

Legal
Considerations of
Estate Planning

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Today's Purpose

- The importance of estate planning
- The significance of Wills and Powers of Attorney
- Potential scenarios that arise

What is Estate Planning?

- Important to plan ahead
- You are never too young to begin
- Estate planning is much more than preparing a Will or Power of Attorney.

Estate Planning Includes the Following:

- *Shareholder agreement
- *Partnership agreement
- *Lease
- *Marriage/Cohabitation agreements
- *Name beneficiaries
- *Make^{**} a Will
- *Draft Powers of Attorney

Without a will:

- Estate could be inherited by people you had no intention of providing an benefit.
- Delays in distribution of estate.
- Significant costs.
- Stress on your loved ones.

With a Will:

- Ensure your estate is administered and distributed according to *your wishes*.
- Choose your own executors/estate trustees.
- Ability to name alternatives.
- Considerations for minors or persons with disabilities.
- Naming guardians.
- Estate Trustees outside of Canada? This could have significant tax consequences for your estate.

Updating Your Will

Significant Life Events

**Birth of a child or
grandchild

**Marriage or
separation

**New business
venture etc.

General recommendation:

*Review your will every 5
years to just keep things
updated and relevant.

WILLS

Wills
Probate
Estate
planning
Guardianship
Trusts

- ** No inheritance tax in Canada
- ** Often estates pay an estate administration tax

- ** Certificate of Appointment of Estate Trustee, “proves” the authenticity of a will and is issued by a judge

Institutions that may require it:

- ** Banks
- ** Most real estate
- ** Most transfer agents for publicly traded shares.

How is Estate Administration Tax Calculated?

First \$ 50 000.00 is not subject to estate administration tax.

Beyond \$50 000.00, estate is charged \$15.00 for every \$ 1,000.00

How Can I Avoid Paying this Tax?

- ** Assets with named beneficiaries**
- ** Jointly held assets**
- ** Real property outside of Ontario**

How to Minimize the amount of estate administration tax paid

****Secondary Will or Corporate:** governs assets that can be transferred without a certificate of appointment of estate trustee. This can include “things” such as collectible items and shares in a privately held corporation.

****Assets in joint ownership:** highly suggested to speak to your lawyer to avoid disputes by creating a bare trust agreement.

****Name beneficiaries** when possible

****Gift assets** during your lifetime.



Can My Will Be Challenged?

YES!

By anyone but most likely by a beneficiary or child who was left out of the will.

Grounds

- 1) Undue influence
- 2) Incapacity

Other Challengers

A dependent:
-spouse
-child
-former spouse
-ambiguity in the will

Final Thoughts

Be certain to discuss all the possibilities with your lawyer to avoid hardships down the road.

ETDL (Estate Trustee During Litigation) if Estate is challenged

Court Appointed: a neutral third party with limited authority to administer the estate. No authority to liquidate or distribute assets without direction from the court.

Cons:

-expensive and could cause potential disputes.

-ETDL are often trust companies, lawyers or accountants responsible to maintain and preserve the assets of the estate.

-Highly unlikely ETDL will understand the intricacies of farming.

How to Equalize the Estate

Scenario

If one child shows interest and the other does not.

1

Naming other child beneficiary on a life insurance policy. This can minimize estate admin. taxes.

2

Naming the other child as beneficiary on your TFSA or Pension.

3

Finally, if you own property, you can consider “gifting” the property to your child.

What are Powers of Attorney?

Answer:

Legal documents which allow you to grant someone the right to act on your behalf.

CPAP “Continuing Power of Attorney for Property”

A CPAC allows you to give legal authority to a person or persons to make financial decisions on your behalf when you can not able do so.

PAPC “Power of Attorney for Personal care”

PAPC allows you to give legal authority to a person or persons to make personal care decisions on your behalf when you can no longer capable of doing so.

Why Do I Need Powers of Attorney?

A proper estate plan involves planning ahead to ensure your wishes are carried out when...

A) You are unable to look after your financial affairs or manage your assets.

B) You are no longer capable of making personal care decisions for yourself.

Key Take Aways:

1

Estate
Planning
Never
Ends.

2

Revisit your
estate plan
every 5
years or
after a
significant
life event

Be
transparent

3

4

Keep all important
documentation
in one place

5

Online
Presence: Keep
passwords for
various
platforms in a
safe place.



Thank you for your time. If you have any questions or would like to contact me directly, please feel free to email or call me.

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