

## **Important Tips You & Your Executor Need to Know - Summary** ... including the Changes to Probate Rules January 2013

**Choose Your Executor Wisely** - candidate should be capable, responsible, local and impartial

**Choose an Executor that will Outlive You** - otherwise their Executor becomes Yours

**A Named Executor Can Renounce their Position** - be sure your Executor is willing to serve - communicate with them

**No Will?** - Intestate - don't leave a big mess behind - otherwise the Courts decide who gets your hard earned Estate

**Insolvent Estates** - Who gets paid first? Funeral Home, Executor, Lawyer, Advisor, Revenue Canada, Creditor, Province

**Executor's Fee** - set by Provincial Courts - Ontario is 5% of Assets submitted for Probate. A bank or Trust company may charge as high as 7%

**What is Probate?** The process of the Provincial Court approving the presented Will as authentic and valid - once this process is complete a "Certificate of Estate Trustee" is issued to the Executor - takes on average 6-12 weeks. Estates worth less than \$10,000 do not need to be probated. Probate is not needed on the first spouse's death, but must go to probate on second spouse's passing

**Calculating Probate Fees** - Ontario "Estate Administration Tax" is 1.5% of probatable assets - which include the value of bank accounts, mutual funds, home, vacation property, rental property, stocks/shares, savings bonds, extensive art or jewellery collection - the ONLY thing exempt from probate fees is Insurance Proceeds - such as the payout of a life insurance policy to a named beneficiary or any form of savings held in Segregated Funds left to a named beneficiary

**Who gets Paid?** The Minister of Revenue, the lawyer, the accountant and the Executor all base their fees on the amount of assets submitted for probate - depending on the structure of your estate, could be as high as 16.5% in total fees (or \$82,500 on \$500,000 of investments)

**Changes to Probate Rules** - January 1, 2013 - new *prescribed* information required about the deceased - not yet disclosed by the Minister of Revenue. A new 4 year assessment window which will require the Estate file to remain 'open' for potential re-assessment by the Minister of Revenue. Misrepresentation may result in a minimum fine of \$1000 or a maximum fine of 2 times the tax payable and/or 2 years imprisonment. This will make the estate settlement process more costly and more time consuming, with greater potential for liability to the Executor. It is now more important than ever to address your estate planning issues, to protect those left behind.

### **Strategies to Avoid Probate**

**Joint or Co-Ownership** - often recommended by the bank teller - triggers a taxable disposition/capital gains, if you are joint owner with your kids - you are responsible for their misfortunes - if they divorce the ex can lay claim to half of your asset. I feel this is a risky recommendation. The bank is not compelled to release assets in a joint account until they see the Certificate of Estate Trustee - issued after the Will is probated

**Estate Friendly Investments** - like Segregated Funds are much easier for your Executor, the value is not submitted for probate, lower professional fees, avoid 1.5% tax, avoids delays, value & beneficiaries remains private

**Segregated Funds** - offered by a Canadian Life Insurance company - excellent tool to avoid probate fees & delays - proceeds paid out to beneficiaries within 2 weeks of claim - available in GIC's, Bond Funds, Dividend Funds, etc in RRSP's, RRIF's, TFSA's, Non-Registered savings accounts

- Banks haven't told you about them because they can't offer them - lawyers either don't know about them or don't want you to know about them, as it reduces their fees. Not all advisors are licensed to offer Segregated Funds. They are called Segregated because they are segregated from the rest of the assets of the life insurance companies, who are heavily regulated and monitored by both the Federal and Provincial governments.

**A Probated Will becomes Public Record** - anyone can pay a fee to obtain a probated copy of your Will - may create problems

**Executor is Personally Liable** - for maintaining the credit-worthiness of the Estate and protecting the assets of the Estate until distributed. The Executor has one year to settle the affairs of the Estate after which the beneficiaries can demand payment of their legacies and interest begins. Must notify the home insurer that the home is vacant for insurance coverage to continue to be valid. The Executor has a fiduciary duty to act only in the best interest of the deceased.

**Canada Post** - As the Executor, take a copy of the Will & Death Certificate to Canada Post and have the mailed re-directed to you for free.

**Passing of Accounts** - is a summary of the financial transactions of the Estate provided to the beneficiaries, who have a right to request this document from the Executor

**Executor's Fee** - if you are both the Executor and a beneficiary of the Estate, take your fee as an increase in inheritance, rather than a fee - to avoid paying income tax on the fee

**Experienced Advisor** - not many advisors truly understand probate and specialize in Estate Planning. My goal is to provide you with peace of mind that your life savings are secure and growing, and knowing when you become an angel we have simplified and preserved as much as possible for your Executor and beneficiaries. I do not charge any fees to my clients.

To learn more or for a complimentary review or

## **Estate Plan Fire Drill**

please contact Léony deGraaf at **905-632-9900** or [leony@dgfs.ca](mailto:leony@dgfs.ca)



The information provided is for general educational purposes and could change without notice. Please consult a lawyer, accountant and/or financial advisor for personalized legal, tax and financial advice.

## Changes to the probate process in Ontario

Ontario's probate fees are governed by the Estate Administration Tax Act, 1998 ("EATA"). The 2011 Ontario Budget contained several measures to improve the administration of Ontario's tax system. Advisors and others involved in the estate planning area may not necessarily have taken note of these changes.

Probate fees are currently administered by Ontario's Ministry of the Attorney General. With the new legislation, the administration of this tax will shift to the Minister of Revenue. Provisions of Ontario's Retail Sales Tax Act will govern the procedures for assessments and reassessments, objections and appeals, administration and enforcement.

An application for probate will generally be "open" (that is, subject to possible audit and reassessment) for four years from the date it is made. For example, an application filed on January 1, 2013 could be audited and reassessed any time until January 1, 2017. (There are no time limits when there is a failure to comply, fraud or misrepresentation.) New provisions provide for fines and imprisonment for certain types of non-compliance.

Practitioners in this area are awaiting the release of the regulations dealing with what is referred to as "prescribed information" about the deceased. Some suggest that there will be an increased need for valuations, etc. If this is the case, the probate process will not only become more costly, there will be time delays.

Under the EATA, the probate fees are \$5 per \$1,000 for the first \$50,000 of assets falling into the estate, and \$15 per \$1,000 for assets in excess of \$50,000. These fees can be avoided by naming beneficiaries in insurance policies.

With appropriate planning, and a designated beneficiary, assets will pass outside the estate. Insurance policies include segregated fund contracts, life insurance policies, critical illness insurance policies, and annuity policies (including term fund, life and term certain policies).

### Case Study:

John anticipates that at the time of death, he will have \$1 million in assets. His house will be worth \$450,000. He will have another \$550,000 in investments (currently a Guaranteed Investment Certificate (GIC) held at a bank). He is considering acquiring a Term Fund issued by an insurer. Looking at these two scenarios, see the difference in how probate fees are calculated:

	Estate subject to probate (\$)	
<b>Anticipated holdings at death</b>		
House	450,000	450,000
GIC held at bank	550,000	
Term Fund Issued by an Insurer having a named beneficiary		550,000
	<b>1,000,000</b>	<b>1,000,000</b>
<b>Estate subject to probate</b>	<b>1,000,000</b>	<b>450,000</b>
<b>Probate fees:</b>		
First \$50,000 (\$5 per \$1,000)	250	250
Remainder (\$15 per \$1,000)	14,250	6,000
<b>Total</b>	<b>14,500</b>	<b>6,250</b>
<b>Savings achieved by estate bypass</b>		<b>8,250</b>

Not only does the use of a named beneficiary result in probate fee savings, designating a beneficiary also means they will usually receive the bequest at a much earlier date. If the asset forms part of the estate, like a GIC at the bank, it's possible that executors may delay disbursing the estate proceeds. They may not be able to ascertain that no additional amounts are owing in probate fees, especially given the allowable four year time frame for audits.

Other strategies exist for avoiding the fees, including the use of alter ego or joint partner trusts, joint ownership with right of survivorship (JOWROS), etc. Each situation needs to be reviewed before the appropriate strategy is implemented, as the full implications need to be determined. For example, a transfer of assets into JOWROS may have income tax implications (possible deemed disposition for tax purposes, possible application of income attribution rules, etc). Other implications, including loss of control, exposing assets to debts of the other party, etc, need to be considered as well.

It is clear that the administration of estates will become considerably more complex for many individuals. Heirs may also see delays in payouts from estates. For this reason, it is important that financial advisors in the province of Ontario review existing estate plans, and, equally important, that those who have done no planning in this area do so at the earliest opportunity.

The following is taken from the Budget documents: "The government will propose amendments to the Estate Administration Tax Act, 1998, to enhance compliance by integrating the administration of this tax with audit and verification functions at the Ministry of Revenue, starting January 1, 2013."

Ontario's Bill 173 received Royal Assent on May 12, 2011. Applications filed on or after January 1, 2013 will be subject to the provisions of the new legislation, unless Ontario's Minister of Finance defers the application to a later date.

While the legislation has received Royal Assent, we still await the release of certain regulations. Of considerable interest to many estate planning practitioners is that the estate representative will be required to provide to the Minister of Revenue "such information about the deceased person as may be prescribed by the Minister of Finance."

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## Estate planning peace-of-mind:

Take steps now to reduce probate fees and expenses



Every estate must file a final (or 'terminal') tax return after the death of an individual. This can trigger probate fees and other expenses.

Owning deferred annuity policies such as segregated funds and term funds can help ease the burden on your estate by passing amounts directly to your beneficiaries, outside of your estate and the probate process.<sup>1</sup>

### Probate Fees

- Fees or taxes charged by the provinces for confirming a will is valid and the executor has the authority to act, referred to as "Letters of Probate" (essentially a tax on your estate).
- There is no limit on fees (except for Quebec, Alberta, and the Territories).
- Fees and taxes could be as high as 1.5% of your estate.

### Deferred Sales Charges (DSCs) at Death

- Unlike most mutual funds<sup>2</sup>, generally no charges are applied to segregated fund policies at the time of death.

### Legal and Executor Fees

- Legal and executor fees usually range from 3% - 6% of the estate.
- Executors are responsible for locating the will, arranging the funeral, ascertaining names and addresses of beneficiaries and next of kin, finding the assets and liabilities, and tax return preparation.

- Executors usually charge a fee of up to 5% on average, of the value of the assets transferred under the will in most jurisdictions.
- Lawyers or notary, as executors, will often charge a percentage of the assets valued in the estate.
- Segregated fund and term fund policies with a named beneficiary do not form part of the estate and are not subject to any executor, legal or trustee fees.

### Accounting Fees

- For larger and more complicated estates, an accountant could be needed to file the final tax returns and ensure the orderly transition of assets.
- Fees usually range from another 2% - 5% of the total estate assets.
- Unlike GICs and most mutual funds<sup>3</sup> segregated fund and term fund policies, do not form part of the estate and go directly to named beneficiaries. This means the accounting fees will be significantly lower (and should generally only relate to the preparation of tax returns).

<sup>1</sup> Not applicable in Québec, as notarial wills do not need to be probated by the court and, for holograph wills and wills made in presence of witnesses, probate fees are minimal.

<sup>2</sup> Standard Life Mutual Funds Ltd. does not charge any deferred sales charges for surrender on death of the holder of an individual account.

<sup>3</sup> Registered mutual funds can bypass probate. Not applicable in Quebec.

*Remember... you must name a beneficiary (other than the estate) on your segregated fund and term fund policies to ensure these assets go directly to the beneficiary and avoid fees.*

## Take a look at how owning segregated and term fund policies can increase your estate

The example below compares a \$100,000 investment fund and a \$100,000 guaranteed investment over 10 years. The result shows a \$24,782.65 benefit to the estate using segregated fund and term fund policies.



### Estate Taxes on Investments

Input Data
Disclaimer
Help

Province: Ontario

	Mutual Fund		Segregated Fund
Investment Fund Amount:	\$100,000.00		\$100,000.00
Life Expectancy:	10 years		10 years
Rate of Return:	8.00 %		7.50 %
Additional Management Fee:	N / A		0.50 %
Fund Value:	\$215,892.50		\$206,103.16
DSC Charges (0%-7%) <span style="border: 1px solid #ccc; padding: 2px;">3</span>	\$6,476.77		N / A
<b>Fund Value at Death:</b>	<b>\$209,415.72</b>	<b>A</b>	<b>\$206,103.16</b>

  

	GIC		Term Fund
Guaranteed Fund Amount:	\$100,000.00		\$100,000.00
Life Expectancy:	10 years		10 years
Rate of Return:	4.00 %		4.00 %
<b>Fund Value at Death:</b>	<b>\$148,024.43</b>	<b>B</b>	<b>\$148,024.43</b>

  

<b>Total Fund Value at Death:</b>	<b>\$357,440.15</b>	<b>A+B</b>	<b>\$354,127.59</b>
<b>Total Fees:</b>	<b>\$28,095.21</b>		<b>N / A</b>
<b>Net Fund Value at Death:</b>	<b>\$329,344.94</b>		<b>\$354,127.59</b>
<b>Savings:</b>			<b>\$24,782.65</b>

**Total Fees:**

Probate Fees:	\$4,601.00
Legal Fees (3% - 6%) <span style="border: 1px solid #ccc; padding: 2px;">4</span>	\$14,297.61
Accounting Fees (2% - 5%) <span style="border: 1px solid #ccc; padding: 2px;">2.5</span>	\$8,936.00
<b>Total Fees:</b>	<b>\$28,095.21</b>

Assumptions: Non-Registered assets. All values are estimates and for illustration purposes only. Not jointly owned with rights of survivorship as this method also allows for probate bypass.

Load defaults
Calculate
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*Estate taxes based on Ontario. Amounts revised as per October 2009 Tax and Estate Issues Pointer Card.*

**Your advisor has tools to help you estimate the potential impact on your estate. Ask about the estate planning advantages of owning segregated fund and term fund policies in your portfolio.**

*This information is subject to change. Consult a legal advisor for specific information.*

*Ideal Segregated Funds and Term Funds are offered under Standard Life's savings and retirement income plans, which are insurance products.*

*A description of the key features of Standard Life's Ideal Segregated Funds is contained in the Information Folder. Subject to any applicable death and maturity guarantee, any part of the premium or other amount allocated to an Ideal Segregated Fund is invested at the risk of the policyholder and may increase or decrease in value according to fluctuations in the market value of the assets of the Ideal Segregated Fund.*

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