

# Strategies to Minimize Probate Taxes



Probate is the 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 real estate or upon request from a financial institution prior to the transfer of an investment or account, or in other circumstances.

## Part of the estate planning process

Probate planning is usually part of the estate planning process, particularly in jurisdictions where probate fees are relatively high. Probate taxes or fees<sup>1</sup> are payable when a Will is submitted to court for probate and are generally based on the value of the estate dealt with under the terms of the Will. These taxes are charged either as a flat fee or percentage depending on the province or territory. Appendix 1 outlines the probate taxes charged in each province and territory.

This article will outline a number of strategies that may be considered to minimize probate tax.

## Gift or donate assets during your lifetime

Assets gifted or donated during your lifetime will not form part of your estate and therefore will not be subject to probate tax. However, income tax may be payable as a result of the gifts or donations since you will generally be deemed to have disposed of the assets at fair market value.

## Own assets jointly with right of survivorship

Assets owned jointly with a right of survivorship may pass to the surviving joint owner(s) upon the death of a joint owner. The assets will generally not form part of the deceased joint owner's estate and will therefore not be subject to probate tax. However, there are potential risks associated with owning assets in this manner, especially where the assets are owned jointly between parents and children. Risks include income tax potentially being payable as a result of the transfer, possible claims by creditors of the new joint owner(s), a potential loss of the principal residence exemption, loss of control of the asset by the original owner, and sometimes uncertainty as to how the assets are to be dealt with on death of a joint owner.

The concept of joint ownership with a right of survivorship is not recognized in Quebec.

## Designate beneficiaries

Individuals may designate beneficiaries of registered plans (such as RRSPPs, 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 and the named beneficiary survives the owner of the plans or policies, the proceeds are paid directly to the named beneficiary and do not form part of the

deceased owner's estate. Therefore, no probate tax is payable on the plans or policies (although income tax, if any, is generally payable by the estate of the deceased individual on some registered plans).

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 and therefore no probate tax would be payable on those assets as long as your estate is not a beneficiary on your death under the trust. Again, there may be income tax considerations as a result of the transfer of 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 income tax consequences by using an alter ego or joint partner trust.

## Use multiple Wills

This strategy involves preparing two Wills – a primary Will dealing with assets that generally require probate (such as bank accounts, investment accounts, and most real estate) and a secondary Will dealing with assets that may not require probate (such as personal effects, shares of private companies, and loans and amounts owing from private companies and family members).

On death, only the Primary Will is submitted for probate and only the value of the assets dealt with under that Will is subject to probate tax.

It is important to note that this strategy may not be effective in all jurisdictions. You should consult with your legal advisor to determine if this strategy is appropriate in your circumstances. ■

## Considerations

The appropriateness of each strategy should be considered in the context of your circumstances and objectives, keeping in mind the overall impact probate taxes may have on your estate. Contact your TD Wealth advisor to help you better understand the strategies that may suit your circumstances and needs.

## Appendix 1 – Provincial and Territorial Probate Taxes

The following table summarizes probate taxes payable in each province and territory:

Province/Territory	Value of Estate <sup>2</sup>	Fees or Taxes
<b>Alberta</b>	\$10,000 or under	\$35
	Over \$10,000 up to \$25,000	\$135
	Over \$25,000 up to \$125,000	\$275
	Over \$125,000 up to \$250,000	\$400
	Over \$250,000	\$525
<b>British Columbia</b>	\$25,000 or under	\$0
	Over \$25,000 up to \$50,000	\$200 <sup>3</sup> + 0.60% on amount over \$25,000
	Over \$50,000	\$350 + 1.40% on amount over \$50,000
<b>Manitoba</b>	\$10,000 or under	\$70
	Over \$10,000	\$70 + \$7 per \$1,000 or portion over \$10,000
	After July 1, 2020: Any amount	\$0
<b>New Brunswick</b>	\$5,000 or under	\$25
	Over \$5,000 up to \$10,000	\$50
	Over \$10,000 up to \$15,000	\$75
	Over \$15,000 up to \$20,000	\$100
	Over \$20,000	\$5 per \$1,000 or part thereof
<b>Newfoundland and Labrador</b>	\$1,000 or under	\$60
	Over \$1,000	\$60 + \$0.60 per \$100 on amount over \$1,000
<b>Northwest Territories</b>	\$10,000 or under	\$30
	Over \$10,000 up to \$25,000	\$110
	Over \$25,000 up to \$125,000	\$215
	Over \$125,000 up to \$250,000	\$325
	Over \$250,000	\$435
<b>Nova Scotia</b>	\$10,000 or under	\$85.60
	Over \$10,000 up to \$25,000	\$215.20
	Over \$25,000 up to \$50,000	\$358.15
	Over \$50,000 up to \$100,000	\$1,002.65
	Over \$100,000	\$1,002.65 + \$16.95 per \$1,000 or part thereof on amount over \$100,000
<b>Nunavut</b>	\$10,000 or under	\$25
	Over \$10,000 up to \$25,000	\$100
	Over \$25,000 up to \$125,000	\$200
	Over \$125,000 up to \$250,000	\$300
	Over \$250,000	\$400

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Province/Territory	Value of Estate <sup>2</sup>	Fees or Taxes
<b>Ontario</b>	\$50,000 or under	\$0
	Over \$50,000	1.50% on amount over \$50,000
<b>Prince Edward Island</b>	Under \$10,000	\$50
	Over \$10,000 up to \$25,000	\$100
	Over \$25,000 up to \$50,000	\$200
	Over \$50,000 up to \$100,000	\$400
	Over \$100,000	\$400 + \$4 per \$1,000 or portion above \$100,000
<b>Quebec<sup>4</sup></b>	Non-notarial Will	\$209
	Notarial Will	\$0 (it is not necessary to probate a Notarial Will)
<b>Saskatchewan</b>	Any amount	0.70%
<b>Yukon</b>	\$25,000 or under	\$0
	Over \$25,000	\$140

<sup>1</sup> The term used for probate taxes and fees may vary by province and territory. For example, in Ontario, probate tax is formally known as "Estate Administration Tax".

<sup>2</sup> The "Value of Estate" figures have been calculated according to the rules of each province and territory, which may or may not allow certain deductions, such as for debts or property (real or personal) located outside the province or territory. As well, fees may be payable in more than one province and territory.

<sup>3</sup> The \$200 is an administration fee that is levied on estates with a gross value exceeding \$25,000.

<sup>4</sup> In Quebec, the process is referred to as the "verification of the Will" whenever it is not a notarized Will.



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