

	<b>Question</b>	<b>Answer</b>
1.	Please list the items that must be submitted for probate	<p>Probate requirements vary depending on jurisdiction (country or province). In Canada requirements for probate are defined by provincial or territorial legislation for each jurisdiction.</p> <p>The documents required to file a probate application in Ontario include:</p> <ol style="list-style-type: none"> <li>1. Original Signed Will with an affidavit of Execution to the Will with one photocopy (if any).</li> <li>2. Death Certificate or proof of death. You can obtain a death certificate from Service Ontario online.</li> <li>3. Any addition or supplement to the will that explains, changes or revokes a will or part of a will.</li> <li>4. Proof of death.</li> </ol> <p>Once you have gathered all the necessary documents, you can apply for probate of an estate by completing court forms. The court forms include:</p> <ol style="list-style-type: none"> <li>1. Draft Certificate of Appointment of Estate Trustee (Form 74C)</li> <li>2. Application* (Form 74A)</li> <li>3. Affidavit of Service* (Form 74B) or Lawyer's Certificate of Service (Form 74B.1)</li> <li>4. Affidavits*, as required (the evidence that is required by legislation)</li> </ol> <p>If you have a will and have appointed an executor, you may have the idea that when you pass away, all your assets will need to go through probate before they are distributed to your beneficiaries. This isn't always exactly what happens. In some cases, only certain assets need probate and in others, probate is not even necessary. There are many misconceptions about probate floating around, and it is</p>

		<p>hard to know which information is correct. Small details and differences can have a large effect on the probate process, and often, well-meaning friends and family will give advice based on their own experience which may not apply to your circumstances.</p>
<p><b>2.</b></p>	<p>Please clarify how one can avoid probate with a RIF, which has not had all funds transferred to a TFSA before the owner's death. The fund has a named beneficiary.</p>	<p>You should consult with your wealth management specialist (a financial advisor or your financial institution) where the RIF or TFSA is located.</p> <p>A RIF, with a named beneficiary or successor holder, passes outside of probate.</p> <p>Non-registered money does require probate.</p>
<p><b>3.</b></p>	<p>My lawyer has retired and left no instructions. How do I find a lawyer to look at the will after my husband or I pass? All the lawyers I have contacted want to create a new will and that is costly.</p>	<p>Normally a retiring lawyer refers existing clients to another lawyer that may be involved in the practice. If that is not the case you should look for a referral from a trusted friend or relative, or a referral from your financial institution, or accountant. Failing those options for referral search a listing from your provincial bar association.</p> <p>In terms of ensuring your will is appropriate for your situation we recommend you review and update your will every year (at tax time as you complete your annual tax return) or as often as your situation, or the situation of your executor(s) or named beneficiaries change.</p> <p>In some cases, this update may not require the will to be entirely rewritten and a codicil (amendment) may be all that is required.</p> <p>In any event it is crucial to complete any required updates – the cost of litigation or unnecessary probate challenges could far exceed the cost incurred to revise or amend a will.</p>

4.	I have heard of a revocable living trust. How does this work?	A revocable living trust is a legal document that gives someone the authority to make decisions about someone else’s money or property that’s held in a trust. People set up a revocable living trust in order to give someone else the power to make financial decisions on their behalf, in the event they become unable to because of injury or illness.
5.	My Tax-free savings lists my children as beneficiaries of this account. Will they have to pay tax on this?	<p>A tax-free savings account (TFSA) can have a named beneficiary or a successor holder. A successor holder is unique to a TFSA account. Only a spouse can be named as a successor holder. A successor holder spouse literally takes over the TFSA account of their deceased spouse. The account does not need to remain separate from their own TFSA and can be consolidated though.</p> <p>A beneficiary designation works a bit differently. A non-spouse can only be named as a beneficiary, not as a successor holder. A spouse can also be named as a beneficiary and when TFSAs were first introduced, many institutions only offered a beneficiary designation. So, many early adopters of TFSAs may find their spouse is named as beneficiary, not successor holder, if they have not updated it. Quebec residents cannot name a successor holder or beneficiary.</p> <p>A key difference with naming a spouse as successor holder instead of beneficiary is that income and growth from a TFSA after death is taxable to the beneficiary. Not so with a successor holder.</p> <p>Given your wife’s account, Scott, had no designation at all, it will be payable to her estate by default. But fear not—there is a solution.</p>

	<p>As executor of her estate and sole beneficiary, you can have the account transferred from her TFSA to your own without impacting your TFSA room. You may not be a successor holder or beneficiary of the account, but you are a beneficiary of her estate. The caveat is the transfer must be done by December 31, 2023 (the end of the year after her death). This should be plenty of time to settle her estate and distribute her assets.</p> <p>What happens to a TFSA after death</p> <p>Now, onto the estate distribution and your question about probate taxes. Probate or estate administration tax is payable on the value of an estate's assets at the time of death. It is important to distinguish estate assets from other assets of the deceased.</p> <p>A beneficiary for a TFSA, registered retirement savings plan (RRSP) or life insurance policy receives their distribution without the assets passing through the estate. Typically, only a death certificate is required. Jointly held assets or certain assets like private company shares may also be able to avoid probate.</p> <p>Probate fees and TFSAs</p> <p>Probate or estate administration tax is payable on the value of the assets, including TFSAs, that are passing through an estate and distributed based upon the terms of a will. So, if an asset is not held jointly or does not have a beneficiary or successor holder, it will generally be subject to probate.</p> <p>Probate requires paperwork to be submitted to the province or territory and a probate fee or estate administration tax payable based on the value of the relevant</p>
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<p><b>6.</b></p>	<p>If part of my estate will be donated, after my death, to an educational institution in a foreign country, will I be able take advantage of tax exemptions?</p>	<p>There are three considerations that affect the response to this question – donations to an educational institution and receipt of any tax benefits from the donation, the location of the institution (not in Canada) and the time of the transfer (after death, so as part of the estate). So, in order of those three considerations:</p> <ul style="list-style-type: none"> <li>• To receive a tax benefit the institution must be in Canada;</li> <li>• The tax benefit would go to the individual if the transfer of the asset (or a portion of the asset) occurred prior to the individual's passing, and would be based on the estimated value of the asset at the time of transfer;</li> <li>• If the transfer occurred after the individual passed (and was indeed part of the estate) the benefit of the transfer would accrue to the estate.</li> </ul>
<p><b>7.</b></p>	<p>Who to ask in dividing estate equally between 2 children when one lives overseas (UK)?</p>	<p>You should seek the advice of your lawyer. Consider using a percentage of the estate, rather than a fixed dollar amount to account for fluctuation of dollar values or residual value of estate once all expenses have been paid. One consideration is to base your division of the estate on Canadian dollars, given the exchange rate</p>

		and its implications for the child living in the UK.
<b>8.</b>	If you put earnings from a RRIF into a TFSA does your estate have to pay taxes on the money from RRIF. If no, does that suggest getting your money from RRSPS and RRIF out and into TFSA as soon as possible after 65 but before 71.	See the response for Question 5. The main challenge is when to do the transfer, and its implications on tax incidence. If you do it before you die the tax applies to the individual, after death it applies to the estate.
<b>9.</b>	Do you age out of life insurance if you want to use it for charity?	A qualifying event such as aging out normally is a term for a child covered by a policy. For other considerations relating to charitable donations discussion with a wealth management specialist is encouraged.
<b>10.</b>	Are trusts used frequently by blended families to ensure that the children of the first couple to die get their fair share?	Trusts are frequently chosen as an option for blended families, where the assets are considered to be of higher value. The concept of fairness is a personal and subjective choice – is fair based on equal or proportional division, or is it based on need? In situations such as this legal advice or advice from a professional dealing with trusts should be sought.
<b>11.</b>	If you move provinces, will your will still be valid in your new province of residence even if it was initially created in a different province?	<p>If you move from one province to another in Canada, your will may still be valid, but it is important to review it with an experienced estate lawyer to ensure that it complies with the rules of your new province of residence. Estate laws can vary significantly among provinces, and your will may not comply with the rules of your new province of residence.</p> <p>Every province and territory in Canada has its own separate estate laws. If you prepare your will in Ontario, but later move to British Columbia, the will from Ontario is to be used in BC when you die (assuming a new one isn't written). Even if your will is valid in Ontario, it can be found invalid in BC and you will risk dying intestate (without a valid will).</p>

		<p>It is advisable to have your will reviewed by an experienced estate lawyer who understands the estate laws of your new province of residence. An estate lawyer can go through your will, identifying provisions that might have been valid in your old province of residence, but would be invalid in your new province of residence. Keep in mind that it's extremely unlikely that you will have to write an entirely new will. Usually, only a few changes will be required, if any. However, it is essential to ensure that your existing will is valid in your new province of residence to ensure your estate will be distributed according to your wishes upon your death.</p>
<b>12.</b>	<p>Can you provide the examples again that Suzie mentioned during the presentation regarding gifting stock &amp; capital gains?</p>	<p>Please see my separate PDF attachment with examples. ... Suzie</p>

Please note responses to these questions provide a general overview, and should not be taken as legal advice. It is always advisable to consult a lawyer for legal advice on your specific situation, and to consult an accountant for advice regarding income tax.