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Is Probate Right for Your Estate ?

Estate planning can be an overwhelming process. Whether it is your own estate or you are the executor for someone else, the checklist can seem never-ending. A financial advisor can help make sure your checklist is complete before you start checking the boxes.

One of those items on the checklist is probate, the legal process that confirms the executor's role. A will authorizes the executor to act on behalf of an estate, but an executor may seek confirmation of their authority from a court through a letter of probate.

You might be wondering why anyone would bother with this step.

Probate provides legal evidence of an executor's authority to third parties. Depending on the estate, the amount of third parties you have to deal with can be quite numerous. These third parties can include financial institutions like banks and stock brokers, transfer agents, and government offices. A letter of probate can help this process move more smoothly. With an official confirmation of your identity and authority, third parties can transfer funds with peace of mind; they don't have to worry about being liable for paying the wrong party. With some transactions, probate is not optional. With a few exceptions, land registry offices require probate to transfer land from the deceased to someone else.

Probate can also be used as an official timestamp. Some estate claims, like dependent's relief or family law claims, have time limits. The limitation period begins with the date probate is initiated. If probate is not started, the potential claims on the estate may be allowed indefinitely.

What are some of the downsides of probate? It is a public document. If you want the estate to remain private, then probate is not going to be an appealing option. For many people, the worst part of probate is the fees, which are charged by the provincial government. Some provinces have flat fees, but most provinces have asset-based fees. This can quickly turn into a large headache for larger estates. Some rates are as high as 1.50%. If you have an estate of \$1 million, your probate fee would be \$15,000. Most people don't part with that sum of money very easily.

Navigating probate successfully can be a tricky endeavor because there are so many factors to consider. Even the calculations of assets can vary provincially. In some provinces, debt can be deducted from the asset value, but these deductions are not consistent. Probate may be sidestepped in some cases: joint accounts will transfer to the surviving joint account holder depending on the terms of the account agreement. A death certificate may only be required for the asset transfer. In most cases, registered accounts like RRSPs, RIFs, TFSAs and life insurance policies can usually avoid probate, but since rules can vary from province to province, it is always best to seek professional advice in this matter. Other legal and tax implications should be considered in all cases, as unintended consequences can always arise. Avoiding probate for privacy reasons or to avoid fees can lead to even more expensive situations if professional advice is not sought.

Estate planning is more than just managing assets; it's about managing a legacy. The legacy you leave should be a story of diligence. Consulting with a professional over the strategic use of probate will become part of the legacy you leave with your estate.

Do you have questions about estate planning?

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