

Multiple Wills can provide business owners with an opportunity to reduce the probate fees that would otherwise be payable upon their deaths.

## WHAT IS PROBATE?

Probate of a Will gives the executors the court-sanctioned authority to deal with the estate assets, as directed by the Will. Probate of a Will is not always required to administer an estate. In fact, probate is only required where the third party holder of the asset (e.g. the bank, ICBC, the Land Title Registry) will not accept instructions from the executor without probate to confirm the executor's authority. Other assets, like jewelry or artwork, can be dealt with by the executor without probate. However, if probate is required to deal with any single asset of the deceased's, then all of the deceased's assets will normally have to be listed in the probate application and probate fees paid on them, even those assets that otherwise wouldn't require probate.

Probate fees in British Columbia are 1.4% of the gross estate for assets over \$50,000, with no maximum. This amounts to approximately \$1,400 payable in probate fees for every \$100,000 of gross estate assets.

## HOW DO MULTIPLE WILLS WORK TO AVOID PROBATE?

The BC Wills, Estates and Succession Act (WESA) permits "Multiple Wills" to be used to deal with the assets of a deceased person with assets in British Columbia. The goal in creating multiple Wills for probate avoidance is to divide assets between two Wills on the following lines:

1. The first Will deals with assets that do not require probate in order to transfer assets to the beneficiaries (the "Non-Probate Will").
2. The second Will deals with the assets which do require probate (the "Probate Will").

The key is in naming a different executor for each Will. At death, the executor administering the Probate Will is only required to disclose assets falling into the Probate Will, and the estate only pays probate fees on those assets. The assets in the Non-Probate Will are not disclosed by the probating executor, because he/she is not in charge of them.

## HOW DOES ALL THIS SAVE MONEY?

The BC *Business Corporations Act* allows the directors of private companies to transfer a deceased shareholder's shares in a private corporation to the estate executor without a Grant of Probate being required. The combination of this with the Multiple Wills option can mean substantial savings to the estate of a private business owner. As an example, consider a person with the following assets at death:

Home	\$ 1,000,000
Investments	\$ 650,000
Private Company Shares	\$ 2,000,000
Total	\$ 3,650,000

The probate fee payable on this estate, without taking advantage of the Multiple Wills option, would be approximately \$51,100. Using Multiple Wills to avoid probate fees on the \$2,000,000 shares, however, reduces the probate fee to approximately \$23,100 - a savings of \$28,000!

### ARE THERE OTHER BENEFITS?

Multiple Wills also affords privacy in respect of those assets for which probate is not required. Probate is a public process with the information contained in the probate application being available to any member of the public upon payment of a nominal fee. Since assets in the Non-Probate Will bypass probate, information about their value and other sensitive details remains private.

Careful drafting and coordination is required to prepare effective Multiple Wills that work together to address all of the estate assets and debts, and to properly carry out the deceased's intentions concerning the distribution of all estate assets among the beneficiaries.

We would be happy to review your estate plan and discuss how Multiple Wills could be of benefit to you and your family.

For assistance with estate planning or administering an estate, contact a member of our experienced estate team at Fulton & Company LLP.



**LEAH CARD**  
 lcard@fultonco.com



**LYLE BACKMAN, Q.C.**  
 lbackman@fultonco.com



**DANIELLE LESLIE**  
 dleslie@fultonco.com



**TYSON MCNEIL-HAY**  
 tmcneil-hay@fultonco.com