are in possession of a Will of the deceased, that the third-party institutions may require probate so they have

assurance that the version of the Will presented is, in fact, the final Will of the deceased. If the assets were released to persons purporting to be the next of kin and/or executor and the assets end up in the wrong hands, for example – persons other than the beneficiaries identified in the deceased's Will – those same beneficiaries would have an "axe to grind" with that third party.

Accordingly, the second purpose of probate comes into play – the Grant of Probate is a court-ordered authorization which allows these third-party institutions to release the estate's assets to the executor and effectively relieves the third party of any liability on release of the assets.

How long does probate take? Upon filing an application for probate with the court, processing times vary anywhere from 9 to 12 weeks. Part of the application for probate requires an inventory of the assets for probate and values of those assets. Prior to filing the application, determining if assets require probate and to obtain date of death values and/or valuations of the assets takes additional time.

Does probate affect income taxes? No, income tax is separate from probate. Currently, there are no "death taxes" or "estate taxes" in Manitoba, although income tax and capital gains tax would still apply to the deceased person's income or capital gains realized in the year of death. Likewise, income received, or capital gains realized by the estate in the year or years following death would apply. Often a Trust Income Tax Return is filed for the estate in the year or years after the year of death for any income or other gains realized in those years. You would still potentially require the assistance of an accountant to deal with the tax implications for the individual year of death and for an estate tax return in the year or years following death.

How much does probate cost? The Province of Manitoba eliminated the former Probate Filing Fee (.007% of the value of assets for probate) in November 2020. Utilizing the services of a lawyer for probate and the legal fees associated are set out in the Court of Kings Bench Rule 74.14(6) and Form 74EE and are a percentage of the value of assets for probate.

How can I reduce the cost of probate? Identifying the nature and ownership of your assets is important in reducing and identifying the potential costs. Engaging with your professional team, including lawyers, accountants and financial planners to produce a comprehensive estate plan is important.

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