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Payment of Probate Fees

At the time of the filing of an Application for a Certificate of Appointment of Estate Trustee With a Will (also known as a "probate application"), the applicant is required to pay Estate Administration Tax (more commonly referred to as "probate fees"). Probate fees are calculated in accordance with the Estate Administration Tax Act, 1998, S.O. 1998, c. 34, Sched., and can represent a significant estate expense. One challenge that can present itself to estate trustees named in testamentary documents is how to fund the payment of probate fees.

Typically, probate will be required before third parties recognize the authority granted pursuant to a last will and testament or a codicil thereto. Accordingly, subject to certain exceptions that may apply to bank accounts holding limited funds or joint bank accounts that were held with the estate trustee, estate trustees do not typically have access to estate funds before probate is granted.

Depending on the amount of probate fees that are due, it can be difficult for an estate trustee with restricted access, or no access whatsoever, to estate assets to obtain the funds that need to be submitted as part of the probate application filed with the court.

The following are two options available to estate trustees who require funds in satisfaction of probate fees:

* Most banks will issue a bank draft or money order payable to the Minister of Finance on account of the applicable probate fees upon request. The bank may require notarial copies of the death certificate, testamentary document appointing the estate trustee(s), a direction and authorization signed by the estate trustee(s), and/or a letter from a lawyer outlining the quantum of probate fees that are due upon the filing of the probate application.

* The estate trustee may also wish to pay probate fees out of his or her personal funds, to be reimbursed upon gaining access to estate funds. As with funeral expenses, which may need to be paid at a time before access to estate funds has been obtained, probate fees are a reasonable estate expense for which an estate

trustee can be reimbursed if required to pay the cost upfront. Any time that an estate trustee personally pays an estate expense for which reimbursement will be sought, it is advisable to retain complete records of the transaction, including supporting documentation.