

**PROBATE: DOING IT & AVOIDING IT**

The word “probate” has different meanings in different contexts. In a narrow sense, it means the proof of a will. The court where the proof is made is the Probate Court. More generally, “probate” is often used to describe the process of administering the estate of a deceased person under the supervision of the Probate Court. That does not necessarily entail going to court to administer an estate.

A will must be filed at the Probate Registry when a Grant of Probate is sought. A Grant of Probate is the document issued by the Probate Court of Nova Scotia, which certifies that the will was the last will of the deceased and is registered in the Court. The Grant of Probate is evidence of the executor’s authority. In case of intestacy (dying without a valid will...something we all seek to avoid!), a Grant of Administration is issued to the administrator wishing to administer an intestate’s estate.

Probate is not always necessary. It is necessary when property registered solely in the name of the deceased person cannot be transferred to the beneficiaries without court approval. The Court grants the legal authority to the Executor to transfer the property out of the estate and administer it according to the deceased persons’ wishes.

Those estates whose disbursements involve financial institutions, transfer agents, the land registry office, etc., require probate because of the nature of the assets of those estates. These third parties require assurance that the Trustee is the valid representative of the estate before they are called upon to transfer estate property to the Trustee. Probate is strictly necessary depending upon the nature and extent of the deceased’s assets. If the estate is relatively small and uncomplicated, probate is often unnecessary. More complex estates are usually probated so as to fall under the supervision of the Court. In some cases, those benefiting from an estate will want the supervision of the Court. For example, if there is doubt whether the will found is the last one, or doubt whether the deceased made a valid will, then the Court can resolve those doubts. In these situations, the probate process serves a very important function.

Specifically, probate is not usually required to deal with the following estate assets: life insurance, RRSP and RRIF proceeds with a named beneficiary; CPP survivor benefits; jointly held property with right of survivorship; personal articles; automobiles; certain kinds of securities and bank deposits; and concerns of third parties.

The key to avoiding probate for your estate is to make sure that all of your assets are owned in such a way as not to require probate and probate fees. If all of your assets, or at least all of the significant ones, are owned in a manner that will not require probate to transfer them after your death, then probate is optional and not mandatory. If it is optional, most will decide to skip it. It is highly advisable to speak to your lawyer or financial advisor about this.

*Sanaz Gerami is a lawyer with Parkland Law practising in the areas of Elder Law, Wills & Estate, Powers of Attorney, Family, Incorporations and Immigration Law. She can be reached by phone at (902) 444-3998, or via email at: [sanazgerami@eastlink.ca](mailto:sanazgerami@eastlink.ca). Sanaz is a member of Serving-Seniors Alliance.*