But for the Plan

Estates - A Creative Way to Avoid "Probating" a Will and Paying Estate Taxes

One of our retired members constructed his investments and savings so that his estate assets would go to his wife without her having to expend any money on lawyers or estate taxes. All his investments directly named his wife as beneficiary, and all his bank accounts were owned jointly with his wife, **except for one small account** in his name alone. It contained about $4,000.

Unfortunately, things did not quite work out as planned. When his widow went to the bank to deal with the small account, she was told that the bank would not release the funds to her unless she got "Probate" (in Ontario, called a "Certificate of Appointment of Estate Trustee").

"Probating" a Will is not a quick. nor an inexpensive undertaking. There are lawyer fees, court application fees and "probate taxes". In Ontario, "probate taxes" are officially known as the Estate Administration Tax or "EAT" - a provincial fee, not an inheritance tax, that is paid by the deceased's estate when an estate certificate is required and the value of what is being "probated" exceeds $50,000.

Upset and surprised, the widow called our St. Catharines Staff Office for help. We quickly wrote to the bank, explaining that the small account was the only asset that did not pass to the wife by direct beneficiary designation or by survivorship, and asking it to waive probate due to the relatively small amount in the account.

Unfortunately, the bank's response was that despite the amount involved, they retained discretion regarding the need for probate, and they insisted on it.

But **we found another tactic**! We learned that our client had paid for the funeral out of her own funds, and that the funeral bill was about the same as the amount in the husband's small account. So, we advised her to attend at the bank with the bill for her husband's funeral. When she did that, the bank reimbursed her for the cost of the funeral - from the husband's account - thus reducing the account to a nominal amount.

It worked! The bank finally agreed to release the balance without requiring probate!

But for the Plan, our member may not have saved the time and expense of a court application.

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..Submitted by Michael Maddalena

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