

ESTATE PLANNING: WILLS AND POWERS OF ATTORNEY

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It is advisable to have an **estate plan** in place. Meeting with a lawyer to create your estate plan can be a daunting task. However, it is a good idea to consider what you would put in your estate plan before your initial interview with your lawyer. This can save you time and money. Below are some things you should think about before you attend your lawyer's office:

An estate plan may include:

1. Your Will;
2. Your Assignment of a Power of Attorney for both property and personal care should you become incapable of managing your own affairs;
3. And, in some cases, a Trust may also make sense.

When putting together a plan, you must be mindful of both federal and provincial laws governing estates.

Instructions regarding your Will

A will is an essential part of every estate plan because without the will your assets will be distributed in accordance with provincial law. Dying without a will -- also known as dying "intestate" -- can be costly to your heirs and leaves you no say over who gets your assets.

*In Ontario, if you die without a will and have a spouse and two children, your spouse will receive the first \$200,000 of your estate plus one-third of any value of the estate over \$200,000. The remainder will be divided between your children **but**, if you have minor children and you die intestate, the court, and not your spouse, will manage their share of the estate until they turn eighteen.*

Your estate may be subject to probate fees to confirm the validity of your Will and advance planning will allow you to substantially reduce the taxes and probate fees you will have to pay.

Other issues to consider in drafting your will:

1. Estates may be liable to a substantial death tax because you are deemed to dispose of all your capital property when you die and your estate must pay any applicable capital gains taxes. In addition, any RRSPs or RRIFs lose their tax-sheltered status on your death unless you name your spouse as beneficiary.
2. If you have minor children you may need to provide guardian(s)/custodian(s) for your children. Also you should consider if you need a special clause to deal with beneficiaries who are minors.
3. If you have a beneficiary who is disabled, you may need to consider special clauses.

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You should name your Estate Trustee in your plan because if you die without a will, provincial law will direct who will administer your estate and it might not be the person you would have chosen. You will also need to arrange compensation for the Estate trustee(s). Do you want the Estate Trustee to have broad powers for retention, sale and investment of assets, securities etc?

Continuing Power of Attorney for Property

You can name someone to look after your bank accounts, investments, and other property in the event that you become incapable of managing your property yourself. You can choose to name more than one person as power of attorney but you can specify whether they act jointly or not.

Power of Attorney for Personal Care and Living Will

You should also consider whether you will appoint someone as Power of Attorney for Personal Care. If you become incapacitated during your lifetime and can no longer make decisions regarding your health and well being, a Power of Attorney for Personal Care lets you choose a trusted family member, friend, or advisor to manage your affairs. If you are appointing a Power of Attorney for Personal Care you should discuss with your lawyer the kind of care you require (such as no life support if no hope of recovery etc.). Your lawyer may refer to these instructions as your "Living Will".

You may also wish to discuss with your lawyer leaving instructions in your estate plan for your family or friends as to your funeral arrangements.

Trusts

Trusts are legal mechanisms that let you put conditions on how and when your assets will be distributed upon your death. They also allow you to reduce your estate and gift taxes and to distribute assets to your heirs without the cost, delay and publicity of Probate Court (which administers wills). Some also offer greater protection of your assets from creditors and lawsuits. Trusts require named trustees, who administer the trust. It is usual to appoint two trustees (they can be the same people as the executors), and it is always necessary to have two trustees to deal with the sale of land which is subject to trust. You can find out more about trusts from your lawyer and from your financial advisor.

Note: Once you have a will, you must review it regularly to ensure that it is up-to-date and reflects your current wishes. You may need to amend or prepare a new will in the case of:

- **Divorce or remarriage;**
- **Cohabitation with a common-law or same-sex spouse for more than 3 years;**
- **Relocation to another province or county;**
- **The birth of children or grandchildren;**
- **A beneficiary or your proposed executor predeceases you;**
- **A change in your financial circumstances.**

This tip sheet was prepared for CALC by Sharon Leitch, lawyer, and Judith Dale, from the Hastings County Law Association.

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