

FC WILLS *Matter*

I'VE FOUND THE WILL, NOW WHAT?

You may have heard of the term “probate” in connection with Wills. Probate is the legal process by which the Court validates a Will. The Executor normally applies to the Court to probate a Will. Until probate is granted by the Court, the Executor is restricted in what he or she can do with the Will and the deceased's assets.

When a Will is probated, the Court looks at various issues to make sure the Will is valid, such as the mental capacity of the deceased when the Will was made, fraud and whether the Will was properly signed. The Will may be challenged during probate.

It is not always necessary to probate a Will. An experienced Wills & Estates lawyer can help you make that decision.

When probate is necessary, there are “probate fees” that must be paid. Probate fees are set out in the *Probate Fee Act*, and, depend upon the value of the deceased's Estate. There are no fees on Estates valued under \$25,000. There is a formula for calculating the probate fees for Estates worth more than \$25,000.

Putting together a court application for probate can be a complicated process which may require the Executor to do a lot of “leg work”. For example, it is the Executor's job to locate, value and list in the probate application all of the deceased's assets and liabilities. This may be easier said than done. The Executor also has to be aware of what assets are included as part of the Estate and what assets are not. If an Executor makes a mistake, the Executor can be liable for that mistake.

The Executor also has to give proper notice of the probate application to various people that are or might be affected by the Will.

If you are an Executor, it is very important to obtain the assistance of an experienced Wills & Estates lawyer when probating a Will to make sure you do everything right so that the Will is effective.

Contact *Fulton & Company's* Wills & Estates Team

if you have any questions regarding wills or estate matters.

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