

Multiple Wills - Probate Tax Savings Strategy

Some commonly used strategies to reduce probate fees include:

- Holding property in joint name with right of survivorship (outside of Quebec).

NOTE: Be aware that there are numerous problems associated with this strategy, especially where the joint owner is not a spouse.

- Designating beneficiaries on RSP, RIF and life insurance plans.
- Creating *inter vivos* trusts.
- Making gifts during your lifetime.

Another method for minimizing probate taxes in Ontario and British Columbia is the use of multiple Wills. To understand how this strategy works, let us first understand the probate process.

Why is probate required?

The main purpose of probating a Will is to validate the appointment of the executor (*i.e.*, the person appointed in a Will to control and protect the estate's assets, pay off any debts and distribute property as directed by the Will). Specifically:

- Probate may be required before a legal change in ownership of real estate property can be made.
- Probate can protect the executor and third parties from legal liability.

Third parties (e.g. financial institutions) often require probated Wills before they will accept instructions from the executor named in the Will.

If probate is required, then a probate tax ranging from 0% (Quebec) up to 1.5% (Ontario) of the value of the estate is generally payable.

How does the multiple wills strategy work?

This strategy involves preparing two Wills, one dealing with assets administered by third parties such as bank accounts, investment portfolios and real estate; and another designed for personally held assets such as personal effects and shares of a private company.

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In Ontario, the use of multiple Wills is now accepted practice following the decision of the court case *Granovsky v. The Queen*. The judge in this case ruled that if a person dies with multiple Wills (with a common executor), the executor seeking probate is not obligated to probate all of the Wills. The executor has the option to probate whichever of the Wills of the deceased and probate taxes would apply only on the assets that were part of the probated Will. In other words, it is possible to segregate assets of an individual into multiple Wills:

- A primary Will holding the assets that require the probate process.
- A secondary Will holding the assets that do not require probate (e.g. privately held shares or personal properties).

The result is lower probate costs because only the assets of the primary Will are subject to the provincial probate tax.

On March 31, 2014, British Columbia's new *Wills, Estates and Succession Act* came into force and opened the door for B.C. residents to use multiple Wills to minimize probate if different executors are used for each Will.

Example

George, a widower with no children, lives in Ontario and owns an incorporated small business. The privately held corporation is worth \$500,000. George owns his principal residence which is worth \$350,000 (no mortgage), a valuable collection of Group of Seven paintings worth \$150,000 and he also has \$100,000 in a non-registered investment account.

What are the probate taxes that will be payable on George's death if he has only one Will versus multiple Wills?

Single Will		
	Probate required	Probate not required
House	\$350,000	
Art collection	\$150,000	
Private corporation shares	\$500,000	
Non-registered Investment Account	\$100,000	
Total Estate Value	\$1,100,000	
Probate taxes*	\$16,000	

Multiple Wills		
	Probate required	Probate not required
House	\$350,000	
Art collection		\$150,000
Private corporation shares		\$500,000
Non-registered Investment Account	\$100,000	
Total Estate Value	\$450,000	\$650,000
Probate taxes*	\$6,250	

*Ontario estate administration tax (the new name for probate fee in Ontario) rate is \$250 on the first \$50,000 of the estate value and \$15 per \$1,000 on the balance.

By using multiple Wills there is a probate tax savings of **\$9,750** (\$16,000 minus \$6,250)!

Conclusion

If your goal is to reduce probate taxes, using multiple Wills may be something you want to consider. However, it is important to note that probate taxes are based on provincial statutes and since this strategy is based on an Ontario court decision, other provinces may specifically disallow this strategy within their own legislation. Nova Scotia, for instance, has specifically included in their probate legislation clauses that will render the use of multiple Wills an ineffective planning strategy.

It is important to weigh the costs of preparing multiple Wills against the benefits. If you reside in a province that has very low probate taxes such as Alberta, there may not be a need for this type of strategy.

Finally, careful drafting of Wills is critical to the successful use of this technique. In particular, care must be taken to ensure that the Wills do not unintentionally revoke each other. It is also necessary to ensure that the appropriate assets are included in each Will. If just one asset in the secondary Will requires probate (for instance, if an investment account at a brokerage is mistakenly included in the secondary Will), it may taint the entire Will. Probate will then apply on every asset the deceased wished to shelter.

While the focus of this article has been on the ability to reduce probate tax, there are other legitimate reasons for using multiple Wills. An example would be an individual who has assets located in different countries. In this case, the individual may want to prepare a separate Will to deal with the assets located within each country.

It is imperative that you discuss the use of multiple Wills with your legal advisor to determine if this strategy is valid in your jurisdiction.



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