



Canuck Place  
CHILDREN'S HOSPICE

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# Estate Planning

## The Legal Side

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## **ESTATE PLAN:**

1. **WHY** prepare one?
2. **WHAT** legal documents are needed?
3. **WHO** should be involved?
4. **WHEN** should I do one?

- 1. LEAVING A LEGACY**
- 2. PUTTING YOUR HOUSE IN ORDER FOR YOU AND YOUR FAMILY**
- 3. REDUCING TAXES**

## **1. WILLS**

- distribution of estate on death

## **2. POWERS OF ATTORNEY (POAs)**

- designates person to deal with financial decisions while grantor is alive

## **3. REPRESENTATION AGREEMENTS**

- designates person to deal with health care decisions while grantor is alive

## **4. TRUSTS**

- inter vivos and testamentary

- 1. Control who gets what**
- 2. Select guardians for minors**
- 3. Establish testamentary trusts**
- 4. Less expensive and time consuming**
- 5. Less emotional distress for survivors**

## **Wills do not apply to:**

- **Insurance Policies, Pension Plans, RRSPs and RIFFs if there are named beneficiaries**
- **Assets held “jointly”**
  - Real estate
    - > be aware of Capital Gains issues when trying to avoid probate fees
  - Bank accounts
    - > if additional evidence of intention to pass to survivor

## **Validity**

- strict rules**
- in writing**
- witnessed by two people who are not beneficiaries**
- witness must be present when Testator/Testatrix signs and when each signs**
- Will not executed properly is the same as not having a Will at all!!**

## Definition of spouse:

- includes a common law spouse
- includes same sex partners
- provided the spouse and the deceased were in a marriage like relationship for the two years immediately prior to the deceased's death.

**Q: What happens to my Will if I get married or divorced?**

- **Your Will is automatically revoked when you get married, unless it states that it is being made “in contemplation of marriage”.**
- **If you leave something in your Will to your spouse or appoint your spouse as executor, and are subsequently divorced, the Will stands; however, the gift or appointment to your spouse will lapse and the Will is read as if the spouse predeceased the testator unless contrary intention appears in the Will.**

- Under the *Wills Variation Act*, a child (infant or adult) or the spouse of a deceased can apply to the Court to vary the deceased's Will.
- A Will can be varied if it does not make adequate provision for the proper maintenance and support of the claimant.
- A claim must be filed within 6 months of the grant of probate of the Will.
- It is difficult but not impossible to validly disinherit a spouse or a child.

## Distribution on Intestacy:

**SPOUSE and CHILDREN**



**to PARENTS**



**to SIBLINGS**

## Distribution if spouse and children

- **1<sup>st</sup> \$65k goes to spouse and 'life estate' in spousal home, everything else split between spouse and children**
  - Nobody would choose this!
- **So, have minors with assets, which means PUBLIC GUARDIAN AND TRUSTEE involved**
  - added expense and reporting requirements
  - PG&T involved as "co-parent"!

## Spouse and no children

- **If only two spouses and both die at same time, oldest “deemed” to have died first so younger spouse’s parents/family get it all!**
  - Nobody would choose this!

- **The BC Ministry of Health reports that only 10% of deaths are of a sudden nature. Most of us will die having lived for some time with a chronic condition.**
  - e.g. Cancer, Alzheimer's, Multiple Sclerosis, Parkinson's.
- **Planning for future care should reflect this reality.**

- **A Power of Attorney is a legal document whereby you appoint another person, called an “Attorney”, to make financial and legal decisions on your behalf.**
- **A POA can be very specific:**
  - for certain time only
  - for certain purpose only.
- **A POA can be very general:**
  - If you wish, you can give your attorney very wide powers to deal with all of your assets.

- **A Representation Agreement is a legal document whereby you appoint another person, called a “Representative”, to make personal care and health care decisions on your behalf.**
- **Replaces concept of “Living Will”.**

## Types of Trusts

- **Inter Vivos (created during life time)**
  - **Spousal Trusts (benefit of spouse only – no age restriction)**
  - **Alter Ego or Joint Partner Trust (over 65)**
  - **Charitable Remainder Trust (income or use but no encroachment of capital)**
  - **Family Trusts**
- **Testamentary (created on death)**

## Why have a Trust?

- **Delay distribution of estate property**
  - E.g. life estate to spouse, then to kids...
- **Providing for a beneficiary who is not capable of handling money**
- **Leaving money to a charity for a specific charitable purpose**
- **Tax benefits**

## Why have a trust?

- **Preserve benefits for disabled child**
  - **if get direct gift, gov't will cease benefits!!**
- **Keeping control over gifts to minors (give % at 25, 30 and 35)**
  - **must be done properly or once all members of class are 19 they can get their share!!**

## The Team

- **Financial Advisor**
- **Lawyer**
- **Accountant**
- **Insurance Advisor**
- **Family**

## Summary

- **Just Do It**
- **Integrated Solution (involve other professional advisors – financial, tax, etc.)**
- **Don't forget Charities**

## African Proverb

*The best time to plant a tree is 20 years ago.  
The second best time to plant a tree is now.*

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