

## PLANNING YOUR ESTATE

## FREQUENTLY ASKED QUESTIONS / WORKSHEET

This is an outline of common issues to consider. It is not exhaustive. It is not legal advice. Please speak with us about your particular situation.

**BEGINNING:**

**Q: I keep putting off planning my estate and making a Will. How can I motivate myself?**

**A:** Many people procrastinate about estate planning. It can involve difficult choices and discussion. Many of us would rather not think about death.

It may help to begin by considering the benefits of a clear and well prepared estate plan. Without it, your spouse, friends and family will certainly face higher costs and more upsetment after you pass away.

**Q: What will happen if I die without a Will?**

**A:** If you die without a Will (or intestate), your assets will be distributed among your spouse and relatives according to fixed rules and without regard to your wishes.

As well, the administration of your estate will cost more money, take more time, and cause more inconvenience for your spouse and family.

**Q: What is the process for planning my estate?**

**A:** Step 1 You need to consider what assets and liabilities you have and what you want to give and to whom. Please review and complete the worksheet at the end of this document and return it to us.

Step 2 Together we discuss your answers to the worksheet and estate planning issues and options which may be appropriate to you.

Step 3 We will prepare and send you drafts of the necessary documents whether they are Wills, Powers of Attorney or Trust Deeds.

Step 4 You review the drafts and let us know if you want any changes.

Step 5 With your comments, we will put the draft documents in the final form.

Step 6 We meet you, review the documents and arrange with you to have them signed.

Step 7 We send you our report and our account.

**Q: What would be your fees and expenses? Do you require a retainer?**

**A:** Our accounts are divided into two parts: fees and expenses.

Our fees will depend on the complexity and urgency of your estate plan. We can give you an estimate when we know more about your situation and your plans.

Usually, our fees will be higher when dealing with:

- families from different marriages;
- multiple Wills for shares in private businesses;
- succession planning for businesses; or
- a long delay between our initial engagement and your signing of the documents.

We also charge for our out of pocket expenses, like postage, courier charges, etc. All our fees and some expenses are subject to Harmonized Sales Tax.

For new clients, we do ask for payment in advance of a retainer which we will hold in our trust account and apply to our invoices when we render them.

**Q: Who should I choose as my estate trustees (executors)?**

**A:** Your estate trustees will administer your estate according to your Will and the law.

You should pick someone you know well and trust, and who is willing and able to fill the role. Ask the person now if he or she would want to assume this responsibility of administering your estate.

In case the person you name cannot or will not act, you should also have at least one backup estate trustee.

**Q: How can I appoint someone to take care of my young children?**

**A:** If you have young children, in case both you and your spouse pass away, you should name guardians for your minor children in your Will. As with estate trustees, you should ask the proposed guardians now if they will serve. Please bear in mind that the persons who are named will have to apply to court for appointment after you pass away.

**TAXES:****Q: What is probate tax?**

**A:** This tax is charged by the Ontario Court when the estate trustees of an estate apply for a Certificate of Appointment (formerly called Probate). The Certificate is official proof that the Will submitted to the Court is in fact the last Will of the deceased.

The Certificate of Appointment is required to transfer or sell assets which are in a public domain, for example, stocks, bonds and other securities issued by a public company. It is also required to transfer real estate and assets outside Ontario.

For a Certificate of Appointment the Court charges tax based on the value of the assets held by the deceased and subject to the Will. Except for mortgages against real estate, debts cannot be deducted from the value of these assets. The present taxes are \$5.00 per \$1,000.00 for the first \$50,000 of assets and \$15.00 per \$1,000 on the value over \$50,000.

The taxes can be substantial depending on the size of the estate. For example, an estate valued at \$100,000 would pay a probate tax of \$1,000. A \$500,000 estate would pay \$7,000. A \$1,000,000 estate would pay \$14,500.

**Q: How can I avoid or reduce probate tax?**

**A:** There are three main methods of avoiding or reducing probate tax: owning assets jointly; naming beneficiaries for RRSPs or insurance policies or pensions; or, using multiple Wills.

**Owning Assets Jointly** – Remember that a Will is only one way to transfer assets on death. If two people own an asset as joint tenants and one of them dies, the asset is automatically transferred to the surviving owner. It is not transferred by a Will.

In some circumstances it is possible to transfer the ownership of assets to joint names. This can be done easily where all or the bulk of an estate is left to one individual, for example, a spouse.

In these cases, there may be no probate taxes payable until the death of the last surviving owner.

Where the estate is divided among a number of individuals or among individuals under the age of 18, it may be very difficult to restructure the ownership of assets to minimize these taxes.

Before transferring assets into joint names, you should consider carefully tax issues such as attribution. There may also be a concern about losing control of the assets. There is also the risk of abuse if a parent holds assets jointly with one child, and the parent intends that when he passes away, this child will share the jointly owned assets with his or her other children. Please discuss these issues with us.

**Naming Beneficiaries for RRSPs or Insurance Policies or Pensions** – You should consider naming adult beneficiaries, like your spouse, for your RRSPs, insurance policies or pensions. In this way, the proceeds of these assets will flow directly to your named beneficiary and your estate will not pay probate tax on the proceeds. Your estate may have to pay income tax on capital gains generated in your RRSP. It may be a good idea to require the beneficiary of the RRSP to pay the related taxes. Please discuss this with us.

**Using Multiple Wills** – If you have valuable shares in a private company, you may want to consider using two mirroring Wills.

The first Will would relate to specific assets and shares in a private company which do not require probate to be transferred. The second Will would relate to your remaining

assets which are in the public domain and real estate. Only the second Will would be submitted to the Court for probate and subject to tax.

**Q: What other taxes are due when I die?**

**A:** Usually, the most significant tax is on your capital gains. When a person passes away, he or she is deemed to have disposed of all capital assets for proceeds equal to their fair market value. This will trigger accrued capital gains or losses.

There are two key exceptions. Your estate will not pay capital gains on your principal residence and capital gain tax will be deferred on assets transferred to your surviving spouse or in a qualifying trust for that spouse. For transfers to spouses or a spousal trust, capital gains are then deferred until the assets are disposed of by your spouse or your spouse dies. You must make sure the trust qualifies as a spousal trust. If it does not qualify, Canada Revenue Agency will claim tax. To qualify as a spousal trust, your surviving spouse must be entitled to all the income and no one else can be entitled to use the capital.

**Q: What claims can my spouse make when I die?**

**A:** Ontario's *Family Law Act* provides that a surviving spouse has a right to an "equalization" of both spouses' assets on death. There are rules as to what assets must be equalized. This includes the matrimonial home and the value of all assets acquired during the marriage. Thus you cannot ignore your spouse as a beneficiary when you make your Will.

**Q: Does my son or daughter have claims on my estate?**

**A:** No, unless they are financial dependents. You cannot ignore your spouse or dependents when you make your Will. But you have no legal obligation to anyone else.

**Q. My son or daughter has a disability, how do I provide for him or her after I die?**

**A:** You should consider creating a trust for that child in your Will. Usually, you do that by setting aside a specific amount of money to meet the financial needs of your son or daughter. Many disabled people receive financial assistance from government. For these benefits to continue, your trust must state that the payments from the trust are left entirely to the discretion of the trustees.

**Q: At what age should my children or grandchildren receive their bequests?**

**A:** Usually, parents and grandparents do not want their children or grandchildren to receive all of their bequests until the age of 21 or older. To delay a bequest, a Will must provide for a backup beneficiary, in case the first beneficiary dies before he or she reaches the specific age. This provision for a backup beneficiary will serve two purposes. It will deal with the possible death of your child or grandchild and it will prevent your child or grandchild from demanding the bequest at the age of 18 years.

**BUSINESS SUCCESSION:**

**Q: My family has a successful business. How should I deal with the future of this business in my estate plan?**

**A:** You should develop a succession plan. With this plan, you can prepare over time either to sell the business or to pass control and management to your children. Unfortunately, most family businesses do not plan for their future. As a result, when family businesses are transferred from the founder to the next generation of the family, only 30% survive. When transferred to the third generation, only 10% of the family businesses survive.

**Q: What are the benefits of a good succession plan?**

**A:** If you and your family wish to transfer control of the business, then a good plan will help ensure a smooth transition.

If you and your family decide to sell the business, then a succession plan can provide for an orderly sale to existing management or to outside party. If the business can be sold at a time chosen by the family, this will maximize the sale price.

A plan can mitigate the disruption of the business if its founders suddenly die or are incapacitated. For example, a plan can support the internal development of competent managers who will help ensure the business can continue.

**Q: What are the features of a good succession plan?**

**A:** To develop a good plan, you should:

**Begin it now** – There is no time like the present to begin your succession plan. To develop a plan, families will need to consult with legal and financial advisors and with the members of the family, including those who are not directly involved in the business. If the family plans to pass control of a business to the next generation, then preparing the future owners will take several years.

**Communicate** – Owners should communicate with family members who are working in the business and those who are not. By communicating they can foster realistic expectations and gain consensus for a succession plan.

**Be fair** – Being fair to your children does not mean treating them all the same. Assess the competency of each child and determine whether that child is suited to take over the business, or whether the business should be sold. Children may benefit from working outside of the family business to gain experience and fresh perspectives.

**Work together** – Try to develop a shared vision among the family of where the business is going. It is not just for the founder to decide.

**Be flexible** – Ensure the plan can accommodate changes in the family, unexpected events, deaths or opportunities.

**POWERS OF ATTORNEY:**

**Q: What are powers of attorney? Do I need them too?**

**A:** Yes, you should have powers of attorney.

There are two kinds of powers of attorney: one for personal care (health); and one for property. They operate while you are alive.

With powers of attorney you can appoint someone you know well and trust to make medical and financial decisions for you while you are alive.

**Q: Who should I appoint as my attorney(s) for property or personal care?**

**A:** These powers of attorney are powerful documents. Unfortunately, we often see abuse of the power of attorney for property. To guard against misuse, we recommend you consider appointing two people who must act together as your attorneys for property.

For both powers of attorney, you should appoint people you know well and trust. They should be concerned with your best interests and understand your values. Ask them if they are willing before you appoint them. You should always appoint backup persons.

**WORK SHEET**

This questionnaire is designed to help us to determine what estate planning tools will best assist you to achieve your goals. All of your answers and information will be kept strictly confidential.

**PERSONAL INFORMATION**

Your full name: \_\_\_\_\_

(also know as): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: Business: \_\_\_\_\_ Home: \_\_\_\_\_

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Occupation: \_\_\_\_\_

Name of Business: \_\_\_\_\_

Date and place of Birth: \_\_\_\_\_

Citizenship: \_\_\_\_\_

Residence for income tax purposes: \_\_\_\_\_

Marital status: \_\_\_\_\_

Date and place of marriage: \_\_\_\_\_

Do you have a marriage contract? If so, please give details: \_\_\_\_\_

\_\_\_\_\_

Have you been married more than once? If so, would you please give details of any divorce decrees or dissolutions (Do you have any obligation to support anyone?)

\_\_\_\_\_

Full name(s) of ex-spouse(s): \_\_\_\_\_

Are you planning to marry in the near future? Yes  No

Full name of current spouse: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Full names of all your children:

Name:	Address:	Date of Birth:

Full names and addresses of any other person who you support (other than your spouse or children):

Name	Address	Date of Birth	Relationship:

Full names and addresses of other persons or charities who you would like to benefit from your Will (e.g. parents, brothers, sisters, friends, charities):

Name:	Address:	Relationship:

Do any of the intended beneficiaries have special needs (e.g. any disabilities)?: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*If your current Will was prepared by another solicitor, please provide us with a copy*

**ASSETS**

**Safety Deposit Boxes:**

Location:	Box Number:	Registered Name:	Location of Key:

**Real Estate:**

- Principal Residence

Street Address or location: \_\_\_\_\_

Registered Owners: \_\_\_\_\_

Current Market Value: \_\_\_\_\_ Encumbrances: \_\_\_\_\_ Equity: \_\_\_\_\_

Acquisition Cost and Date: \_\_\_\_\_

2. Other (such as cottage, condominium in Florida, income producing property, etc.)

Street Address or location: \_\_\_\_\_

Registered Owners: \_\_\_\_\_

Current Market Value: \_\_\_\_\_ Encumbrances: \_\_\_\_\_ Equity: \_\_\_\_\_

Acquisition Cost and Date: \_\_\_\_\_

If property is rented:

Tenant's name: \_\_\_\_\_

Address: \_\_\_\_\_

Amount of rent: \_\_\_\_\_

Date rent payment is due: \_\_\_\_\_

Length of lease: \_\_\_\_\_

If property is out of the jurisdiction, who acts as your local solicitor: \_\_\_\_\_

**Insurance Policies, Annuities, RRSPs, RESPs, RIFS and Pensions:**

No. of Policy:	Issued By:	Beneficiary:	Value of Benefit to Estate:

**Money on Deposit:**

Name and Address of Bank or Depository:	Type and Number of Account:	Ownership (jointly?):	Approximate Amount:

**Shares, Bonds, Debentures, Guaranteed investment certificates:**

(Approximate current market value of Portfolio):\$ \_\_\_\_\_

Description including Number:	Acquisition Cost and Date:	Current Value:	Physical Location:

**Interests in businesses (whether partnerships, incorporated or unincorporated):**

If these interests will form a substantial part of your estate, they will require special planning.

- Are any of your shares subject to any restrictions on transfer?
- Are any of your shares subject to a buy-sell agreement?
- If so, please provide copies of all relevant agreements.

*Please provide copies of all relevant agreements*

**Does anyone owe you money? (If so, please give details):**

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**Automobile, Boats and Recreational Vehicles:**

Description:	Value:	Ownership:

**Household and personal effects (heirlooms, jewellery, etc.) (Approximate total value):**

\$ \_\_\_\_\_

**Other Assets:**

Do you have any of these?

- contingent or vested interest in a trust (Please provide copy of relevant documents); or
- power of appointment (Please provide copy of relevant documents); or
- tax sheltered investments; or
- royalties; or
- Foreign assets (Please indicate where)

TOTAL VALUE OF ASSETS: \$ \_\_\_\_\_

**DEBTS**

**Debts including Mortgages and Business Debts:**

Creditor:	Principal Maturity:	Interest:

TOTAL VALUE OF DEBTS: \$ \_\_\_\_\_

**SUMMARY**

**Total Value of Assets:** \$ 0.00

**Total Value of Debts:** \$ 0.00

**Approximate Net Value of Estate (Assets minus Debts):** \$ 0.00

**ASSETS OF SPOUSE**

(In order to effectively prepare your Will, an estimate of assets held solely by your spouse should be noted here. A list of property held jointly will be useful.)

Real Estate: \_\_\_\_\_

Pension, annuities: \_\_\_\_\_

Shares: \_\_\_\_\_

Bonds: \_\_\_\_\_

Cash/Savings/term deposits: \_\_\_\_\_

Life insurance: \_\_\_\_\_

U.S./foreign assets: \_\_\_\_\_

Other assets: \_\_\_\_\_

**Total Assets:** \$ \_\_\_\_\_

**Total Debts:** \$ \_\_\_\_\_

**Approximate Net Value (Assets minus Debts):** \$ 0.00

**JOINT ASSETS (If applicable)**

(Please list all property held in joint ownership)

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**DETAILS TO CONSIDER FOR YOUR WILL**

- What are your goals for your Estate plan?

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- Appointing estate trustees (formerly called executors) and backups in case the persons you appoint cannot act.

**Proposed Estate Trustees:**

Name(s): \_\_\_\_\_

Address(es): \_\_\_\_\_

**Proposed Backup Estate Trustees:**

Name(s): \_\_\_\_\_

Address(es): \_\_\_\_\_

- Appointing guardians for your minor children, if any, and backups in case the persons you appoint cannot act.

**Proposed Guardians**

Name(s): \_\_\_\_\_

Address(es): \_\_\_\_\_

**Proposed Backup Guardians**

Name(s): \_\_\_\_\_

Address(es): \_\_\_\_\_

- Do you have any instructions regarding your burial?

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- Do you wish to give specific personal items to individuals? If so, please clearly describe the item(s) and the recipient(s).

Item Description	Recipient

- Do you wish to give cash legacies to individuals or charities? If so, please state the intended recipient(s) and amount(s).

Amount of Legacy	Recipient

- Who will inherit the residue of your estate?

**Residual Beneficiaries:** \_\_\_\_\_

\_\_\_\_\_

**Backup Beneficiaries:** \_\_\_\_\_

\_\_\_\_\_

- If your beneficiaries are under age 18, at what age will they receive their shares?

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- Have you considered granting power of attorney for property? Who would be the person to handle matters relating to your property? If that person is unable to act, who would you appoint as a backup person?

**Attorney for Property:** \_\_\_\_\_

**Backup Attorney for Property:** \_\_\_\_\_

- Have you considered granting power of attorney for personal care? Who would be the person to handle matters relating to your personal care? If that person is unable to act, who would you appoint as a backup person?

**Attorney for Personal Care:**\_\_\_\_\_

**Alternative Attorney for Personal Care:**\_\_\_\_\_

- Please note any additional details or comments regarding the distribution of your estate.

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*Thank you for completing this questionnaire.*

*Would you please either send it to us or bring it to our meeting.*