

# Planning Matters

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## 10 Reasons to Stop Putting Off Your Estate Planning

### Comprehensive Wealth Management

Estate planning is an essential component of a comprehensive wealth management strategy. A well thought out plan ensures that your assets are distributed pursuant to your wishes, in a tax effective manner, while protecting your beneficiaries. It can also apply while you are alive, in the event you become incapacitated.

**If you already have an estate plan, we recommend you review it every three years to ensure it is consistent with your current wishes. Furthermore, an update may be required sooner if you have had changes in your personal or financial circumstances (such as a marriage or divorce), or a beneficiary, executor or named guardian has died.**

# Whether your current estate plan requires revisiting or whether you are considering one for the first time, the following are ten reasons to stop putting it off:

## 1. Control how your estate will be distributed.

Planning can help avoid disputes over how your estate will be divided. Without a will, decisions and distributions will be made in accordance with the law, which may not be the same as your wishes. An effective plan will identify who will inherit your belongings when you die. You may choose for specific items or property to go to particular people or charities, or you may elect a general division of assets amongst certain individuals in set proportions.

## 2. Decide who will administer your estate.

An executor of a will is responsible for administering your estate, including safeguarding your property after you die, gathering your assets, paying your debts and distributing the remainder among your named beneficiaries. An executor can be a friend, family member, or a professional trust company. Aside from choosing someone you trust to be your executor, you should also confirm that they are willing to accept the role.

## 3. Decide who will be the guardian(s) of your minor children in the event of your untimely death.

When making this decision, consider the person's parenting style, age, and existing relationship with your children. If you have older children, you should also consider their wishes. Similar to the executor role, you should speak with the person or persons you wish to name as guardian(s) to ensure they are comfortable in the role. While a guardianship appointment is not binding on the courts, it is usually given significant weight.

## 4. Consider trusts to manage the distribution of your estate to your beneficiaries.

If not specifically addressed in a will, then your beneficiaries will be entitled to their full share of your estate once it has been properly administered. This may not be ideal, particularly if a beneficiary is a minor, or lacks maturity or financial responsibility. However, if you have a will you can stipulate

when a beneficiary will be entitled to receive their inheritance; perhaps at a certain age, or at intervals throughout their lifetime. Flexibility can be built in to allow an executor to use reasonable discretion with distributions for educational costs or living expenses, for example.

## 5. Avoid the Public Guardian and Trustee holding a minor's share of your estate.

If not addressed specifically in a will, beneficiaries who are under the age of majority may have to have their share of the estate paid to the Public Guardian and Trustee to be held in trust until they reach the age of majority. In the interim, the guardian or parent of the minor would have to apply to the Public Guardian and Trustee whenever they need money from the inheritance to cover reasonable expenses for the minor.

## 6. Planning for financial decision making if you lack mental capacity.

Estate planning should also address how your financial affairs will be handled in the event that you lose mental capacity while alive. By executing a Power of Attorney, you can appoint someone to make financial and legal decisions on your behalf if you become incapable, without the need for a court order. You can also determine the scope of authority that you grant to your named attorney. It is important to consider carefully who to appoint as your attorney.

## 7. Planning for personal care and health care decision-making if you lack mental capacity.

Similar to the above, you may choose to appoint one or more people to make personal and health care decisions on your behalf in the event you lack mental capacity, and define the scope of authority your representative(s) will have. Depending on the jurisdiction you live in, these decisions could include:

- where you live, what you eat, participation in social activities, and contact with other people; and
- whether or not to consent to health care matters ranging from routine tests and investigative procedures to dental treatment and major surgery.

Depending on where you live, this may be implemented via a Representation Agreement (BC) or a Power of Attorney for Personal Care, a Personal Directive or a Living Will. Without a designated representative, a temporary substitute decision-maker may be assigned for you in accordance with the law of the jurisdiction you are in, and might not be the person you would have otherwise chosen.

## 8. Tax and probate fee planning.

Aside from tax, an effective plan also seeks to minimize government probate and Administration fees that may be payable upon your death. Fees vary from province to province from a \$400 maximum in Alberta, up to 1.5% of the estate value in Ontario (1.4% in BC). Planning by way of multiple wills, naming beneficiaries for non-taxable investment accounts (RRSP's etc.) and holding assets in joint tenancy may reduce the estate size upon which the fee is calculated.

## 9. Cost savings.

While designing and implementing an effective estate plan will have an immediate up front cost, it can save your

beneficiaries and executor time, money and family conflict in the future.

## 10. Death is inevitable.

While it may feel like a daunting task to undertake an estate planning exercise, there can be unintended consequences if you wait until it is too late. Even if you are uncertain about specific aspects of your plan, it is best to get something in place in the interim while you sort out the outstanding issues. As long as you have mental capacity, you can revise your will, power of attorney and representation agreement.



### SUMMARY

As always, we recommend seeking professional help from a lawyer to ensure your estate planning documents are legal and accurately reflect your wishes.

If you already have an estate plan, we recommend you review it every three years to ensure it is consistent with your current wishes. Furthermore, an update may be required sooner if you have had changes in

your personal or financial circumstances (such as a marriage or divorce), or a beneficiary, executor or named guardian has died.

**A good estate plan should provide the peace of mind that comes with knowing that you have made appropriate provisions for both you and your family's future.**

### About the Author:

**Brendan Burns** works in corporate law and mergers and acquisitions. He also maintains an active practice in estate planning and not-for-profit law. Brendan is passionate about helping clients and prides himself on giving practical, easy-to-understand advice.

### About the Editor:

**Mike Baker** joined Leith Wheeler in September 2016 to manage Private Clients and Foundation clients in our Toronto office. He has over 20 years of experience as the trusted adviser to wealthy families and institutions, and has developed and implemented comprehensive investment strategies to meet their investment goals.

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IMPORTANT NOTE: The information in this Newsletter is for general information and guidance on estate planning, as of May 2017. Miller Thomson LLP cannot be held liable for any errors or inconsistencies. This information is not to be construed as legal or tax advice. Due to the general nature of the newsletter it cannot be relied upon by you. You are urged to consult with a lawyer before acting in any manner on the information contained in this hand out.

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