

# Dear Barbro!

with Barbro E. Stalbecker-Pountney  
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**Q** I'm named as executor on my parents' wills. I've heard so many things about whether or not you have to go to court to "probate" a will, ways of avoiding probate, the costs, etc. Can you give me a brief education? - *Inexperienced but willing to learn.*

**Dear Inexperienced:** In "probating" a will, an executor obtains the court's seal of approval that the will is valid. When someone dies with a will, all their assets - including their body, - pass to their executor who becomes a trustee. As trustee, the executor must pay all taxes, debts and expenses of the deceased out of the assets and then distribute what is left. The estate trustee is responsible for ensuring that all paperwork, such as tax returns, is properly completed and filed. Unless it is a very small estate, it is inevitable that someone holding some of those assets (e.g., the bank) will not release them to the executor. They will require court approval of both the will and executor appointed under that will. In Ontario, the court does this by providing the executor with a Certificate of Appointment of Estate Trustee. Once that is done, third parties are protected from any future question as to the authority of the estate trustee or the validity of the will.

The procedure in Ontario requires that an "Application for a Certificate of Appointment of Estate Trustee with a Will" be made by the executor to the court where the deceased resided. The assistance of a solicitor is generally needed to prepare the documents. (If there is no will at all, the deceased is referred to as "intestate". The process, while similar, is more complicated and more expensive. Legislation determines both who will be estate trustee and who will share in the estate.)

In making the application, all beneficiaries, (in some estates, the Children's Lawyer and Public Guardian and Trustee) will be notified. An Estate Administration Tax is payable to the court, currently \$5 per \$1,000 of estate assets up to \$50,000 and \$15 per \$1000 thereafter. Reducing the amount of estate assets passing through the will is a focus of many estate planners. One way is transferring an asset into joint tenancy so that on death of a joint owner it will pass directly to the surviving owner. But, care must be taken in this as the new joint owner has full rights in the property.

This is just a brief overview of "probate". It's a complex subject. That's why lawyers are involved.

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