



Saving Probate Taxes: Two Wills

February 12, 2016

Although your executor is legally entitled to deal with your assets immediately upon death, the issuance of a Certificate of Appointment by the Court (also called a probate certificate) is usually required by most third parties as a condition of recognizing the rights and authority of your executor to transfer title of your assets (such as publicly traded shares and real estate). Probate serves as proof to financial institutions, financial advisors, the land registry office and others that your Will has been certified by the Court and that your executor is authorized to represent your estate.

When a Will is probated in Ontario there is an estate administration tax (or probate tax) payable on the value of the assets being probated. The tax is approximately 1.5% of the value of the assets. However, not all assets warrant probate – certain assets such as personal property including jewelry, paintings, furniture and privately held shares can be transferred to beneficiaries without the necessity of probate because there is no third party involved (such as a financial institution) (for more information see: [Saving Probate Taxes: Two Wills – Shares in a Private Corporation](#)). When assets can be transferred without the involvement and cooperation of third parties requiring a Certificate, there is no need to have those assets subject to probate.

Accordingly, a review of your assets might reveal that your estate could save tax if you had two Wills, one dealing with all the assets that require probate and one dealing with all the assets that do not require probate. The tax will only be charged on the value of the assets governed by the first Will because there is no need to apply to have the second Will probated. This means that no estate administration tax is payable on the value of the assets governed by the second Will.

Take this example:

Betty Jones, an Ontario resident, has an estate valued at \$4 million. Her assets include a home worth \$1,100,000, investments worth \$800,000, jewelry worth \$30,000, an art collection worth \$70,000 and shares in a privately held company worth \$2,000,000.

If Betty were to pass away today, probate tax on her estate would be about \$59,500. However, if Betty had two Wills, a primary Will dealing with the home and investments that would be probated and a secondary Will dealing with the jewelry, the art collection and the shares that would not be probated, Betty would save her estate at least \$31,500 in probate fees, \$29,500 on the shares alone.

For more information on commercial litigation matters contact Natalie Schernitzki at (416) 306-1819 or at nschernitzki@beardwinter.com.

© Beard Winter LLP, 2025. All rights reserved.

The information contained in this article is for general information only and is not intended as legal advice or opinion. Should you require any advice or assistance with this or any other issue affecting your estate or business, then please do not hesitate to contact us.

[Click to Subscribe To
The Beard Winter Defender](#)

Disclaimer: The contents of this issue are provided for interest only and are not to be considered as, in any way providing legal advice to the readers by Beard Winter LLP or the individual authors of articles contained herein. All readers are strongly advised to obtain independent legal advice on any issue of concern to them from competent legal counsel in Ontario.

