



OFFICIAL NAME

Certificate of Appointment of Estate Trustee

AREA(S) OF LAW

- Estate Planning
- Estate Conveyancing
- Estate Administration

IMPORTANT NUMBERS

Estate Administration Tax Rate:

\$5 for every \$1,000.00 for the first \$50,000.00

15\$ for every \$1,000.00 for the remaining part exceeding \$50,000.00

RELEVANT STATUTE(S)

Estate Administration Tax Act

Land Titles Act

Land Registry Act

In Ontario, a grant of probate, now referred to as a Certificate of Appointment of Estate Trustee, is a status obtained from the court which confirms the validity of a deceased's last will and testament. The Certificate also acts as confirmation of a person's authority to act as estate trustee under the deceased's last will and testament.

What is Probate?

WHERE IS IT REQUIRED?

While probate is not necessarily required to administer an estate, it is required for a variety of reasons, including the following:

1. There's a dispute or question concerning the validity of a will;
2. There's a dispute or disagreement about who should be the estate trustee;
3. There's no named estate trustee; or
4. There was an intestacy, or
5. Third parties such as financial institutions or the land registry office require proof of the estate trustee's authority to deal with estate assets.

IS PROBATE NEEDED TO CONVEY REAL ESTATE?

Probate is a prerequisite for dealing with real property in Ontario's land titles system. Before transferring or otherwise dealing with property of a deceased person, the estate trustee must register a "Transmission Application" to have title to the deceased's property registered in the name of the estate trustee.

Probate is required for an estate trustee to register a Transmission Application, but the following are exceptions to this requirement:

1. There is a will and the value of the estate (not the property) is under \$50,000.00;
2. There is a will and the "**First Dealings Exemption**" applies;
3. There is a court order appointing and vesting the property in the trustee, regardless of whether there is a will;
4. The property is still registered under the registry system under the *Registry Act*, as opposed to the land titles system under the *Land Titles Act*. (Most properties in Ontario are in the land titles system.

WHAT IS ESTATE ADMINISTRATION TAX?

Pursuant to the *Estate Administration Tax Act*, estate administration tax (also known as "Probate Tax") is generally payable on all assets of the estate when an estate trustee applies for Probate in Ontario.

Estate Administration Tax is calculated at a rate of approximately 1.5% on assets over \$50,000.00.

Estate Administration Tax is not payable if the estate trustee does not apply for Probate and it is not payable on the value of assets that pass outside the estate (i.e. by right of survivorship) or on the value of the assets under a secondary will that is not probate.



Estate Administration Tax can be reduced by taking steps to reduce the value of the deceased's estate for tax purposes and by arranging for joint-ownership over assets such as a real estate and bank accounts. Proper estate planning during the deceased's lifetime and an awareness of the legal strategies available is crucial.

How can Probate be avoided?

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IMPORTANT CONCEPTS

- Estate Administration Tax
- First Dealings Exemption
- Multiple Wills
- Joint Ownership
- Right of Survivorship

RELEVANT STATUTE(S)

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WHAT ESTATE PLANNING STRATEGIES ARE AVAILABLE?

The most straightforward way of avoiding the application of Estate Administration Tax is by ensuring that the value of your estate is kept as low as possible and if feasible, below \$50,000.00, so as to fall below the monetary threshold. While the tax payable is \$5 for every \$1,000.00 for the part between \$0 and \$50,000.00, the tax does not apply if the estate's value as a whole falls below the \$50,000.00 threshold.

One way of carrying out this strategy is by using multiple wills. In that case, only those assets owned exclusively by the deceased are included in one will (and submitted for probate), while the deceased's remaining and jointly owned assets are dealt with in a secondary will, which remains private and exempt from probate.

A second method of reducing the value of one's estate for tax purposes is by ensuring that large assets, such as real estate and bank accounts are owned jointly with a right of survivorship. For example, where real estate is owned jointly between spouses and one spouse dies, ownership of the property automatically vests in the surviving spouse. This means that (i) the value of the deceased's estate no longer reflects the value of the real estate and (ii) the surviving spouse no longer needs to apply to the court to deal with or otherwise convey the property.

WHAT IS THE FIRST DEALINGS EXEMPTION?

Where real estate is not owned jointly with a right of survivorship, the property vests in the deceased's estate upon death. In order for an estate trustee to deal with the property, he or she must register a "Transmission Application" so that title will be transferred from the deceased's estate into the name of the estate trustee. Once this is accomplished, the estate trustee can authorize transfers and charges on the property as part of administering the deceased's estate.

In order to register a Transmission Application in the Land Titles System, the estate trustee must first obtain probate as required proof of the estate trustee's authority to act. One exception to this requirement is where the property in question qualifies for a First Dealings Exemption (referred to as "FDE"). If the property in question qualifies for the FDE at the date of the deceased's death, then probate will not be required in order for the estate trustee to deal with the property, thus potentially saving the deceased's estate the estate administration tax which would have otherwise been payable.

An estate planning lawyer's review of the property's title is essential to determine if the FDE exemption is available. This review must be performed prior to the trustee's application for probate.

Stated very briefly, if the property has not been dealt with since it was converted from the Registry System into the Land Titles System, and the property is not otherwise classified as "Fee Simple Absolute", then the exemption will be available.