

Probate Primer: Information for Executors

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So you've been named as the executor of an estate, and you have been told that probate will be required...

What can you expect? What is probate, what's it going to cost and how long will it take?



What is Probate?

Probate is the process by which an executor submits a Will to the scrutiny of a judge, to prove the Will was properly signed in accordance with the law. In Manitoba, this submission takes the form of a **Request for Probate**. A judge who approves the Request for Probate will sign a **Grant of Probate**, confirming the court's approval of the Will.

Once the Grant of Probate is received, the executor can provide copies of the Grant of Probate to whomever may require it, such as financial institutions, life insurance companies, the Land Titles Office, or the Canada Revenue Agency – and upon doing so the executor can deal with the affairs of the deceased person.

How long does probate take?

The process of requesting and obtaining probate can be broken down into several stages. Below we have provided an average timeline for each stage based on our experience, but the actual timeline in any given estate will vary depending on factors outside the lawyer's control, such as the nature and variety of estate assets, the speed at which inquiries are answered, and the judicial centre (court location) where the Request is filed.

Stage 1: Information gathering

The lawyer preparing the Request for Probate will have to collect information from the executors, and from the financial institutions where the deceased had accounts. The information-gathering stage can take around **4-6 weeks** to complete, but that might be shorter or longer depending on how quickly the information comes in.

Stage 2: Document preparation

For a simple Request for Probate, once all the information is available to the lawyer, the Request can usually be prepared **within 2-3 weeks**.

This time period might be longer if the lawyer is also preparing documents such as Letters of Direction and Transmissions for real property or financial assets. The lawyer will meet with the executors to sign the documents, and will send the Request for Probate in to the court for review by a judge.

Stage 3: Court review

Once the Request for Probate has been submitted to the court, generally it takes **4-8 weeks** for a Grant of Probate to issue. This time period might be longer if the court has questions or requires clarification from the lawyer or executor.

The time it takes a lawyer to **obtain a Grant of Probate** should not be confused with the time it takes an executor to **finish administering the estate**. An executor has many other tasks to accomplish before they can distribute the deceased person's estate, and before their job as executor can be considered complete.

Why is probate required? Isn't the Will enough?

Financial institutions, life insurance companies and the Land Titles Office may require probate if the deceased person had an asset (account, investment, policy or real estate) in his or her sole name.

Each financial institution has its own internal policies on how much money can be in an account before they will freeze the account and require the executor to probate the Will. These policies range dramatically from one company to the next. Chartered banks, for example, have a greater ability than Credit Unions to absorb loss, and their amount might be higher than a Credit Union's.

The Land Titles Office will always require probate if the deceased person owned real estate in his or her sole name.

How much does it cost to probate a Will?

The cost associated with probating a Will is mainly comprised of **legal fees**, which are usually calculated as a percentage of the value of the **Inventory of the Estate**.

As part of the Request for Probate, the court requires the executor to prepare and submit an Inventory of the Estate, listing:

1. **all assets** in the deceased person's name on his or her date of death (house, vehicle, bank accounts, investments, etc.), and
2. the **fair market value** of each asset on the date of death, deducting only the amount of any

encumbrances (e.g. mortgages).

Assets that the deceased person **owned jointly** with another person, and assets with **designated beneficiaries** (for example, life insurance, RRSPs, RRIFs, and TFSAs with named beneficiaries), do **not** usually need to be included in the Inventory.

Probate fees were the fees paid to the Manitoba government at the time of submitting the Request for Probate to the Court, and were **abolished** in 2020.

Legal fees are the fees paid to the lawyer for their services in connection with the estate.

Lawyers are governed by the Court of Queen's Bench Rules, which provide the following formula for calculating legal fees, for an estate of **average complexity**:

- a) **3% on the first \$100,000**, or portion of that amount, of the total value of the estate, subject to a **minimum fee of \$1,500**;
- b) **1.25% on the next \$400,000**, or portion of that amount, of the total value of the estate;
- c) **1% on the next \$500,000**, or portion of that amount, of the total value of the estate; and
- d) **0.5%** on the total value of the estate over \$1,000,000.

The legal fee might be higher (or lower) than the fee calculated above, if the estate is more (or less) complicated than average, or if the lawyer is providing additional legal services.

In addition to legal fees, lawyers charge for expenses known as **disbursements**, such as fees for advertising for creditors, searching the Land Titles Office, etc. Lawyers are also required to charge **GST and PST**.

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