



## Is your Estate trapped in minimizing the Probate cost?

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By Dorothy Hagel

You may be very surprised that there are reasons why I would not always agree with your financial advisor who keeps on telling you that you should do everything possible to minimize the cost of probating your estate. Thus, you are advised to move your investment and the title to the house in joint ownership with your favoured daughter, who would also become the beneficiary of your TFSA, in addition to being the trustee of your will.

Now that all your assets are sitting on the joint accounts, the title to the house is also jointly held and the beneficiary on your TFSA is designated, you can be sure that there will be no nasty “probate fees” for your estate to pay to the government. You already have a will that says that each of your children will be getting an equal share of your money when you die and you are now confident that your estate plan is well done. The plan sounds great and your financial advisor looks like a hero for teaching you to efficiently structure your estate.

In the meantime, it is Friday evening and I am still in the office working on complicated estate litigation files because some testators had an estate plan that looked exactly like that. And now that the parent is dead, the “favoured daughter” is advancing a claim that all these joint moneys, and the house, and the TSFA too! belong to her alone, notwithstanding that the will says that the estate is to be divided equally among all children of the deceased.

Can this “favoured daughter” advance such a claim? Yes, she can. All these jointly held assets and the money from the TFSA of which she is the designated beneficiary do not form part of the estate that is distributed under the will. As such they are not subject to probate costs because they are passing directly to the surviving joint owner and the designated beneficiary. Can the position of the “favoured daughter” be successfully challenged? After all mom only meant to save on “probate fee”! Well, perhaps such challenge will be successful, but the legal battle will be complicated and costly. One thing is certain, the cost of the fight will significantly exceed any savings on probate costs that were achieved by transferring the assets to joint ownership. And now the financial advisor does not look so good after all!

The Ontario's Estate Administration Tax (aka "probate fees") is about 1.5% of the value of the estate. It is most likely the lowest tax you will ever pay. Before taking steps to avoid this tax, make sure that your money is actually going to the people whom you want to receive it.

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