

Estate Planning Basics

By Kevin Dolan

Locating of Assets, Contact Names and Documents

One of the most difficult tasks for an executor is finding your assets, your advisors, insurance policies and documents. Prepare a list summarizing the location for each document and contact information.

Building the Estate Planning Team

Estate planning may involve a number of different people, including your Family, Lawyer, Accountant, Investment Advisor, Business Valuator, Estate Appraiser, Funeral Director and Grief Counselor.

Powers of Attorney

If you become incapacitated and you don't have Powers of Attorney (PofA), the government may act as your decision-maker. You should seek the assistance of a lawyer in preparing a Continuing Power of Attorney for Property and a Power of Attorney for Personal Care (medical issues). The Ontario government has free copies available at: <https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poakit.php>

Power of Attorney While Outside Ontario

If you are regularly travelling or residing outside of Ontario, another Province, State or Country may not accept a PofA that was prepared in Ontario. It is prudent to have the PofA prepared where you have assets or spend a significant amount of time.

The Will: Have it Prepared by a Lawyer

A will has two main purposes: to document your intentions in the choice of beneficiaries and to appoint the executor or estate trustee to distribute assets according to the will's instructions. Additional clauses include giving more powers to the executor for administering and investing the assets and appointing guardians for any minors. Every two or three years, and after any significant event, your will and estate plan should be reviewed.

Restrictions on Your Will

You have considerable latitude in drafting your will with two exceptions: you cannot cut off a financially dependent family member and you must provide for a spouse according to the minimum required in the province of residence at the time of death. In some provinces, the definition of family member extends to parents and grandparents. If a spouse is excluded as a beneficiary, death is considered to be a breakdown of the marriage and is a triggering event under matrimonial property legislation.

If You Die Without a Will

In Ontario, if a person dies intestate, an administrator is appointed to perform the functions of estate trustee under the Succession Law Reform Act. Lengthy court procedures may be necessary before the assets are distributed.

Assets

Assets covered by a will and assets outside of the estate include those registered in the sole name of the deceased; a tenancy in common; assets in deceased's estate.

Assets that do not flow through the estate for taxes include: where there is a named beneficiary, i.e. life insurance, pension plans, RRSPs and RRIFs; items gifted before death; joint tenants with rights of survivorship; living (inter vivos) trust; business interests covered by a buy/sell agreement; assets covered by a pre-nuptial or cohabitation agreement; shares or debt obligations of private corporations. Although these assets are not distributed according to the instructions in the will, the estate may still be responsible for paying the final taxes.

Filing Income Tax Returns at Death

An executor could file up to four separate income tax returns including: the deceased's final personal tax return; a separate tax return for "rights or things" belonging to the deceased; a separate tax return in cases where the deceased was a partner or proprietor in a business enterprise; and a separate tax return if the deceased had an interest in the income of a testamentary trust.

Taxes at Death

Taxes that can arise on the death of an individual in Canada include: income tax from deemed disposition of capital property on death as reflected in the deceased's final personal income tax return; income tax on deemed proceeds of RRSPs and RRIFs; probate fees (which are a disguised form of tax); foreign estate taxes and succession duties if the deceased owned property situated outside Canada or if the deceased was a citizen or resident of a foreign country. Neither the federal government nor the provinces levy a gift or estate tax but collect final taxes via the deceased's last income tax return and, in certain circumstances, from the estate, spouse or spousal trust.

Organ and Tissue Donation

If you are considering donating your organs or tissues, register at www.beadonor.ca.