



The costs of probating a will have led to a number of techniques to reduce or avoid these costs, but the techniques are often awkward or expensive to implement, costly to administer over time or have unanticipated consequences. One planning device is relatively easy and safe to employ, and has also been approved by the court, namely the use of multiple wills.

What Is Probate?

Probate is judicial evidence of the authority of the executors to deal with an estate. It is *not* mandatory, but often an estate cannot be effectively administered without probate (now called Certificate of Appointment of Estate Trustee). Assets such as real estate in land titles, securities, and investment accounts will often not be transferred to the executors or beneficiaries without proof that a court has validated the will and the authority of the executors named in it; otherwise institutions cannot know that the will is not subject to dispute or contest. Probate is not, however, always required: it is not generally required to transfer shares in private companies, personal property, or land in the old registry system.

Estate Administration Tax

When an application is made for probate, Ontario levies an Estate Administration Tax on the fair market value of the estate at the rate of \$15 per \$1,000 of the probateable estate, which includes all the assets - those that require probate to effect transmission as well as those that do not.

Planning Technique

One of the techniques developed to reduce probate tax involves using two wills, the concept being to separate those assets that might require probate from those that do not. Where there are multiple wills, only the will covering assets needing probate is submitted to court for certification, and probate tax is limited to the value of the assets governed by that will.

The Granovsky Case

In the *Granovsky* case before the Divisional Court, there were two wills, and the assets for which probate was not required passed under a separate will not before the court. The Court confirmed that the value of those assets would not be included when calculating the probate fee.

Probate planning using multiple wills should be considered if you own appropriate assets. Multiple wills should only be prepared with legal advice to determine which assets should pass under each will and to ensure that the wills are properly drafted so that, for example, the wills are properly linked and one will does not inadvertently revoke the other.

Cunningham Swan offers a broad range of legal services to individual and corporate clients in the private and public sectors in Kingston and Southeastern Ontario. We welcome your inquiry: Cunningham Swan Carty Little & Bonham LLP, 1473 John Couter Blvd., City Place II, Suite 201, Kingston, ON, K7M 8Z6; Telephone: 613.544.0211; Facsimile: 613.542.9814; Email: info@cswan.com. This factsheet does not constitute legal advice.