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## THE USE OF MULTIPLE WILLS IN BC

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The *Wills, Estates and Succession Act* (“**WESA**”) allows the use of multiple wills in BC. Doing so may allow certain assets to bypass the probate process, and therefore avoid the obligation to pay probate fees on those assets.

### What is Probate?

When you pass away, while some of your assets (such as jointly owned assets with a right of survivorship, insurance policies, RRSPs, RRIFs, or TFSAs) may pass outside your estate, other assets (such as real estate or bank accounts that are in your sole name) may require administration through the probate process.

Generally, under the probate process, an inventory of your assets and liabilities are disclosed to the court, your will is provided to the court, and the court acknowledges the appointment of your executor. Some third parties (most commonly, the Land Title Office and financial institutions) will only accept your executor’s authority to handle the assets of the estate if a grant of probate is obtained.

All assets subject to probate will attract probate fees, which presently are calculated at approximately 1.4% of the gross value of those assets of your estate at death. In effect, the tax probate fee is \$14,000 for every million dollars of assets governed by your Will.

### What Happens if I Have a Single Will?

If you have a single will, and your executor requires a grant of probate to administer any one of your assets, then your executor must disclose (and therefore pay probate fees on) all of your assets that pass to that executor.

For example, if there is a bank account registered in your name alone, and the bank will not allow your executor to administer the account without being shown a grant of probate, then your executor must apply for probate. If in addition to the bank account, you solely own shares in a private company in BC, then those shares must also be disclosed to the court and be subject to probate fees.

### What Happens if I Have Multiple Wills?





Shares in a private BC company can typically be transferred without a grant of probate. The same can be said for money owing to you by such company, including loans by you as a shareholder and dividends the company has declared but not yet paid to you.

Therefore, if you create two separate wills, one dealing with assets requiring probate (your “**Probate Will**”), and a second dealing with your private company shares (your “**Non-Probate Will**”), then the executor of your Non-Probate Will can bypass the probate process and fees.

For example, if your private company shares and shareholder loans are valued at \$2,000,000 upon your passing, then by creating a Non-Probate Will, your estate will avoid approximately \$28,000 in probate fees.

### **What is the Catch?**

In deciding whether the use of multiple wills is appropriate for you, you should consider the following:

1. *Different Executors.* Because your executor must disclose any of your assets that pass to him or her, you cannot appoint the same executor for both your Probate and Non-Probate Wills.
2. *Increased Costs.* Although you may reap some benefit from economies of scale, there are nevertheless higher costs associated with creating multiple wills and possibly administering multiple estates. You should consider whether the savings in probate fees would offset such higher costs.
3. *Wills Variation Risk.* Under WESA, a spouse or child seeking to challenge the distribution you have made under your will must commence a court action within 180 days of the grant of probate being issued by the court. Because your executor will not obtain a grant of probate for your Non-Probate Will, the distribution of your private company shares (or any other assets governed by your Non-Probate Will) may be challenged at any time since there is no 180-day limitation period. This therefore creates indefinite risk to the executor of your Non-Probate Will. The executor may ultimately submit the Non-Probate Will for probate in order to avoid this risk, or the disgruntled spouse or child may even seek to compel the executor to do so.

### **Conclusion**

While the use of multiple wills may lead to significant savings in probate fees, careful structuring of the provisions in your Will can also allow your beneficiaries to maximize available exemptions to Tax on Split Income (TOSI) and, if you have a beneficiary who is entitled to the federal disability tax credit, preferential tax rates available for Qualified Disability Trusts (QDTs). Our team of estate and wealth advisory lawyers would welcome the opportunity to explore with you your individual circumstance, the potential risks, and your available estate planning options.





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For more information, please contact any member of our Estate & Wealth Advisory team.



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