
Will Planning Workbook

Your WILL PLANNING Workbook

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Preparing your Will

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Glossary of terms

All these words will appear in bold the first time they're used in this Will planning workbook.

| | |
|-------------------------------|---|
| Administrator | A personal representative who is appointed by the court to settle your estate if you die without a Will, and therefore do not have an executor. |
| Assets | All the property that you own, including your house, cottage, RRSPs, car, savings account deposits, etc. |
| Beneficiary | A person named in your Will, who you want to receive property from your estate or under a trust after you die. |
| Bequest | A gift to a beneficiary stated in your Will. |
| Capital gains (losses) | The difference between what you paid for certain assets and what the assets are worth when you sell them or die. |
| Committee | The court appointed manager assigned to handle your affairs if you become physically and/or mentally incapable of doing so yourself. |
| Estate | The trust to which all of your assets are transferred when you die. |
| Executor | A personal representative, appointed by you in your Will, who is responsible for settling your estate when you die. |
| Heirs | The people you leave behind who will inherit your property after your death. |
| Intestate | If you die without a valid Will, you die intestate. |
| Living trust | A trust created during your life. |
| Mandate | The Quebec equivalent of a power of attorney. |
| Minor | A person who has not reached the age of majority (18 in many provinces). |
| Power of attorney | A written document that allows a person to act as your legal representative (to do your banking, pay your bills, etc.) |
| Probate | The process of having a court declare your Will valid. |
| Probate fees | The amount paid to the court as a fee for having your Will probated. |
| Trust | A relationship naming or establishing a trustee to manage one person's assets for the benefit of another person, the beneficiary. |
| Trustee | The person responsible for managing a trust (this may be the same person as the executor of the Will). |

Introduction

A great deal of thought and planning needs to go into preparing your Will. Not only should you consider what your estate is currently worth, you should also consider your future sources of wealth. In addition, your Will should be flexible enough to include unborn, as well as living, beneficiaries. It is a task that should not be handled alone. Discussions with your family and professional advisors will help you make decisions best suited to your needs and wishes. This workbook contains information to help you prepare your Will. However, you will still need to meet with a legal advisor when you are ready to put it all together.

Your estate

Keep records of all your assets – your house, pension, savings plans, insurance and investments. A questionnaire has been provided at the back of this workbook to assist you with this.

There are many questions you will need to answer regarding your estate. For example:

- Is the title to the house in your name or your spouse's name, or both? This is important in determining whether the house will form part of your estate.
- Who are the beneficiaries named in your insurance and pension plans? If anyone other than your estate is named, then the proceeds will flow outside your estate.
- What is the approximate value of your assets?
- If you are a partner or a shareholder in a private business, are there any arrangements for selling your share to your family or to the other people in the business when you retire or die?
- Have you loaned money to people in your family?

You should also keep records of what you owe, such as the mortgage on your house, bank loans, private loans etc. If you have assets (such as investments or a second residence) which may be taxed in the future, how much will the tax be? (More about this under the heading "Income Tax.")

It costs money to administer an estate. As a rough figure, this can be from two per cent to six per cent of the estate value.

By noting what you have and deducting what you owe, including your taxes and your estate administration costs, you will see what is left for your beneficiaries.

Beneficiaries of your estate

a) Your spouse

Many couples leave everything to their surviving spouse. Some people leave assets in a trust for their surviving spouse, providing them with income to meet their future needs. An executor is authorized to distribute the capital to the spouse if the income is not enough. When the spouse

dies, the trust assets go to the children. (Often, this is the desire of people who have remarried and have assets they want ultimately to go to the children of the first marriage.)

If you are considering a trust for your spouse, we suggest you deal with your home, its contents and personal effects outside of the trust. It is awkward for the surviving spouse to live in a home that is owned under a trust and it is also difficult to administer. If your spouse doesn't have independent assets, you might consider leaving him or her something apart from the trust, that is, an amount of money or a percentage of the estate. This will give your spouse some independence.

b) Your children

After you and your spouse have died, you may want what is left of the estate to be divided equally among your children. If your children are too young to receive their share, you can appoint a trustee to hold each child's share in a trust until they reach a certain age. Before they reach this predetermined age, you may specify that the trustee use the trust assets for the benefit of that child.

If you have several children, each child's share may not be enough to get the child through school. You may wish to specify in your Will that what is left for the children be kept in a single trust until the youngest reaches an age that you choose. In the meantime, the trustee can use the income from the trust for your children, unequally if necessary. Then, when the youngest reaches the age specified in your Will, what is left is divided among the children.

On the other hand, if a child's share will be substantial, some people direct that it be given in stages – part at one age and the balance at a later age.

In deciding shares for your children, your Will should also deal with these questions:

- How much flexibility will you give the trustee to use the income and capital of the trust for the children? (In smaller trusts, the trustee is usually given a lot of flexibility; in larger trusts, the trustee may be directed to give the income directly to older children and to use the capital as necessary.)
- If the child dies before the age when the balance is to be received, who will receive what is left? His/her children? His/her spouse? As he/she directs in his/her Will? Your other descendants?

If your child needs special care and won't be able to look after what you leave him/her, you can leave assets with a trustee to hold in trust for the lifetime of the child. The trustee must use the assets for the benefit of the child. When the child dies, what is left of the assets within the trust would go to his/her descendants or to your other descendants.

Parents of young children often ask, "Who will look after our children if we both die?" Usually, families or friends step in to help. If there is a dispute, the courts decide. In your Will, you can name someone to have custody of your children. The effect of such an appointment differs from province to province. However, it allows you to state who you want to be the guardian if there is a dispute. You may want to appoint a separate guardian and executor/trustee to avoid any possible conflicts of interest.

If you have named a minor as beneficiary under a life insurance policy, the proceeds would normally be paid to the court. The guardian would have to apply to the court to obtain the funds.

There are two ways to avoid this. First, you can name the estate as the beneficiary and explain your intentions in your Will. Second, the guardian or trustee could be named as beneficiary to hold the life insurance proceeds in trust for the minor.

c) Others

If you want to make a specific bequest to someone – i.e. a relative, friend or charity – you can do so outright or within a trust, either as a set amount or a percentage of your estate. If you have no immediate family, careful consideration should be given to those you want to share in your estate and to what extent.

d) Personal and household effects

You may want personal items – jewelry, furniture, art – to go to certain people. In your Will, you can specify which items you want each person to have. However, this can lead to difficulties later if the personal items cannot be found or you wish to change your mind as to who receives the personal item. Alternatively, you can ask that these items be distributed as the executor decides. A common practice is to make a list of these personal items, including who you would like to receive them in memorandum form, and keep it with your Will. The memorandum is not binding but can be a useful tool for your Trustee. Your heirs are not bound by this list since it is separate from the Will but your executor can use it as a guide when distributing your property.

e) Dependents

Most provinces require that you make plans for the support of your dependents in your Will. Your dependents are those you support, or should be supporting, when you die. This may include your spouse (this may include common law and same sex couples depending upon the jurisdiction), former spouse, children (this may include legitimate and illegitimate children depending upon the jurisdiction), parents, brothers and sisters.

There are Federal Child Support Guidelines that may be referred to in determining the appropriate amount of child support. It will depend on your circumstances and the needs of your dependents. If what you provide isn't adequate, after you die the dependent can often apply to the court to obtain more support.

Choosing executors

In your Will, you name one or more executors to carry out your instructions. Alternate executors should be named. As well, thought should be given to an executor within the same jurisdiction or living area. This simply makes it easier for your executor to deal with your affairs. It may also avoid the need for an executor who lives out of the jurisdiction to be bonded.

- Your executor(s) finds out what your assets are and what they are worth. They look after them until they are sold or distributed to your beneficiaries.
- They find out what you owe, including income tax.
- As soon as they can, they plan how to pay your debts and taxes, how to provide money for your dependents while the estate is being organized and how to complete the estate

administration. There are tax returns to be filed, accounts to be kept, assets to be looked after, money to be raised and reports to go to beneficiaries.

You should choose an executor who will be sensitive to the needs of your family, will be able to do the job and will know when and where to get advice. You should try to choose people who will not have a conflict between their job as executor and their personal interest in your estate, such as a beneficiary or possible purchaser of an asset.

Choosing the executor(s) is as important as deciding how the estate will be divided. Your choice will depend on many factors. Many couples, who leave everything to the survivor and then to their children, name the survivor as the sole executor and then name others as alternative executors to handle matters for the children in the event the spouse is not living. Some people choose a professional trustee – a trust company – or authorize the executors to hire a trust company to do the administrative work. This usually occurs when the estate is quite large or there is a lengthy period of time for the distribution of the trust(s) contained within the Will. Others choose one or more people and a trust company as co-executors.

When there is a trust set up under a Will, the executor(s) could become the trustee(s). Executors and trustees are basically the same but they need not be the same people. You could have different trustees for different trusts. For example, if you are going to put assets in trust for your grandchildren, you could have the parents of each grandchild act as the trustee.

Inheritance tax and death duties

Currently, there are no inheritance taxes or death duties in Canada. (For information on probate fees, which some consider a hidden form of estate tax, see the section of this workbook entitled “probate fees”)

Many countries, such as the United States and England, have estate or inheritance taxes. If you have property in countries where there are death duties or estate taxes, some special planning may be needed.

Income tax

There are special rules when a taxpayer dies. Your capital assets are said to be sold when you die and any capital gains or losses are included in calculating your final income. Also, your RRSPs and other tax-favoured investment plans and accounts are brought into your final income. So, while there may not be any inheritance tax, there may be a large income tax liability resulting from your death.

You may be able to defer payment of this tax liability if you transfer your assets to your spouse through your Will. The tax liability will be deferred until your spouse sells the asset or receives the proceeds from the RRSP or until your spouse dies. At that time he or she will pay the tax. This also applies to a spouse trust – where you leave assets in trust for your spouse and he or she alone will receive all the income from the trust for the duration of his or her life.

There may be other planning opportunities that can reduce your tax liability on death. You should consult a professional advisor who can help you minimize the taxes your estate will owe. Often, it is appropriate to have life insurance to cover the potentially large tax liability at death.

When to review your Will

You should review your Will whenever your circumstances change: marriage (normally, marriage revokes a prior Will), separation or divorce; birth of children or children growing up; disposing of assets given in your Will to someone; assets, debts or tax position changing substantially. A Will should also be reviewed after a change to income tax laws or other relevant legislation. Ideally, a Will should be reviewed every three to five years even if there has not been a significant change to one's assets or personal situation.

If you don't have a Will

If you don't have a Will, you will die intestate. Without a Will, provincial law decides how your estate will be distributed and that may be very different from what you want. Usually, your spouse receives a certain amount of your estate, (in many jurisdictions this is referred to as the "preferential share") and the balance is then divided among your spouse and children. Portions for children under 18 will probably have to be paid into court. If you don't have children and if you aren't married, everything will usually go to your parents, brothers or sisters. For many people, this is not what they want.

Also, when you die intestate, the court will appoint an administrator to settle your affairs. An administrator will have many of the same duties as an executor, however, he or she will be restricted to handling your property in the manner set out in provincial law. The process of appointing an administrator can be expensive and will delay the distribution of your estate. For these reasons, it is important to have a Will.

What if you become incapable of handling your affairs?

If you become incapable of managing your affairs and your assets need to be looked after, the court will appoint a committee. This could be a relative, friend or perhaps a trust company. The committee manages your assets and pays your expenses under the direction of the court. This takes time to organize and it costs money. When you die, the committee's role is terminated and your appointed executor takes over.

Powers of attorney

In most provinces, anyone who is not a minor and is of sound mind can give power of attorney to another person. If you give someone power of attorney, you give them authority to deal with your assets – to sell, mortgage, manage and pay expenses. It can be a general power, meaning they can do anything you can legally do, or it can be special or restricted, meaning you authorize them to do only specific things. In most provinces, provided that specific wording has

been used, the power of attorney may continue to be effective even after incapacity. As well, a power of attorney for personal care in certain jurisdictions may also be put in place.

Many couples give powers of attorney to each other, as well as appointing the other as executor of his or her Will. We recommend that you consider giving power of attorney in conjunction with the preparation of your Will.

An alternative to power of attorney is a living trust. If you anticipate a serious illness, you can place all your assets in a trust which is managed with co-trustees (spouse, friend or both). The trust can continue to provide for you and your family until death. After death, the trust can be distributed in accordance with a Will or it can simply continue to provide income to your heirs, thus effectively replacing a Will and avoiding many of the delays and costs of estate administration. Most living trusts are revocable so that if you recover you can get all your assets back and terminate the trust.

Mandates in Quebec

Under Quebec law, the equivalent of a power of attorney is called a mandate. A mandate is set up to administer your assets if you become incapable of doing so yourself. The person named in the mandate will be able to make personal care decisions for you as well as manage your assets during your illness. You can draft your own mandate. However, a mandate only comes into effect if a court recognizes that you are not able to perform your duties (i.e. if you become incapacitated).

Probate fees

Probate fees are essentially a form of tax based on the value of your estate. When you die, your executor will probably need to have a court declare your Will valid in order to deal with certain assets. For example, banks and trust companies will often require that a Will be probated before they will allow an executor to get access to funds on deposit. Your executor will need to apply to the court for letters probate and will have to pay the probate fees set by your province.

Currently, every province except Quebec charges probate fees. The fees range up to 1.5 per cent of the gross value of the estate – \$1,500 for every \$100,000 of your assets. These fees are applicable not only to the probating of Wills but also for approving the administration of intestate estates. You should keep these fees in mind as you work with your advisors in structuring your Will. If you plan your affairs so that your assets pass directly to your heirs rather than through your estate, you can minimize the costs of probate fees. However, it is also important to remember that probate planning may cause other issues to surface that are not related to probate tax. For instance, if property is transferred to a joint tenancy arrangement and a matrimonial dispute arises involving one of the joint tenants, the interest in the property then becomes subject to a claim for inclusion for the purposes of matrimonial division. Therefore, careful consideration should be given when planning for probate.

Conclusion

Preparing a properly drawn Will is a very important task. Your insurance advisor would be pleased to assist you and your advisors in this process. He or she can also provide you with information on the uses of life insurance in estate planning.

Will Planning Questionnaire

Balance Sheet

Date:

| Assets: | You | Your spouse |
|-----------------------------------|------------|--------------------|
| Personal residence | \$ _____ | \$ _____ |
| Other real estate (list below) | _____ | _____ |
| Personal property | _____ | _____ |
| RRSPs | _____ | _____ |
| RRIFs | _____ | _____ |
| RPPs | _____ | _____ |
| Stocks and bonds (list below) | _____ | _____ |
| Life insurance (list below) | _____ | _____ |
| Business interests | _____ | _____ |
| Bank accounts (list below) | _____ | _____ |
| Liabilities: | You | Your spouse |
| Credit cards | _____ | _____ |
| Personal loans (list below) | _____ | _____ |
| Business loans (list below) | _____ | _____ |
| Mortgages | _____ | _____ |
| Total assets: | \$ _____ | \$ _____ |
| Total liabilities: | \$ _____ | \$ _____ |

| | You | Your spouse |
|-----------------------------------|------------|--------------------|
| Real estate: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| Bank accounts: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| Stocks & bonds: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| Personal loans: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| Business loans: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| Life insurance: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| Beneficiary/Beneficiaries: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| Policy loans: | _____ | _____ |
| | _____ | _____ |

Instructions:

By answering the following questions, you will be well on your way to planning a Will which will help ensure that your wishes are respected when you die. The next step is to take this information to your professional advisor who can assist you in making a valid, comprehensive Will.

1. Who do you wish to be your executor?

You: _____

Your spouse: _____

2. Do you wish to appoint someone to assist your executor? Who? (co-executor)

You: _____

Your spouse: _____

3. Do you wish to name someone to replace your executor in the event of death? (contingent executor)

You: _____

Your spouse: _____

4. Do you wish to leave any personal property to anyone? (Bequest eg. Jewelry, collections, clothing)

You: _____

Your spouse: _____

5. Do you wish to leave a sum of money to anyone?

You: _____

Your spouse: _____

6. Do you wish to leave the remainder of your estate to your spouse?

You: Yes _____
No _____

Your spouse: Yes _____
No _____

7. If not, do you want to create a trust for your spouse, with the trust assets going to your children when your spouse dies?

You: Yes _____
No _____

Your spouse: Yes _____
No _____

8. Do you wish that any bequests to your children go directly to them or be held in trust by the executor?

You: _____

Your spouse: _____

9. Do you wish to have your business managed by trustees until your spouse and / or children are capable of doing so?

You: Yes _____
No _____

Your spouse: Yes _____
No _____

In the event that children are left alone while minors:

10. Who do you wish to name as guardian or guardians?

11. Do you wish your estate to be held in one trust until your youngest child reaches a certain age (usually age of majority) with income from the trust paid to children according to their individual needs? (sprinkler clause)

You: Yes _____
No _____

Your spouse: Yes _____
No _____

OR

Do you wish your estate to be divided equally on your death and held in separate trusts with income paid to each child from his or her own trust?

You: Yes _____
No _____

Your spouse: Yes _____
No _____

12. If, at any time because of inflation or special needs, the income is not sufficient, do you wish to allow the children to use part of their capital? (Capital encroachment)

You: Yes _____
No _____

Your spouse: Yes _____
No _____

13. At what age should each child receive his or her share? (date of final distribution eg. age of majority, age 21, half at age 21 and remainder at age 25)

14. If a child dies before the date of final distribution and leaves children of their own alive, do you wish your grandchildren to take your child's share?

Yes ____ No ____

15. If a child dies before the date of final distribution and leaves children of their own alive, do you wish that child's share to go to your other children still alive?

Yes ____ No ____

16. If none of your children survive to the date of final distribution, to whom do you wish to leave the rest of your estate? (gift over)

You: _____

Your spouse: _____

Other provisions

17. Are there any special clauses you want in your will?

You: _____

Your spouse: _____

18. Are there any special funeral instructions? (i.e. cremation, closed casket, burial plot)

You: _____

Your spouse: _____

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