

Dual Wills - A Tax-Saving Strategy



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For many Ontarians, the use of dual wills is part of a well-informed estate planning strategy because it can reduce or eliminate the Estate Administration Tax (the “EAT”) which is often payable as a result of death.

The EAT is a tax of 1.5% on the value of an estate, and must be paid if probate is required. A will does not need to be probated in every estate, and if you can avoid probate, you can also avoid the EAT. Even where probate cannot be avoided, by using a dual will the amount of the EAT payable can be reduced.

Probate is the informal name for the process taken by estate trustees when they apply to the Court for a certificate of appointment. It is very common for an institution, such as a bank or insurance company, to request probate so that they can be sure a person has authority to be the estate trustee before they give them access to a deceased person’s finances.

Upon receiving a probate application, the Court will review documents relevant to the deceased and their affairs, and verify three key facts: first, that the person is actually deceased; second, that the will presented is the deceased’s last will and thus determines the distribution of their assets; and third, that the estate trustee is the proper person to be administering the estate. Once the Court is satisfied, they will provide their seal of approval and issue a certificate to the estate trustee.

This means that when estate planning, assets can be divided into two broad categories: assets that will or are likely to require probate, and assets that will not. When using dual wills, assets that will require probate would be dealt with by the first will, commonly called the primary will, and assets that will not require probate would be dealt with by the secondary will.

An asset will require probate if it is controlled by a third party, like a bank, who will want the Court’s approval - think of real estate, bank accounts, investments, and life insurance payable to an estate. These assets would all be dealt with in the primary will.

An asset will not require probate if it is already in the control of the estate trustee, or if the estate trustee does not require a third-party’s involvement - think of personal assets, such as jewellery, paintings, etc, trust assets, and shares held in private corporations, like a family business.

By creating two wills, if probate is required, the EAT payable would be limited to the value of the assets dealt with in the primary will. If there is any significant value in the secondary will assets, then there is the opportunity for substantial tax savings - with the EAT at 1.5%, dual wills would save \$1,500 for every \$100,000.00 of assets.

While a dual will strategy is an excellent approach for many, the best estate-planning strategy anyone can take is ensuring that they have even a single will. Preparing a will ensures your wishes are carried out, avoids uncertainty, minimizes the chance of a disagreement, and streamlines the administration of your affairs. You will reap great benefits by speaking with an estate planning lawyer and creating a proactive and well-organized plan - whether it is with one will, or two.

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