



Passing on Your Wealth

A guide to what you need to consider

Passing on Your Wealth – What you need to consider

Studies have shown that approximately half of adult Canadians have a valid Will in place. Some assume that upon death everything will go to their spouse and/or children or some people may find this a difficult discussion to have at this time. Whatever the case, having a Will and establishing a plan for how you distribute your assets, what sort of legacy you would like to leave, and planning how your dependents will be looked after is one of the most important things you could do for those that you care about.

Although everyone has good intentions, a lot of people die “intestate”, meaning, without having made a valid Will. A Will is the legal document in which you explain what you want done with your assets (your estate) such as real estate, money, investments, and personal or household belongings that you own. There are two main purposes for making a Will. The first is to document your intentions as to the choice of beneficiaries or recipients of your assets. The second is to appoint the executor*, who is the individual or professional you appoint to take care of your estate and carry out your wishes as intended.

Whatever the complexity or size of your estate, the value of your family home, investments, Retirement Savings Plans (RSPs)/Retirement Income Funds (RIFs), Tax-Free Savings Accounts (TFSA), life insurance and other assets can make it larger than you might think. Having a Will as well as an Estate plan that reflects your values and considers your needs today, as well as the best interests of your loved ones down the road, is as important as saving for your children’s education or investing for your retirement. It means knowing that your final wishes will be carried out and that your loved ones will be taken care of after you are gone.

**“Liquidator” in Quebec; “Estate Trustee with a Will” in Ontario.*

Getting you started

This guide has been developed as a practical overview of things that you should consider and the personal matters that need to be addressed when preparing your Will and planning your estate. After working through this guide, your financial professional can help you get started and point you in the right direction. You should have peace of mind knowing your affairs are in order.

While working through this guide, refer to the Appendix on pages 8 and 9 for definitions used throughout this guide and additional information.

Step 1. Know what you have

Using your current financial situation as a guideline, complete the table below. Identify assets you own and how you own them (either sole, as tenants in common or joint tenants), and those that have designated beneficiaries such as your registered investments, pensions and life insurance policies.

Assets	Ownership		Beneficiary	
	Sole / Tenants in Common	Joint Tenancy*	Named	In Will
Bank accounts	\$	\$	n/a	
Investment account	\$	\$		
GICs/Term deposits	\$	\$	n/a	
Stocks, bonds, mutual funds	\$	\$	n/a	
RSPs	\$	n/a		
RIFs	\$	n/a		
RESPs	\$	n/a		
TFSAs	\$	n/a		
Annuities	\$	\$		
Other investments	\$	\$	n/a	
Life insurance	\$	\$		
Group life insurance	\$	\$		
Company pension plan	\$	\$		
Principal residence	\$	\$	n/a	
Other real estate	\$	\$	n/a	
Private business shares	\$	\$	n/a	
Other:	\$	\$		
Other:	\$	\$		
Other:	\$	\$		
Other:	\$	\$		
Total assets	\$			

Liabilities	Ownership		
	Sole / Tenants in Common	Joint Tenancy*	Insurance
Mortgages	\$	\$	\$
Loans / Lines of Credit	\$	\$	\$
Credit cards	\$	\$	\$
Other loans or debts	\$	\$	\$
Income tax	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Total liabilities	\$		
Net Estate	\$		

*Not applicable in Quebec.

Step 2. Decide what your Will should provide for and what your Estate plan should achieve as well as any issues that you may be faced with

While your goals are unique to your circumstances, some common objectives you may wish to consider include (rank in order of importance to you):

- Providing for loved ones
- Distributing assets according to your wishes
- Helping to secure responsible guardians for your children
- Making sure your estate has sufficient liquid assets to pay taxes and other liabilities
- Maximizing the value of your estate assets
- Giving back to your community or a charitable organization

Listed below are some common issues you will want to minimize or avoid. Make note of what might apply in your circumstances:

- Leaving a financial burden for your family
- Incurring delays in settling your estate
- Leaving a tax burden on your estate
- Incurring unnecessary estate costs
- Creating tension and discord in your family

Step 3. Choose how you want your estate distributed

Below you will find several distribution strategies you may wish to consider in distributing your property. Identify those strategies you would like to consider in your Will and Estate plan.

- Gifting assets before death** – Passing assets on to your beneficiaries while you are still alive. These gifts can be both financial and personal.
- Distributing assets under your Will and through your estate** – Distribution of assets that fall under your estate will be outlined in your Will. Your Executor distributes the assets of your estate to your beneficiaries after all outstanding debts are paid and any tax issues with Canada Revenue Agency (or other tax authorities) are resolved and any related tax payments are made.
- Distributing assets outside your Will** – Registered investments, TFSAs, life insurance policies and pensions may not be subject to probate fees provided there is a beneficiary other than your estate (allowed in most provinces/territories) named in your Will, or designated directly with the plan or policy administrator.
- Joint Ownership** – Joint ownership of an asset generally means that the asset will pass directly to the survivor without passing through the estate.
- Insurance** – In most situations, life insurance provides an efficient, cost-effective way to preserve the value of an estate because, under current Canadian tax law, life insurance proceeds are received tax-free, providing immediate liquidity to pay taxes and other expenses that arise at death.
- Establishing a Trust** – A legal arrangement by which you place property with a trustee to be held for the benefit of one or more beneficiaries. The trustee owns and manages the trust property for the beneficiaries.
- Charitable Giving** – Many people like to leave a legacy to or for a cause they believe in. In addition to the altruistic and goodwill benefits any charitable contribution brings, it can also have significant tax advantages.

See page 9 for additional information and cautions on each of these strategies.

Step 4. Choose your Executor(s)

An Executor is one or more individuals, or an estate professional (i.e. trust company), appointed in your Will to administer your estate after your death.

Executor _____

Co-Executor _____

Co-Executor _____

Place a check mark beside each qualification for the person you are considering as your Executor:

- Lives in the same city or near to you** – Estates are administered in the jurisdiction where the individual resided.
- Is younger than you** – Many people choose a family member or friend of their own age and don't update their Will if that person has predeceased them and if this happens then their executor becomes your executor which may not be what you intended.
- Agrees to take on the role** – Make sure you discuss this with the person before naming them your Executor.
- Won't negatively impact family dynamics** – This often occurs when only one child in the family is appointed Executor or all of the children are appointed co-Executors.
- Has the time to carry out all of the Executor duties** – Often people choose a family member or friend that is a professional, not considering that this person is already stretched for time balancing work and family.

Executor Duties

Many people believe they are bestowing an honour on family members or friends by naming them Executor. In fact, very few truly understand the duties of an Executor and the responsibilities that this obligation can bring.

If your Executor does not have all of the qualifications, consider naming a co-Executor or a professional Executor. Many people are choosing to name an estate professional in their Will as their Executor or co-Executor. Alternatively, your Executor has the option of hiring a professional to assist them in settling your estate. You can add a note to your Will for your Executor to consider using these services. Not only does a professional help your loved ones at a trying time, they can also help maximize the value of your estate for your beneficiaries with their expert handling of estate assets and taxes.

Being an Executor is a complex role that includes risks. For example, Executors can be personally liable for errors made in administering the estate. In addition, Executor duties can last for years. Think about the amount of work involved before choosing your Executor. Listed below are some typical Executor duties.

- Make funeral arrangements
- Identify all bank accounts and investments; obtain information regarding balances and debts owing; locate and access safe deposit boxes
- Notify beneficiaries and financial institutions
- Locate insurance policies; apply for amounts payable to the estate
- Prepare a detailed statement of assets and liabilities valued at the date of death
- Redirect mail, cancel subscriptions, credit cards, driver's license, health card & passport
- Ensure all property such as real estate, investments, businesses, etc., are managed, protected and insured if necessary during the estate administration
- Apply to the court for probate
- Pay bequests and distribute gifts of property according to the Will
- Retain sufficient cash to settle debts and/or final expenses of the estate
- Prepare and file final tax return(s), paying any outstanding taxes and obtaining tax clearances from Canada Revenue Agency

Step 5. Prepare your Will and Power of Attorney

We have summarized below three basic ways to have your Will prepared. Indicate your preferred option:

- Having a trust company arrange a lawyer to draft a Will for you** – this is becoming increasingly popular as more Canadians are opting to name a trust company as their Executor. Many trust companies also have tax and estate planning professionals on staff that can guide you with your overall Estate plan. Trust companies also offer complementary services such as holding your Will for safekeeping and reviewing it with you on a regular basis to help identify changes to your circumstances that should be considered when updating your Will and Estate plan.
- Having a lawyer draft a Will for you** – ensure that your Will is prepared by a lawyer who is familiar with Wills and knowledgeable about how to complete the necessary legal work. Depending on your situation, you might need to also enlist the expertise of other specialists such as tax and estate planning professionals to ensure your Will terms deal with your property in a tax efficient manner.
- Drafting it yourself** – also known as preparing a holographic Will. This method is not a suggested approach because it could have inadequacies that result in legal, financial and administrative issues for your family (i.e. its provisions could be disputed by different persons or beneficiaries due to lack of clarity or effectiveness).

Power of Attorney

Part of a complete Estate plan includes planning for possible illness, accident, or other disability that leaves you unable to manage your financial affairs and personal medical care. A Power of Attorney for property is a legal document that empowers another person to manage your financial affairs during your lifetime. Similar to choosing a professional Executor, many people are choosing to name professionals as their Attorney for property should the need arise to have someone manage their financial affairs for them.

In some provinces/territories, it is now also possible to name a Power of Attorney for personal care, which allows you to name someone to make decisions on your behalf concerning nutrition, shelter, clothing and consent for medical treatment or withholding treatment should you become incapable of doing so. In all cases, Powers of Attorney arrangements terminate upon your death, at which time your Will takes effect.

Choose a Power of Attorney for property and a Power of Attorney for personal care (in provinces where applicable)

Power of Attorney for property _____

Power of Attorney for personal care _____

Step 6. Put your Will and Estate plan into action

Arrange a meeting with your financial professional who can help you. Gather the following personal records prior your meeting:

- Address book
- Real estate documents
- Bank account statements
- Credit card, loan, and mortgage statements
- Investment account and RSP statements
- Pension statements
- Vehicle ownership(s)
- Recent tax return and notice of assessment
- Insurance policies
- Separation agreement and/or divorce documents

APPENDIX

Beneficiary

A beneficiary is an individual or institution that is designated to receive something under a Will, registered investment plan, insurance policy, annuity or trust.

Dying “Intestate”

“Intestate” as defined as dying without having made a valid Will, means that your estate would be distributed according to the intestacy laws in your province/ territory. All provinces/ territories have specific rules on how an estate is to be divided among the living heirs of the deceased. The end result may be quite different from what you would have wanted, particularly where there is a spouse and children involved.

The absence of a Will can also delay the administration of your estate, resulting in inconvenience or financial difficulty for your beneficiaries. In addition, your estate may incur unnecessary administration costs and could be subject to tax liabilities, which could otherwise have been mitigated in a properly prepared Will.

Estate

An estate is made up of the assets and liabilities of an individual at the time of death.

Joint Tenancy vs. Tenants-in-Common

Tenants in Common is one of the ways to hold title to a piece of real estate by two or more individuals. A property held by tenants in common can be owned by two owners, three owners or 100+ owners and each person owns a half, or third, or some other portion that belongs only to them and they can leave their share to someone in their Will or sell it. When a property is held in joint tenancy and one joint tenant dies, generally the entire property belongs to the remaining, surviving joint tenant(s). Whoever is the last joint tenant to die owns the property. Only that last person can use his or her Will to give the property to someone else.

Probate

A Will usually needs to be “probated*” in order to be able to distribute assets through the estate. Probate is a court process that:

- confirms your Will is valid
- confirms the Will presented is your “Last Will and Testament”, and
- confirms the authority of the Executor to administer the estate and distribute the assets

As part of this process your estate is subject to probate fees that are payable to the court and vary by province/territory. In some provinces/territories, they are based on a percentage of the value of the assets that pass under your Will, or your “estate value”, while in other provinces/territories they are flat fees, or a combination of both. These fees are usually paid from the assets of your estate.

**Probate is not required for Quebec Notarial Wills.*

Estate Distribution Strategies

Strategy	Additional Information
Gifting assets before death	<p>This method can reduce costs when your estate is being administered. However, there are other factors that should be considered when gifting financial assets, such as:</p> <ul style="list-style-type: none"> ▪ triggering potential capital gains or other income at the time of the gift ▪ losing control over property ▪ your extended life span and need for additional financial resources ▪ insufficient funds to settle your estate
Distributing assets under your Will and through your estate	<p>While this method of distribution allows you to maintain control over these assets in your lifetime, there may be cost implications for your estate. Upon death, assets in your estate are generally considered, for tax purposes, to have been sold immediately before death at their fair market value. This means any resulting tax on capital gains or other income will have to be paid. Unless your estate has liquid assets available to pay this tax, you could be leaving your estate and beneficiaries with a tax burden, and therefore the estate may be required to sell assets to meet your tax obligations. In some jurisdictions, the greater the value of assets passing under your Will, the higher the probate fees will be for your estate.</p>
Distributing assets outside your Will	<p>Although distributing assets outside your Will could help to minimize probate fees payable, there are complexities. For example, naming beneficiaries for certain assets may result in tax potentially being payable by your estate resulting in an unequal distribution among heirs, particularly residual beneficiaries if other property is used to satisfy the tax.</p>
Insurance	<p>Insurance strategies can be complex and there are many different strategies to consider. A licensed insurance professional can help you determine what is right for your individual circumstances.</p>
Joint Ownership	<p>This strategy should be used with caution. There are drawbacks of joint ownership with adult children. You should understand that you may be transferring ownership and control of your assets. In addition, transferring property into joint tenancy with anyone other than a spouse or common-law partner may result in a capital gains tax liability. Joint assets may also be subject to other tax rules, provincial family/property laws and estate taxes. Another caution with this strategy is that it does not always work as a mechanism for conferring beneficial ownership and it may cause family disputes if the intention of the joint assets is not properly documented up front.</p>
Establishing a Trust	<p>The trustee owns and manages the trust property for the beneficiaries. There are two main types of trusts – living trusts, also called “inter-vivos” trusts, and testamentary trusts. A living trust is established during your lifetime. A testamentary trust is outlined in your Will, and takes effect only after your death. There are also other special trusts such as “alter-ego” and “joint partner” trusts.</p> <p>There are many different reasons why people choose to establish a trust including:</p> <ul style="list-style-type: none"> ▪ to provide long-term income or care for minor children, dependants, or family members with special needs ▪ to safeguard your property and assets for your beneficiaries ▪ to provide lasting donations to charities and other organizations ▪ to reduce probate fees ▪ for income splitting purposes <p>Establishing and administering a trust requires professional assistance to help ensure that it is properly established, maintained and meets your needs and requirements.</p>
Charitable Giving	<p>There are different options for making a charitable contribution through your Estate plan including establishing a Trust as mentioned above. Alternatively, you can contribute to a Private Giving Foundation for as little as \$10,000. Donations can be made in cash, however, you can also donate qualified securities (publicly traded stocks, bonds, mutual funds and segregated funds) and thereby eliminate all capital gains on the disposition of these securities and receive a charitable tax receipt for the fair market value of the donated securities at the time of the gift. Donations can be made during your lifetime or as set out in your Will.</p>

How you structure your Will and Estate plan depends on what you want to accomplish as each person's situation is unique. For this reason as well as changes to the law and in the lives of your family, your Will and Estate plan, once written, should be reviewed by you and your financial professional(s) on a regular basis. It is advisable to prepare your Will and Power of Attorney at the same time.

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