

Beware of Unintended Consequences in Efforts to Avoid Probate Fees



purposes and may trigger an obligation to pay capital gains tax. If you add a person to title to your principal residence and that person does not live in the residence, capital gains tax may become payable on part of the future increase in value of the home. Once ownership is changed, control is lost, and any future decision

Probate fees are fees paid to the province to obtain a Grant of Probate when a person dies. There are some adjustments, but the fee can be estimated as 1.4% of the value of the estate assets.

Some assets do not form part of a person's estate requiring probate to enable transfer. A RRSP, RRIF, TFSA or life insurance policy that designates a beneficiary who survives the deceased person, will transfer directly to that beneficiary and not form part of the estate assets. And assets that are owned with one or more other persons as joint tenants can pass to the surviving joint tenants rather than to the estate.

Most couples own their home as joint tenants, have joint bank accounts, and often own vehicles jointly. It often makes sense to name your spouse as beneficiary for life insurance, RRSPs, RRIFs, and TFSAs. Upon your death, those assets transfer to your surviving spouse without the need to obtain a Grant of Probate.

Given the savings of time and money in avoiding probate, many people without a spouse ask about adding children or other intended beneficiaries to title to a home or recreational property, or to bank accounts, in an effort to avoid probate fees.

Be careful. Adding another person to title, or to a bank account, is a transfer of ownership. The transfer will be a disposition for income tax

regarding that asset, including whether or not to sell or mortgage it, will require agreement of all owners. The asset may also be at risk of a claim by any creditors of the person that was added as an owner as well as claims by that person's spouse in a family law claim.

Probate fees are significant enough that it makes sense to at least consider options to avoid the need to obtain a grant of probate. But any changes in ownership should only be undertaken after careful consideration of the consequences of such change within the context of a person's overall estate plan, and taking into account family dynamics that may create greater risks. All of these factors require a good conversation with your legal advisor to ensure any effort to save probate fees does not create problems that will be much more expensive and damaging to address.

Tom Christensen, Q.C.

NIXON WENGER ...

LAWYERS

Nixon Wenger LLP
301-2706 30th Avenue
Vernon, BC V1T 2B6
www.nixonwenger.com
250.542.5353 | 1.800.243.5353