

INVEST THE TIME: PLAN YOUR ESTATE

As a popular saying goes, “If *you* don’t write it down, the government will do it for you.” These words are especially true where Wills and Powers of Attorney are concerned. If you die without a Will, your estate will be distributed in accordance with legislation governing intestate succession in your jurisdiction. Without a Power of Attorney, if a person becomes incompetent, either the Public Trustee of the province will get involved or an interested individual will be forced to make an application to become that person’s court appointed guardian.

Although these problems are easily avoided, the reality is that too often people don’t take the time to have these vital documents prepared. If you have been putting off planning for the future, consider this: the cost of drafting a Will and a Power of Attorney is just a fraction of what it will end up costing your estate should you neglect to do so.

A Power of Attorney for Property is a written authority to do certain specific acts regarding a person’s property in the name of and as personally representing the person granting the power. In those jurisdictions that permit a Power of Attorney for Personal Care, individuals can delegate the authority to make personal care decisions if they subsequently become incapable of making them on their own. These would include decisions about health care, food, living arrangements or housing, clothing, cleanliness, and safety.

A Power of Attorney bridges the gap between incompetency and death, at which point a Will takes over. With even the simplest of Wills you can establish who will take care of your estate upon your death, how to deal with special concerns such as articles of personal property, and how your estate will ultimately be divided. A Will also provides the perfect vehicle for setting up trusts for children or grandchildren. These trusts can be as simple or as detailed as you wish, laying out when an heir will take his or her share and under what circumstances. Without proper planning, heirs entitled to any portion of your estate will receive their share at the legal age of majority, no matter how large an amount that may be!

Where charitable giving is a concern, a Will can be used to make either a direct gift on death or alternate gifts if primary beneficiaries predecease you. A lot of older Canadians who intend to leave substantial sums to charity in their Wills are becoming interested in a

relatively new concept, the charitable remainder trust, which has many attractions, including tax savings, certainty in gift giving, and maintaining an income flow during the donor's lifetime.

***For example:** John and Louise want to support the charity with which they have long been associated, but they need all of the income generated by their capital. John transfers \$200,000 of his property to a charitable remainder trust. The trustee pays all of the net income to John and then to Louise, if she survives him. At the time the trust is established, John receives a donation receipt for the present value of what the charity will receive, thereby significantly reducing his taxes. At the death of the survivor, the property passes to the charity without being subject to probate.*

Much has been written recently on probate fees and techniques to avoid them. These fees are in effect a “death tax” on the total value of your estate. Ensuring that proper beneficiary designations are made for retirement (RRSP or RRIF) funds and life insurance policies (outside of your Will) is perhaps the first and easiest step to take. Putting assets into joint ownership or making outright gifts is yet another. For more complex situations, “living trusts” may be appropriate.

All of these strategies will also ensure that the assets are more readily accessible to your beneficiaries upon your death. But there may be a significant immediate tax cost (capital gains) to this sort of planning. The desire to avoid probate fees should never drive the estate planning process.

Estate planning is not the exclusive reserve of the well-to-do. Almost everyone has an estate. With a little time and effort (and surprisingly minimal costs) you can ensure that your estate will be handled and distributed in accordance with your own wishes and not the dictates of some legislative regime. Invest the time. Plan now!