

# Probate of a Will



## What does it mean to “probate” a will?

The word **probate** means to prove or validate. Probate is the procedure by which a will is approved by the Court as the valid and last will of a deceased **testator** (the person who made the will). It also confirms the appointment of the person named as executor in the will. The Court gives the executor documents, called the **letters probate**, as proof of his or her authority to deal with the estate.

## When do you need probate?

It depends on the nature of the assets, the beneficiaries and the will. Often, the will is sufficient to give the executor all the powers of action needed to settle the estate.

If the will is particularly complex or if the administration of the estate may take several years to complete, it is wise for the executor to obtain letters probate. The **letters probate** provide official recognition of the authority of the executor over the testator’s estate. The executor may need this proof, for example, to recover money owing to the testator or to transfer certain assets in accordance with the instructions in the will. As well, letters probate may be necessary if the executor expects that somebody may contest his or her right to act as executor.

## How does the executor obtain the letters probate?

The person requesting the letters probate may apply to the office of the Clerk of the Probate Court. This may be done in the judicial district where the testator was residing when he or she died or in a district in which the testator owned property. For example, if the testator lived in Moncton, but owned a cottage in Plaster Rock, the executor could apply to the court in Moncton or in Woodstock.

## What fees must an estate pay to obtain the letters probate?

The fees payable to Probate Court for the letters probate are set out in the **Probate Court Act** and its **Regulations**. The fees are based on the value of the estate. Generally, the fee schedule is as follows:

Value of The Estate Being Administered	Fee for Grant of Letters Probate
\$5,000 or less	\$ 25.00
> \$5,000 to \$10,000	\$ 50.00
> \$10,000 to \$15,000	\$ 75.00
> \$15,000 to \$20,000	\$100.00
> \$20,000	\$5.00 per \$1,000 of the estate being administered

If a lawyer prepares and submits the application for **letters probate**, the estate will have to pay the lawyer’s fee as well. This fee is separate from the probate fee. The tariff of fees lawyers are entitled to charge for specific services for settling an estate is also set out in the legislation.

## What happens if a person dies without leaving a will?

When someone dies without a valid will, they are said to have died “**intestate**”. In such cases, the Probate Court must appoint someone to act as **administrator of the estate** (rather than the executor). The Court makes this appointment when someone qualified to act in this capacity makes an application to the Court. Usually this would be a member of the family, or if there is none, a close friend of the deceased. The administrator may then apply for the **letters of administration** in the same way as for letters probate. The fees payable are the same as the fee schedule for the letters probate.

## What is the role of an administrator?

The role of the administrator is similar to that of an executor named in a will. The administrator collects all money due to the estate and pays the debts. Once the debts are paid, including income tax, the administrator must sell the assets of the estate and distribute the proceeds in accordance with the **Devolution of Estates Act**.

## What if no one is willing or able to act as an administrator?

In cases where a person dies in the province and leaves property and there is no one available to administer the estate, the Public Trustee may be appointed by the Court. Once appointed, the Public Trustee will administer the estate. This can happen with or without an existing will.

**Relevant Legislation:**

*Probate Court Act*  
*Devolution of Estates Act*  
*Public Trustee Act*

You can read or download these **Acts and Regulations** on the Government of NB website at [www.gnb.ca/0062/acts/index-e.asp](http://www.gnb.ca/0062/acts/index-e.asp). Or, you can order them from the Queen’s Printer in Fredericton (tel. 506-453-2520) for a fee.

*This pamphlet does not contain a full statement of the law in this area and laws change from time to time. Anyone who needs specific legal advice should talk to a lawyer. You may wish to check out our other pamphlets on wills and estate planning.*

*Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit, charitable organization. Its goal is to provide New Brunswickers with information about the law. PLEIS-NB receives funding and in-kind support from the federal Department of Justice, the New Brunswick Law Foundation and the New Brunswick Office of the Attorney General.*

*We gratefully acknowledge the cooperation and assistance of members of the Law Society of New Brunswick, the Department of Justice and Consumer Affairs and the Office of the Public Trustee.*

Published by:



Public Legal Education and Information Service of New Brunswick

P.O. Box 6000  
 Fredericton, N.B.  
 E3B 5H1

Tel: (506) 453-5369  
 Fax: (506) 462-5193  
 Email: [pleisnb@web.ca](mailto:pleisnb@web.ca)  
[www.legal-info-legale.nb.ca](http://www.legal-info-legale.nb.ca)

Revised July 2011

ISBN: 978-1-55471-413-1