

A close-up photograph of a person's hands writing in a notebook with a pencil. The person is sitting at a desk with a cup of coffee on a saucer to the left. The background is softly blurred, showing a window with light coming through. A teal-colored rectangular box is overlaid on the top half of the image, containing the title text in white.

YOUR WILL & ESTATE PLANNING GUIDE

Abundance
CANADA

ABUNDANCE CANADA

Abundance Canada encourages and enables giving that is faithful and joyful—from God’s hands through yours. Should you want to explore ways to put your generosity dreams and goals into action, call us. Our experienced staff can help make giving easy.

Whether you want to learn more about flexible gift options that can be distributed over time or how Abundance Canada can assist with your will and estate planning, we have resources to help you.

For additional information, visit abundance.ca, call us at 1-800-772-3257, or go to abundance.ca/contact-us to send an email inquiry to one of our offices.



CONTENTS

Your Will and Estate Planning Guide.....	1
Chapter 1: Getting Started on Estate Planning	2
Chapter 2: Leaving a Legacy.....	5
Chapter 3: Your Will	9
Chapter 4: Considerations in Estate Planning	12
Chapter 5: Your Family and Your Estate	14
Chapter 6: Planning Details to Consider	18
Chapter 7: Other Estate Planning Issues	21

Your Will and Estate Planning Guide

Copyright ©2016 Abundance Canada. All rights reserved.

Contents of this book may be used with written permission from Abundance Canada.

Published by Abundance Canada

12-1325 Markham Road, Winnipeg, Manitoba R3T 4J6

Printed and bound in Canada by Premier Printing Ltd.

YOUR WILL AND ESTATE PLANNING GUIDE

Starting With Gratitude

The wisdom writer of Ecclesiastes laments that, “You work for something with all your wisdom, knowledge, and skill, and then you have to leave it all to someone who hasn't had to work for it. It is useless, and it isn't right!” (Ecclesiastes 2:21, *Good News Translation*). This was the ancient way of saying, “You can't take it with you.”

Whether our estates are large or small, we all share this reality. Instead of lamenting, we have the opportunity to put plans in place that express our love and values. In our planning, we can convey care and nurture for our loved ones. At the same time, we can consider expanding our circle of care by sharing gifts with charities that make our world a better place.

Because thinking and talking about death makes many of us uncomfortable, we may put off writing wills and getting incapacity documents in place. One positive way to move forward is to bring to mind the people we love (it may even help to collect their photographs) as a reminder that the task of estate planning is not about us. When we start with gratitude for loved ones it puts our planning in perspective: we want the best for them and their world.

To help make writing a will easier, Abundance Canada has developed *Your Will and Estate Planning Guide*. This guide draws on the experience of assisting people from many walks of life understand their will and estate planning issues. It includes practical information and tools. Plus, the guide reminds us that the way we write our plans reflects our deepest values.

Abundance Canada exists to promote and facilitate generosity planning, whether that be during lifetime or at the end of life. Because God is generous, all of us are invited to consider how we will reflect that generosity. A significant purpose of this guide is to demonstrate the benefits of including a generosity strategy for charitable giving in will and estate planning.

Starting with gratitude may help us make the best plans we can.

Start today and give yourself peace of mind! Abundance Canada is here to help you.

CHAPTER 1

GETTING STARTED ON ESTATE PLANNING

Where Do I Begin?

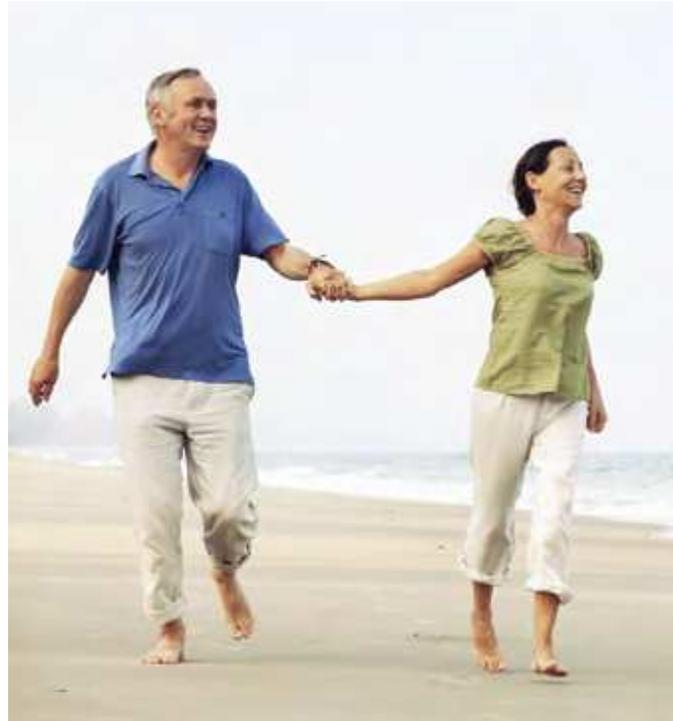
Simply put, estate planning is a thoughtful, caring act. Putting your plans in place is an intentional act of stewardship that expresses your faith and values and shows what is important to you.

For Christians, estate planning can be an expression of gratitude to God as is found in the words of Psalm 24, “The earth is the Lord’s and everything in it.” The Apostle Paul affirms this when he writes to Timothy that God “richly provides us with everything for our enjoyment” (1 Timothy 6:17). It is by God’s grace and mercy you have gathered what you now have.

What is an Estate Plan?

The components of an estate plan are as follows:

- A will, which is the cornerstone of your estate plan.
- A document naming the person(s) authorized to carry out your financial affairs if you are not able to do so.
- A document naming the person(s) authorized to carry out your wishes if you are incapable of making those decisions due to serious health issues.
- Instructions where your important documents are stored for your executor and family.



How Do I Develop an Estate Plan?

STEP 1: SET GOALS

Before you decide on any details of your estate plan, identify what you want to achieve through the process. Your goals might include the following:

- Provide for your family, particularly your spouse, children, or anyone else who is dependent on you.
- Be a good steward (manager) of what God has given you.
- Make charitable gifts, now and/or through your estate.
- Ensure that your assets are distributed according to your wishes and beliefs.

STEP 2: READ YOUR WILL AND ESTATE PLANNING GUIDE

Your Will and Estate Planning Guide is designed to provide an overview of the basic issues in estate planning and to walk you through the planning steps. To get the most out of this guide, read it carefully, and as you do, make notes and a list of your questions. More details are available online at abundance.ca/ywepg.

As you read through this guide, carefully consider how charitable giving can be part of your plan.

STEP 3: FILL IN THE PLANNING YOUR WILL WORKSHEET

Abundance Canada's Planning Your Will worksheet (in the centre of this guide) is another practical tool in your estate planning. Filling it in will help you consider the key decisions you need to make. It will also provide you with most of the details that a legal professional requires to draft your will, making your meeting with that person more productive.

- Complete as much of the Planning Your Will worksheet as you can.
- If you want a reminder of what a term or question means, review the appropriate section of our glossary at abundance.ca/ywepg-glossary.

Putting your plans in place is an intentional act of stewardship that expresses your faith and values and shows what is important to you.

STEP 4: MEET WITH AN ABUNDANCE CANADA GIFT PLANNING CONSULTANT

Meet with an Abundance Canada gift planning consultant to help you design a plan for your will. The consultant will provide a written document based on your conversation including any questions you may still have as you prepare to meet with a lawyer. Our consultants do not charge for this assistance.

To find the Abundance Canada office closest to you or to contact us, go to abundance.ca/contact-us or call 1-800-772-3257.

STEP 5: MEET WITH A LAWYER

Having a lawyer offer advice and prepare your will and other estate planning documents is a wise investment. It is worth the expense to have a qualified professional ensure your documents are clear and complete. If you do not have a lawyer in mind, an Abundance Canada gift planning consultant may be able to suggest one.

- When you make the appointment with the lawyer, feel free to ask any questions such as the cost of having a will prepared or what the process involves.
- Take the will memo an Abundance Canada gift planning consultant has prepared for you to your meeting with the lawyer.



CHAPTER 2

LEAVING A LEGACY

Making End-of-Life Gifts to Charity

Gift planning is an important part of estate planning. Many of us are in a position to make a gift from our estate to help support the church and other charities we care about. This final act of giving is also an expression of thanks to God for the gifts God has allowed us to gather during our lifetime.

Abundance Canada's Role in Your Gift Planning

Abundance Canada gift planning consultants are available to work with individuals, couples, and families on their estate planning. Abundance Canada consultants understand charitable giving and tax matters and can highlight issues where you may wish to obtain further professional advice.

DISTRIBUTION OF CHARITABLE GIFTS

Abundance Canada is a donor-advised foundation which means that we distribute gifts to the charities you care about. Abundance Canada distributes gifts to any registered Canadian charity, which includes most churches. If you choose to name Abundance Canada as the charity of your choice in your will, you may then indicate on a separate document how you wish Abundance Canada to distribute your gift.



HOW IT WORKS

In your will, you indicate the percentage (or share) or the dollar amount of your estate that you are leaving to Abundance Canada to be distributed to charities. After you die, your estate sends a cheque to Abundance Canada for the amount indicated in your will. Abundance Canada issues a charitable receipt for the gift to your estate and distributes the amounts to the charities you have recommended.

Using a form provided by Abundance Canada (or in another format), we encourage you to:

- Name the registered Canadian charities that you want to receive gifts. You may choose to include Abundance Canada as one of your charities.
- Indicate the percentage to go to each charity.
- Indicate whether Abundance Canada is to distribute the gift(s) all at once or over a specified period of time.
- Indicate whether you want to give anonymously.

Using Abundance Canada to distribute your end-of-life gifts has a number of benefits:

- The distribution plan you develop makes it easy to support multiple charities and reduces work for your executor.
- You can change the distribution form at any time without incurring fees, as you would in redoing your will.
- Using this form enables you to make gifts anonymously if you wish.
- If a charity you have named ceases to exist, your gift would not fail, as could happen if it were named in your will. Abundance Canada would work with your executor to find another suitable cause or to disburse funds to the remaining charities.

Abundance Canada does not charge a set fee for facilitating estate gifts. By including Abundance Canada on your distribution list, you can support our ministry of inspiring and facilitating more generosity.

How Much is Enough?

Some people hesitate to make end-of-life charitable gifts because they feel an obligation to leave their whole estate to their family and/or dependants. However, it is often possible to provide

for your family and dependants and to make an end-of-life charitable gift. In some cases, family members may not need to inherit your whole estate. For example, if your adult children are already doing well financially, you have an excellent opportunity to make a more generous gift to your favourite charity(ies).

Some people have found that asking themselves *How much is enough?* helps them to decide on the size of their end-of-life charitable gifts. To come to a decision, you could think in terms of:

- **Age and stage:** Given the current size of your estate, what would your gift mean for each recipient? Would it be too little, too much, or just right for them at the age they will likely be when they inherit?
- **Current help:** Helping your loved ones financially during your lifetime may ensure you give gifts when they are most useful.

You may also wish to have a conversation with your adult children. Many parents are pleasantly surprised when their adult children encourage them to give more to charity.

In some cases, people don't make charitable end-of-life gifts because they don't know how easily it can be arranged and what help is available to them through the gifting services of Abundance Canada.

Gifts to Charity May Be Large or Small

Whether you make a large or small charitable end-of-life gift, you will be helping others. You can use a variety of methods to make your gift, but typically you would designate a percentage or share of your estate to charity rather than a specific amount. Leaving a specific dollar amount means the value of the gift will not change as the value of your estate grows or shrinks, so the size of the gift may not ultimately reflect your wishes. Options include:

- Choosing to leave the bulk of your estate to charity.
- Considering charity as an extra child that will receive the same amount or, in some cases, more than your biological children.
- Leaving a tithe (e.g., 10 percent of the estate).
- Leaving even a small percentage as a values statement.
- Dividing the estate in half—one portion for family and the other portion for charity.

Adopting a Child Called Charity

It's not too late or difficult to adopt a child called charity. Many people have discovered that it's an easy way to make a significant gift to charity. Simply decide that charity will receive a share of the estate equal to your other children. For example, if you have three children, you would divide your estate into four portions; one for each child and one to charity. The charitable receipt will reduce or eliminate the income tax due by the estate, so the dollar amount received by your children may not be significantly reduced.

- Leaving everything to charity.
- Leaving a specific asset to charity, such as investment accounts, life insurance, RRSP/RRIF or a TFSA.

Giving Options

Charitable gifts made through a will, also known as charitable bequests, are the most common form of end-of-life gifts. Leaving a charitable bequest is a testimony to your values and a final show of support to the causes you care about. Ways to give include the following:

- Cash gifts
- Publicly traded stocks, mutual funds, and bonds
- Property

You may also use beneficiary designations to make charitable gifts. These gifts transfer outside the will and are not subject to probate. They often transfer more quickly than a gift in a will. These include:

- Life insurance
- Registered Retirement Savings Plan (RRSP)/Registered Retirement Income Fund (RRIF)
- Tax-Free Savings Account (TFSA)

Check with an Abundance Canada gift planning consultant, your financial advisor, or a tax preparer to get information on which method of charitable giving would be most beneficial to you.

CHAPTER 3

YOUR WILL

The Cornerstone of Your Estate Plan

A will is a written document that lays out your wishes with regard to the distribution of your assets and personal property after you die. It is the main tool you have to ensure that your wishes will be carried out with the least possible expense and delay.

Provided you are mentally competent, you can change the terms of your will or revoke it completely up to the time of your death. You can update your will by replacing a particular section using a codicil. Changes must be witnessed and signed in the same manner as a will.

You should review your will every three to five years or upon any major life event to ensure that it is not out of date due to your family situation, estate value or changes in government legislation. In some situations, a badly outdated will may be worse than no will at all.



Role of an Executor or Trustee

An executor is the person who is legally authorized to carry out the terms of your will, so choosing a suitable executor is one of the most important estate planning decisions you will make.

An executor is responsible for ensuring that your estate and trust assets are well managed, debts are paid, income tax returns are filed, and estate assets are distributed according to the terms of

your will. Depending on the complexity of your estate, the job might last only a few months or might continue for years following your death.

Acting as an executor is a big job. You want to be sure that the person you name to carry out this role is willing and able to do it. Many spouses name each other, their adult child or children, a trusted friend or a professional estate trustee.

Consider naming an alternate in case the executor you have named is unable or unwilling to serve—or predeceases you. If your estate is complicated, your family situation is complex, or you are unable to find a suitable executor, consider naming a professional, such as a lawyer, accountant or trust company.

EXPENSES

Your estate pays all costs for settling your estate. Your executor is responsible for ensuring this happens. Because of the work involved, your executor is allowed by law to receive payment for services from your estate. Although the amount paid often depends on the size of the task and the degree of professional assistance your executor hires, a maximum fee is established by provincial law.

Role of Guardians

If you want to influence how your minor children or dependants will be cared for when you and your spouse die, you must make a will and name a guardian for them in it.

The term *guardian* refers to the person or persons named to care for minor children (or dependants who are mentally incapable of caring for themselves) in the event of their parents' death. Persons named in your will as guardians may serve immediately in that capacity upon your death (provided no one else has custody), but that appointment does need to eventually be confirmed by the court.

You also need to name someone in your will to act as a trustee of any assets you leave to a minor child because minors cannot take control of their inheritance until they become adults. You will want to do the same for a mentally incapacitated dependant.

How Old is Old Enough to Inherit?

Even when they are legally considered adults, many young people are not mature enough to make good financial choices. If you don't specify otherwise in your will, your children will receive their entire inheritance as soon as they reach the age of majority.

At one estate planning seminar, an Abundance Canada gift planning consultant was questioning the wisdom of letting children inherit as soon as they become adults. Suddenly, a young woman leapt out of her seat and agreed.

She said that when her father died, she and her brother each received \$60,000. Within two years, her brother had depleted his share, wrecked vehicles, ran up debts, and left a string of unpaid bills. She did little better in spending her portion and is determined not to repeat the mistake with her children.

HOW TO CHOOSE A GUARDIAN

Choosing a suitable guardian to care for your children or dependants is a serious decision. You are, after all, entrusting your guardian with what is of greatest value to you—your children. You want to be sure that the person you name to carry out this role is willing and able to do it. You may name someone related to you to be the guardian, but this is not essential. In your will, you may state reasons for naming specific guardians (or why you are not naming someone else), or you may simply name the people you have chosen. Choosing suitable guardians is about doing what is best for your children first and foremost, not about satisfying the wishes of other family members.

Storing Your Will

You should store your will in a safe place that is easily accessible because only the signed original will be accepted after your death. You may choose to store the original (signed) copy at your lawyer's office (some will provide this service for free), in your home or office, or another safe place to which your executor will have access.

Keep a copy of your will at home. Make a note on the copy indicating where the original will is stored to help your family or executor find it without delay. File it with a completed copy of Abundance Canada's *Personal Information Directory* (available online at abundance.ca/pid).

CHAPTER 4

CONSIDERATIONS IN ESTATE PLANNING

Understanding Assets and Liabilities

It is important when embarking on estate planning that you have a complete understanding of your assets (what you own) and liabilities (what you owe). Making a detailed list of these as part of the process is only a current snapshot, but it can help you make the best plan for your estate.

Assets include anything you own, such as savings, a TFSA, RRSPs or RRIFs, stocks, bonds, land, a house, a cottage, a car, farm property, a business or interest in a business, coins, or collectibles. You may own an asset in your name alone or with another person (e.g., joint tenants, tenants in common, shareholder agreement, etc.).

To avoid misunderstandings, it is important to have clear records about any loans, including money given to children or beneficiaries. Keeping records of who owes you money, including interest rates and terms of any loans, is critical for estate planning. If the loan was made to a child or beneficiary, state whether the money was to be repaid, considered an early inheritance, or a loan to be forgiven at death.

Liabilities include money owed on credit cards, lines of credit, loans, promissory notes, guarantees, mortgages, reverse mortgages, and lease agreements. Keeping a list of people or institutions to which you owe money as well as the amount, interest rates, and terms of any loans allows you to plan with confidence.



Personal Information Directory

The person you name as executor will need a number of documents to carry out his or her duties. You can assist your executor by leaving a list of all the documents and information needed to settle the estate or by leaving all the documents in one file.

To help you prepare such a list, Abundance Canada has prepared the *Personal Information Directory* available from any Abundance Canada office or online at abundance.ca/pid. Complete the directory and keep a copy in a safe but accessible location. You will want to inform family or trusted persons where to find this information.

If you have prearranged your funeral and your cremation or burial, list the name, contract number, and address of the funeral home and/or cemetery.

Regularly updating your records ensures that no significant information is overlooked. Some people like the discipline of updating records annually at the same time as tax filing.

If you have accounts at more than one credit union or bank, stock brokerage, or mutual fund dealer, consider putting all your accounts with the same organization to reduce the number of accounts you use.

Understanding Tax Implications

Taxes can significantly reduce the value of your estate because Canada's tax laws deem (assume) that your registered assets and capital assets are sold at fair market value (FMV) immediately upon your death.

Capital gains taxes could apply, for example, to shares of a private company, shares of a public company, and real estate (not your principal residence which is normally the house you live in).

Exemptions exist for some assets. If property is owned with someone else (held in joint title) or willed to your spouse, it is not deemed to have been sold upon your death. A family farm or small business assets that are rolled over to eligible family members are not subject to capital gains taxes at your death.

There are special rules for family farms and qualifying small businesses that permit capital gains exemptions in certain circumstances. It is a good idea to check with your accountant regarding tax issues for your estate.

CHAPTER 5

YOUR FAMILY AND YOUR ESTATE

Planning for Family Matters and the Unexpected

Understanding family law implications of the province in which you live are critical for developing an estate plan that will accomplish what you intend. Marriage, remarriage, and blended family situations all create unique challenges for successful estate planning.

MARRIAGE AND REMARRIAGE

Marriage has specific legal implications which vary from province to province in Canada. In most provinces, marriage voids a previous will. If your marital status changes, it is a good time to write or review your will.

Remarriage can have particular challenges, especially if there are children from previous relationships. It is wise to consider how to protect assets built up in a previous relationship for beneficiaries when estate planning with a new spouse.

Marriage Contract

When you marry someone, you and your spouse agree to accept the terms of a contract written for you in provincial law. There is the possibility of making a marriage contract which couples have been making since before Roman times.

In a marriage contract, you and your intended spouse can create a legal agreement that sets out decisions you have made together, often about financial arrangements, which can differ from terms set out in marital laws.



It may not seem romantic to be negotiating a marriage contract just before you say, “I do,” but think of it as a tool to bring mutual understanding to two family units, each with unique patterns and habits, that are now merging into one.

Pre-Nuptial Agreements

Frank had been widowed eight months when he met Martha, who had also been widowed. Within the year, they married. Frank had three adult children from his previous marriage and Martha had two. Frank and Martha had each done reasonably well financially.

Before getting married, the couple agreed that they would maintain their financial affairs separately and would benefit their own children through their wills. During their lifetime, they would live in the house Frank owned, and he would cover the housing expenses. They contacted a lawyer who prepared a pre-nuptial agreement.

Eight years later, Frank and Martha were involved in an accident that resulted in the death of Frank and injuries to Martha. She recuperated in hospital for three months.

While Frank’s and Martha’s children had gotten along well enough, the loss and the settling of the estate put some strain on their relationships. The question of whether Martha would continue to live in the home she and Frank had shared was especially difficult. Thankfully, the couple’s pre-nuptial agreement clarified their intent. When Martha moved into an apartment three years later, the house was sold and Frank’s estate was finally settled.

Money Matters

Money ranks high as a leading cause of conflict for couples at the best of times, and perhaps more so for couples who are remarrying. They frequently bring more financial responsibilities and assets into the relationship than they did into their first marriages. They may be responsible for child or spousal support payments, business interests, children from previous marriages, credit card payments, insurance policies, investments, cottages, and homes. Some couples have different values regarding finances, which can lead to difficulties.

Redrafting Your Will and Updating Beneficiary Designations

If you marry, take the time to make a new will because your old one may have been revoked by the marriage.

It is important to do the following when redrafting your will:

- Review and update your beneficiary designations on insurance policies, pension plans, RRSPs, RRIFs, TFSAs, annuities, or any other financial instrument.
- Review and update your life and disability insurance.

SPECIAL FAMILY SITUATIONS

All families need wills. For single parents, stepparents, and blended families, not having a will can mean that family members they want to benefit from their estate could instead be left out.

Abundance Canada's gift planning consultants can help you navigate estate planning in these situations.

Blended-Family Considerations

For Doug and Susan, being part of a blended family meant that nearly everything required extra planning. Even their wills required careful consideration, since they couldn't just leave assets to each other. Doug and Susan each had children from their first marriages to consider, and they were expecting their first child together. Their pastor recommended they contact Abundance Canada for assistance.

The Abundance Canada gift planning consultant was familiar with the laws of their province and was able to suggest ways for Doug and Susan to provide for their own children and for each other if one of them were to die. For the couple, this meant purchasing life insurance policies that would benefit their children, while leaving joint assets such as their home and retirement savings to the surviving spouse. As the children grow and family needs change, Doug and Susan will need to review their wills and estate plans. For now, they can check it off their to-do list.

COMMON DISASTER: WHAT IF ALL BENEFICIARIES DIE?

If you and your family should perish at the same time, does the wording of your will cover the disaster? Even if your children are older and are unlikely to be in situations where disaster could strike your whole family, it is wise to prepare for the unexpected. You can do this by including a clause in your will that gives clear instructions on how your estate is to be distributed if your family should all die at the same time.

You should also consider writing a clause in your will to cover situations in which beneficiaries die before receiving their full inheritance.

Contact an Abundance Canada gift planning consultant for more information on how to ensure your estate plan reflects your family situation.



CHAPTER 6

PLANNING DETAILS TO CONSIDER

Personal Effects

DIVIDING YOUR PERSONAL POSSESSIONS

We can't take it with us! Most of us will leave behind personal possessions when we die (furniture, household goods, photo albums, clothing, collections, books, tools, etc.). Although not legally binding, you may write a letter of wishes outside your will to clearly explain to your executor how you would suggest your personal effects be distributed.

IF YOU DON'T LEAVE DISTRIBUTION INSTRUCTIONS

The executor is responsible to oversee the distribution of your personal possessions. If you don't leave specific instructions, your executor will likely allow family members (children, grandchildren, parents, and siblings) to divide your personal items among themselves. This could lead to misunderstandings or disappointment. Studies show that disputes arising from an estate's distribution are more often over items that have sentimental value than over money.

If you have no family or your family is not interested in the things you have left, the executor may sell what is of value and add the proceeds to your estate.



Sentimental Value

Bob and Sara were getting older and had recently updated their wills. But they had not yet discussed who might want their dishes, jewelry, and home furnishings. Sara remembered those decisions had been difficult when her parents died. Following a family holiday dinner, Bob and Sara began a conversation about distributing their personal effects and were surprised when their four adult children quickly started to argue.

After calling a brief time out the couple began again, this time slowly sorting through the emotions and relationships with their children before moving on to tackle their belongings. It was a very open and healing conversation.

For Bob and Sara, it was important to deal with the distribution of their possessions while they were still alive. Leaving it until they had passed away or were no longer able to have the conversation could have left their children with painful memories of a family feud. They now believe their children are comfortable with the decisions made about their parents' personal effects and will remain close friends after their passing.

Probate

Probate both certifies that the will is valid and confirms the appointment of the executor. Not all estates need to be probated. You will want to obtain advice from professional advisors to determine whether the estate requires probate.

Probate fees vary by province and territory and are generally based on the value of the estate. Although you may wish to reduce the costs of administering your estate, cutting costs should not be the only consideration. For example, placing property into joint title with a family member may reduce probate costs but may lead to other unanticipated problems. As well, transferring or gifting property before your death will reduce your assets, but you must also consider your own financial needs before doing this. It always makes sense to seek professional advice as you plan.

Tax Returns

After you die, your executor will have to file one or more tax returns, depending on when you die, how complex your estate is, and your personal financial situation.

Meeting CRA's requirements and taking advantage of all tax provisions that apply to your estate may be a challenge for your executor. Depending on how complicated your estate is, it may be wise for you to do some advanced planning along with your executor and your accountant, so your estate can be wound up quickly and efficiently. If you are dealing with someone else's estate, it is advisable to use a professional to file the final tax returns.



CHAPTER 7

OTHER ESTATE PLANNING ISSUES

Planning for Incapacity

People often think of death as a worst-case scenario, but some suggest that losing the ability to talk and reason due to illness or accident is even worse. When someone suffers a crippling stroke, is in a lengthy coma, or becomes mentally incapacitated for another reason, that person has to depend on someone else to make decisions. He or she needs to have someone who can pay bills, file tax returns, handle investment decisions, and make medical decisions.

If you were to become mentally incapacitated, you would likely want someone you had chosen ahead of time to look after your assets and your medical decisions. To ensure that is the case, you need to make and legally document your decisions while you still have the mental capacity to do so. The sooner you do it, the better.

As you plan for the possibility of your own mental incapacity (*mental incompetence* is the legal term), you need to consider two separate, though related, decisions: whom you will appoint to look after your property (money, investments, real estate, insurance) and whom you will appoint to look after your health and medical concerns.

Legal Documentation

Legally, the person you name to act on your behalf is acting as your *attorney*. Attorney in this sense does not mean a lawyer; it means an agent, someone whom you trust to look after your interests when you cannot do so.

After you decide on the person(s), you need to prepare a legal document to record the appointment. The best plan is to have a lawyer draw up a document in which you name someone to act on your behalf. The name of the document varies across Canada, as does how the document is set up and signed. Consider naming alternates in case your first choice is unable or unwilling to act.

It is important to have a lawyer draw up this document for you because poorly worded or improperly signed documents may not be valid.

Be Prepared

You should be prepared for the possibility you could become incapacitated. If you are unable to conduct your financial affairs and have never prepared documents giving someone the authority to act for you, “a potential nightmare awaits the family,” suggest lawyers Barry Fish and Les Kotzer in their book *The Family Fight: Planning to Avoid It: A No Nonsense Guide to Wills and Estates*.

An Ontario couple lived that nightmare. When the husband suffered a stroke, his wife was unable to complete the sale of the family home, yet needed the money for a condominium they had agreed to purchase. His share of the proceeds from the sale of their home was held for a time by the Public Guardian and Trustee. She had to spend a lot of money and suffered considerable grief before getting the situation resolved.

Giving someone the right to act for you for financial and personal reasons should not be seen as something you do only when you get old. It is excellent protection for any adult—regardless of age or health.

Succession Planning

FOR FAMILY FARMS AND BUSINESSES

Transferring your family farm or business to the next generation can be complex and challenging. One or two of your children may already be involved with or interested in operating the farm or business, while others may be pursuing different careers. If that is the case, you may be caught between trying to treat all your children fairly in your division of assets and ensuring that the family farm or business is passed on as a financially viable unit for the next generation to manage and enjoy.

The timing of the transfer of assets may be another issue you have to sort out. Those who take over or inherit the farm or business may receive their inheritance much earlier in life than the non-farm/business heirs.

Troubled Legacy

Bob and Alice were happily married with two small children. The young couple took the time to purchase life insurance and felt good that their retirement plans were on the right track. However, they had never made wills. They had good intentions, but the question of guardianship for their minor children always seemed to stall the process.

On their 10th wedding anniversary, tragedy struck when their car collided head-on with a drunk driver. Bob died instantly and Alice two days later.

With no will in place and no recommendations as to who should care for the children, many people stepped forward and disagreements ensued. Lawyers were hired and the matter was settled by a judge at a cost of thousands of dollars over several long and tedious months.

Dying Without a Will

If you are like most people, you do not particularly enjoy thinking about the prospect of your death. However, you should not let that keep you from writing a will. It is wise to make plans for your estate and write a will while you have the health and ability to do so.

If you die without a will (or intestate, which is the legal term), the consequences can be devastating for those you leave behind. Dying without a will means your estate will be distributed according to the laws of your province or territory, which may not reflect your wishes. These laws cannot be changed by a court.

DECISIONS ON BENEFICIARIES

You may want your spouse, partner, or children to receive much or all of your estate upon your death. If you do not make a will, this may not happen because the laws throughout Canada vary widely.

In some provinces and territories, a common-law partner is treated the same as a married spouse for estate purposes. Separated spouses may still be considered spouses for estate purposes.

Only biological or adopted children are able to inherit under estate law. If you wish to leave any of your estate to stepchildren, you must state this in your will.

If you want to make an end-of-life charitable gift, you need a will. (Exceptions to this are beneficiary designations on life insurance policies, RRSPs, RRIFs, and TFSAs.)

CHOICE OF A GUARDIAN

You may want a particular person(s) to be the guardian for any minor children or dependants. However, if you die without a will or without indicating in your will whom you want to be the guardian, a court will select someone for this role.

All of these potential problems can be avoided by writing a will. Abundance Canada consultants are available to help!



Abundance
CANADA

1.800.772.3257 | abundance.ca