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## Probate Fees

By Clinton Orr

Estate planning is an important part of your overall financial plan. Sometimes, during the estate planning process folks go to great lengths to arrange their affairs to avoid probate fees on their estate. I do not suggest this approach, I do not believe fee reduction should be the focus of your estate plan. As well the Manitoba government has recently proposed changes that will make arranging your affairs to avoid probate unnecessary. I believe a short discussion on the probate process will help clarify the situation.

For starters, what is Probate? The process through which the courts validate a will is called probate. That answer is pretty technical, a scenario might be helpful. If Uncle Bob passed away and you were his executor, you could walk into the bank, where Uncle Bob had his accounts, show them the will, say you are the executor and ask that the accounts be liquidated so you can distribute the money to the beneficiaries. How would the bank know that the document you are showing them is the proper will? Maybe Uncle Bob made changes and updated his will and the copy the bank is seeing is outdated and not the current and valid will, how would the folks at the bank know? This is one situation that probate can help remedy.

When Uncle Bob passes away, as his executor, you can take his will to the courts, fill in some forms and submit those documents for probate. During this process, if there are multiple documents the court can resolve the conflicts between them and establish the true last will and testament. During the probate process the court will also determine if the executor is willing and able to continue in their role. Once the court has accepted the appointment of the executor and validated the will, it will issue a grant of probate. The grant of probate is the court grant issued by the Manitoba Court of Queen's Bench confirming that the will is valid. As the executor once you receive the grant of probate for Uncle Bob's estate, you can then go back to the bank, present the document, and the folks at the bank will have the assurance that they are following Uncle Bob's wishes and releasing the money to the correct person.

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What exactly gets probated? Technically the probate applies to your estate, but not all of your assets will end up in your estate. For example, if Uncle Bob had a joint bank account with your Aunt Mary, and the account was set up as a joint account with rights of survivorship, the money would go directly to Aunt Mary and bypass Uncle Bob's estate. That account would not be part of Uncle Bob's estate and would not be probated. As well any asset that directly names a beneficiary would bypass the estate and avoid probate, examples include life insurance policies and registered accounts, like RRSPs and TFSAs. This is where some folks get creative, trying to set up their affairs to shrink their estate and avoid or reduce the need for probate.

The reason folks might try to shrink their estate is because probate is not free. The provincial government charges a fee for probate. Since it is a provincial process the cost varies across Canada. In Alberta, for example, there is a flat fee, which varies based on the size of the estate, it could be as low as \$25 for estates under \$10,000 and as high as \$400 for estates over \$250,000. In other provinces probate fees are higher, for example in Ontario, once an estate is over \$50,000 the cost of probate is a percentage of the estate, 1.5% of the value of the estate, for a larger estate that could equate to thousands of dollars in probate fees. At the moment in Manitoba the probate fee is 0.7%, so if our estate was worth \$100,000 the probate fee is \$700. However, in December of 2019 the Manitoba government proposed eliminating probate fees. That proposal is set to be implemented on July 1, 2020. If the proposal goes ahead as planned probate fees in Manitoba will be 0.

It is worthwhile noting that the location of the assets is important for determining probate. For example, if Uncle Bob lived in Manitoba, but had a cottage in Ontario. The cottage would go through the Ontario probate process and the Ontario probate fees would be applied to the fair market value of the cottage.

It is also worth noting that if you do not have a will, your estate will still be probated. The process is a little different, but probate is not avoided.

I can understand trying to reduce cost, however, probate fees are not that expensive in Manitoba, and, if the government proposal goes ahead as planned, could be eliminated later this year. Fee reduction should not be the focus of an estate plan. I encourage folks to chat with their financial and legal professionals and ensure they have an estate plan that meets their needs.

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