

## WHY IS ESTATE PLANNING SO IMPORTANT?

### WHAT IS ESTATE PLANNING?

Estate planning is the process of organizing your financial affairs, with the benefit of appropriate professional advisors, during your lifetime, so that when you pass away the government gets as little of your estate as possible, your estate is distributed as you wish; and the pain and confusion of dealing with financial matters after a death is minimized.

### IS IT WORTH MY TIME AND MONEY TO DO ESTATE PLANNING?

We spend more than 100,000 hours earning a living. Doesn't it make sense to spend just a few hours and a few dollars a year planning to save it? In this article, we outline the basic issues to think about when starting your estate plan.

#### 1. WHAT ARE THE ELEMENTS OF GOOD ESTATE PLANNING?

The key to any good Estate plan is to assemble and work with a good team of professional advisers:

- Financial planner for asset/wealth management
- Accountant for tax planning
- Lawyer for Wills, Powers of Attorney & Representation Agreements
- Insurance agent for life insurance policies

#### 2. WHAT IS A WILL?

A principal element of a good Estate Plan is a Will.

A Will is a written document signed at the end in the presence of two witnesses, which takes effect upon your death and contains instructions about how your possessions are to be distributed after you pass away.

A holograph Will is a handwritten document signed at the end but without any witnesses. **It is not valid in BC.**

There are some very important rules that must be followed in making a Will, and no matter how simple the Will, it is easy to make mistakes. In fact, there is no such thing as a simple Will. If your Will is not clear, a Court will have to figure out what it means and the Court will not be able to ask you what it meant! The result may not be what you wanted.

To ensure that a Will does what you want, you should have a lawyer write it because it is a complex legal document with highly technical requirements.

### **3. WHY DO YOU NEED A WILL?**

You need a will because a Will does the following important things for you:

- Appoints a person to look after your affairs after your death (called an Executor/Trustee).
- Appoints a guardian for minor children.
- Expresses how you wish your estate to be distributed (to family, friends, charities, and in what proportions).
- Ensures beneficiaries receive their inheritance at the times and in the manner you feel is appropriate.
- Allows you to specify your wishes with respect to burial, cremation and funeral services.
- Permits your estate to take advantage of potential tax savings.
- Provides for the continued operation of your business(es).
- Reduces the cost of administering your estate.
- Avoids the law of intestate succession which automatically determines who will receive your estate if you die without a Will.
- Particularly important if you have a spouse or child who is mentally or physically disabled.

### **4. WHAT MAKES A WILL INVALID?**

It is important to know that there are certain events and situations that make a Will invalid:

- Undue influence: being forced by someone, against your wishes, to distribute your assets in a certain way.
- Mental incapacity at the time the Will is signed.
- Marriage after the Will is made, unless the Will was made in contemplation of the marriage.
- Divorce voids the parts of your Will to do with your spouse.
- If the Will was improperly executed (signed).
- If the Will was formally revoked, or revoked automatically when a subsequent Will is made.



- Destruction of the Will, with the intention to revoke it.

## **5. WHAT HAPPENS IF YOU DIE WITHOUT A WILL?**

If you die without a Will, one of your next of kin must apply to the Court to be appointed as Administrator/Administratrix of your estate. Until then your assets are deemed to be held by the province. If no one applies, an Official Administrator will be appointed by the Court (the Public Guardian and Trustee). The process is far more time consuming and costly, and the Administrator/trix does not have nearly the powers to deal with the assets of an estate that an Executor does under a Will.

Your estate will be divided among your relatives in according to the rules in a statute called the ***Estate Administration Act***.

- Your spouse receives only a life interest in your principal residence.
- If you have a spouse but no children, the whole of the estate passes to him or her.
- If you have children, then the first \$65,000 goes to your spouse, and the balance:
  - If one child, ½ to spouse, ½ to child.
  - If more than one child, 1/3 to spouse, 2/3 equally between children.
- Any funds payable to minors will be held by the Public Guardian and Trustee until the child reaches 19.
- If you have no spouse or children, then the estate passes to your next of kin in a pre-ranked order of priority.
- The Courts will appoint a guardian for your minor children.

## **6. WHAT PROPERTY DOES NOT PASS UNDER YOUR WILL?**

Not everything you own passes to your beneficiaries through your Will. For example, jointly held assets, such as your home, investment properties, bank accounts or joint investments, will pass to the named co-owner of that asset.

Also, certain assets with named beneficiaries pass directly to those beneficiaries, such as RRSPs, RIFs, life insurance policies.

Assets that pass outside your estate do not attract probate fees and are secure from claims by creditors of your estate.

## **7. HOW DOES A WILL FIT INTO AN ESTATE PLAN?**

A Will is only one component of an Estate Plan. A complete estate plan may also include:

- arrangements regarding ownership (title) of assets
- corporate re-organizations and estate freezes



- trusts
- life insurance
- Powers of Attorney
- Representation Agreements

## **8. OWNERSHIP OF ASSETS**

Sometimes parents transfer an interest in their recreational property or investment accounts to their children. If this transfer is intended to give to the children a right of survivorship, that addition will be treated under tax law as a disposition with a value equal to the value of the asset that is transferred to the children.

The children will have to report on their tax return their share of any income from the property or investment accounts. Also, there may be capital gains tax problems if the asset has increased in value when it is eventually sold.

If the property is the parents' principal residence, the transfer will not create a tax, but capital gains may be a problem at the time of sale.

*Please consult an experienced accountant and a lawyer before transferring title to assets.*

## **9. CORPORATE RE-ORGANIZATIONS**

An estate freeze is a process by which steps are taken to stop or limit the future growth of your estate and provides for the future growth to accrue to the benefit of your children or other family members. The objective is to arrange an orderly transition of your business assets to the next generation with the least amount of tax and future complications. It allows you to quantify and lock in the capital gains tax liability which will be triggered on death. It can also reduce liability for probate fees and potential estate taxes by limiting the value of the estate.

## **10. TRUSTS**

Trusts used for estate planning come in two basic varieties: trusts which you create and use during your lifetime (living trusts) and trusts which are created under the terms of your Will (testamentary trusts).

A **living trust** is created by a transfer of property, while you are alive, to a trustee who holds that property in trust for a group of persons referred to as beneficiaries. The trustee of a living trust has the responsibility of holding, investing and distributing the trust property and the income from trust investments to beneficiaries according to the terms and conditions set out in the trust documents.

Popular uses for living trusts are:

- to bypass your Will in order to avoid probate fees, which in BC are currently about 1.4% of the value of your estate;
- to protect the estate from claims from disappointed beneficiary under the *Wills Variation Act*;



- to provide for disabled children or spouse;
- to protect assets from the spouse of a child in a rocky marriage;
- to protect assets from beneficiaries themselves who are immature or are not good at managing money.

A **testamentary trust** is a trust created in your Will that comes into effect after you die. It serves many of the same purposes as a living trust, except that it does not save the estate the probate fees and does not protect against *Wills Variation Act* claims.

## **11. LIFE INSURANCE**

Life insurance is an important and often neglected, element of a good Estate Plan. Today's life insurance plans are innovative and excellent tax sheltered investment vehicles. They can provide income replacement for your surviving beneficiaries and ready cash at a critical time when not only have they just lost a loved one, but they have lost a vital income stream.

If you designate a beneficiary, or beneficiaries, on your policy, the proceeds do not pass through your Will and are not subject to probate tax. Also, insurance proceeds are not subject to income tax.

Most people are grossly underinsured. It is important to speak with a life insurance agent to review your insurance needs.

## **12. POWERS OF ATTORNEY**

A Power of Attorney is a document that appoints another person or a trust company (called the "Attorney") to make financial and legal decisions for you. It can be specific or general, time-limited or enduring. The most common form is a general enduring Power of Attorney, which, if worded correctly, can be used for all financial and most legal purposes, including land transactions and can still be valid if you become mentally incapacitated.

A Power of Attorney automatically ends when you die or if you become bankrupt. You can also revoke it at any time, in writing.

## **13. REPRESENTATION AGREEMENTS**

Through a Representation Agreement you can now appoint someone as your legal "representative" to handle your personal and health decisions if you are unable to make your own decisions.

