



# **Estate Planning Guide**

## **A Guide for Members**

Estate planning is a process that eliminates uncertainties and maximizes the value of your estate. The steps involved include:

- review and document your current financial situation
- define your personal and financial goals
- identify options and make informed choices that will allow you to achieve your desired outcomes
- put your plan into action
- review your plan and periodically make adjustments

A complete estate plan ensures that you can provide for those you care about, even if you're no longer there. Isn't the peace of mind knowing your wishes and directions will be known and carried out worth it?

You may also find it useful to refer to the booklet, ***Settling an Estate, an Executor's Guide to Estate Administration***. This resource, for executors and administrators, will help you to attain a broader understanding of the complexities of estate administration and may assist you in making important estate planning decisions.

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### **Beth & Bill's Story**

*Last year, a close friend of Beth's was killed in a car accident. Her friend had died without a Will.*

*Beth witnessed the family's distress; first at the unexpected death of her friend and then at the overwhelming number and complexity of things that needed to be taken care of.*

*There was the funeral, finding all her friend's financial information and fighting amongst family members. On top of everything, it was provincial legislation that determined how to distribute the assets of the estate.*

*It was devastating to the family.*



*Married, with one young child, Beth and her husband, Bill had built up a solid asset base in their six years of marriage and running their own business. They both worried about what would happen if one of them should be killed in an accident.*

*As much as she dearly loved them all, her family members were often very reactive, emotional and made impetuous decisions during stressful times.*

*So, they embarked on a journey to create an estate plan that would make it easier for her family should the unexpected happen.*

## **Understanding Estate Planning**

Many people avoid the topic of estate planning. For some, it can be an unwelcome reminder of the painful loss of a loved one, of our own mortality or perhaps even a reminder of a few greedy relatives.

However, in reality, a carefully considered and up-to-date estate plan is one of the most caring gifts you can leave to those you care most about. Your estate plan ensures that your wishes and directions are known and can be carried out if you become incapacitated or are no longer there to provide that direction.

The process itself consists of several relatively simple steps:

- review and document your current financial situation
- define your personal and financial goals
- identify options and make informed choices that will allow you to achieve your desired outcomes
- put your plan into action
- review the plan periodically to make adjustments for life events

Working with a professional estate planner enables you to make informed, carefully considered decisions about the things that matter most to you - your family and friends, your own care should you become unable to care for yourself, and the ownership, management and distribution of assets during your lifetime and upon your death.



## **Beth & Bill's Story**

*continued*

*Beth and Bill began by gathering together all the information she had neatly filed away to prepare a financial inventory of their assets and liabilities.*



*Putting all the details into a neatly organized spreadsheet worked really well for Beth. It allowed her to easily add details to each item and, most interestingly, tally up the totals of their combined assets and liabilities.*

*She included their personal and business credit union accounts and details, RRSP investments, insurance policies, listed other valuable assets, whether they belonged to her or Bill or both of them jointly. Finally, she included the current value. She was hoping that, over time, the numbers in that particular column would grow larger.*

*Then she dug into their liabilities; she included the mortgage on their home, business and personal loans as well as their hefty credit card balances. "I think we need to work to pay those down more quickly," she commented to Bill.*

*Finally, she noted on the inventory where their safety deposit box, containing all their most important documents, was kept.*

## **Getting Started**

There's never a wrong time to get started. Today is exactly the right time to begin (or update) your plan.

### **Prepare a financial inventory**

Your first step in the process is listing the value, location and ownership details of the assets and liabilities that you own solely and jointly with another person, such as your spouse, or perhaps a business partner.

Examples of **assets** that should be recorded in your inventory include:

- Real property - your home, rental and vacation property
- Registered investments - RRSP, RRIF, TFSA
- Pension assets
- Income from trust funds
- Investments – mutual funds, stocks, bonds, GICs, Term Deposits
- Bank accounts
- The face value of annuities and insurance policies
- Personal property - vehicles, jewelry, collectibles (art, coins, etc.),
- Details of any business ownership – nature of the business, names of other owners (and their ownership share), business assets and current value

Examples of **liabilities** that should be recorded in your inventory include the following:

- Mortgage(s) on real property
- Investment related debt (e.g. RRSP loans)
- Personal debt (e.g. car loans, consumer loans, etc.)
- Amounts owing on credit cards and lines-of-credit
- Personal obligations (e.g. alimony, child support, debts owed to friends or family members)
- Outstanding property or personal taxes

It's also recommended that you create a record showing the location of important personal documents so that



## **Beth & Bill's Story**

*continued*

*With the information on their assets and liabilities all documented, Beth and Bill began talking about what they would want to happen if one or both of them passed away.*

*If only one of them died, they agreed, the other would inherit everything. But what if they both died?*



*Their first concern in that scenario was, naturally, for Maggie, their young daughter.*

*"Who do you think we should ask to take care of her?" Bill asked.*

*"Well, both our parents have lots of experience with kids and they all love her to bits." Beth replied, "But maybe we should think about someone a little younger?"*

*"What about your sister and brother-in-law, then? She adores them and they live closest to us." Bill suggested.*

*"But then, I wonder if we'd need to leave our estate in their hands in our Will, then, until Maggie was old enough?" he continued, "They're not great with money. Gosh, I really don't know exactly how these things work."*

*"Neither do I" said Beth, "I think we need some help."*

they can be easily located by your spouse or the executor of your Will.

Examples include:

- Original Will
- Powers of Attorney
- Living Will/Advanced Medical Directive
- Marriage certificates
- Marriage, pre-nuptial or co-habitation contracts
- Birth/adoption records
- Life and property insurance policies
- Real estate deeds
- Details of pre-planned/pre-paid funeral arrangements

## **Defining your personal and financial goals**

There are a great many details to consider should you become either incapacitated or pass away. Some of the questions you will need to consider include:

- If both my spouse and I die, who will care for my under-age children?
- Who will take charge of my assets if I'm unable to?
- Who will make health decisions for me if I cannot?
- Who are the beneficiaries that I want to inherit my assets?
- What do I want each beneficiary to receive?
- Should my beneficiaries receive their inheritance immediately or should some, or all, be held in trust?
- If one or more of my beneficiaries predeceases me, what do I want to happen to their share?

## **Identifying your options and making informed choices**

Many people believe that a Will covers all their estate planning needs. But, that isn't necessarily true in all cases.

With professional assistance you can develop, refine and implement the right combination of estate planning solutions that meet your unique needs.



## **Beth & Bill's Story**

*continued*

*The next day, while having lunch with her mother, Beth casually mentioned the conversation.*

*"My credit union sent out a newsletter that had a really good article about Wills in it," her mom said. "When you drop me off at home, I'll find it for you."*



*The article was enlightening. It convinced Beth that she and Bill needed to have a Will drawn up sooner than later.*

*In it, the author, Concentra Trust, outlined the importance of having a Will to name an executor and included an overview of what an executor does.*

*Beth had no idea the job was as complex as this. "Look at this, Bill," she said, "Did you know that an executor can be personally liable if they don't handle the estate correctly?"*

*"No, I didn't," Bill replied. "But look here, they do have an option of hiring a professional."*

*"When we get our Wills done, it'll be done so everything is as easy as possible to handle." She went on, "That's the least we can do for each other, and according to the article, the alternate executors we should name too!"*

## **Estate Planning Solutions**

The following is a description of some of the most common estate planning solutions. An estate planning professional can provide information on additional options available to you.

### **Preparing your Will**

A Will is the most common and perhaps the most important document associated with estate planning. Although you can legally prepare your own Will, or create one using a do-it-yourself option, if you want to ensure your Will is properly written, correctly executed and provides your executor with the clearest direction, it is recommended that you have your Will prepared by a qualified legal professional.

Through your Will, you:

#### **Name an Executor or Personal Representative** *(Liquidator in Quebec, Estate Trustee in Ontario)*

This is the person who will look after settling (or administration of) your estate. While it's an honour to be asked to serve as an executor, it can also be a highly demanding and time consuming responsibility. An average estate usually takes anywhere from 12 to 18 months to settle, while a complex estate can take several years to complete.

To do the job properly, an executor must have the appropriate knowledge, ability and time. The executor is expected to understand and make decisions regarding real estate, taxes, investment management and trust law. The executor must treat all beneficiaries equitably and fairly and, at the same time, ensure all decisions comply with all applicable laws and are administratively correct.

An executor can also engage agents (such as trust professionals, accountants and lawyers) to assist with the administration but, by law, *the executor retains full legal liability* for the actions undertaken by those agents. An executor may even be exposed to personal financial risk if the administration of the estate is not handled properly.

All executors are entitled to charge a fee for their service. The fee may be based on a percentage of the estate's value, by agreement or it could be set by the court. The estate also pays the fees and costs for the agents engaged by the executor to assist with the administration.



## **Beth & Bill's Story**

*continued*

*"Maybe we should think about naming Concentra Trust as our alternate executor?" Bill asked. "That way, we'll know that if we both die, then things will be handled right, for Maggie's sake."*

*"That's a great idea," she replied. "I'll make a note of that so we don't forget."*



*As Beth and Bill continued to read through the article, they learned more about identifying beneficiaries which, in their case was fairly straightforward.*

*They each had a number of personal items that they wanted certain family members to have, but the bulk of their estates would go to the surviving spouse. If they both died, outside of some personal bequests, they wanted Maggie to inherit it all.*



*That brought them back to the question of how to safely ensure Maggie would inherit everything if she happened to be under-age when they died.*

*Beth sighed, "This is a lot like playing a 'what-if' game isn't it?" If this, then that! But, if that, then this!"*

Depending on your circumstances, it may be appropriate to request a family member, friend or business associate to serve as your executor. It's important to ensure the person you intend to name as executor is willing to assume this responsibility. It's also advisable to name an alternate executor to assume the role if the first party is unwilling or unable to accept these responsibilities.

In other situations it is more appropriate, efficient and cost-effective to select a professional. Concentra Trust, your credit union's trust company, can be named in your Will to act as your executor and/or your trustee to provide those professional services.

Having a professional and impartial executor or trustee helps ensure your estate and personal trust objectives will be met.

### **Identify your beneficiaries**

These are the parties who will receive your estate assets. One of the primary reasons for preparing a Will is to ensure you can choose who (either people or organizations) will be entitled to receive the assets from your estate.

In most jurisdictions there is legislation that requires you to ensure that your spouse (legal, common-law or same-sex), dependant adult children and children under the age of majority are adequately cared for in the event of your death.

Although, generally speaking it is "immediate family" who are named as the beneficiaries in the Will, beneficiaries can also include extended family, friends or charitable organizations. It is your decision and one that should be thoughtfully considered.

### **Design the distribution**

This is where you determine how and when you want the assets of your estate to be distributed. Your Will directs the executor to deal with the estate assets in one of two possible ways:

- as soon as the required estate administration has been completed (including the payment of debts and final clearance from the Canada Revenue Agency), release the assets to the beneficiaries; **an outright distribution**; or
- transfer the cash or assets from the estate into a **testamentary trust** and hold, manage and invest the assets in the estate until a certain event occurs or for a specified period of time.



## **Beth & Bill's Story**

*continued*

*Bill piped up, "Beth, this article mentions testamentary trusts too. It says they can be used to hold the assets, in trust, until a child becomes legal age, or actually whatever age we choose."*

*He chuckled, "Maybe we should put it in a trust until she's 40?"*

*"I think that might be just a little too protective, dear." Beth went on, "But I'll make a note of that too."*



*Beth and Bill agreed that they would ask Beth's sister and brother-in-law to be Maggie's guardians. They were very close and Maggie adored them, so it would be emotionally easiest for Maggie.*

*Because they were planning on using a trust for Maggie's care and inheritance, Beth and Bill weren't as concerned about their poor money management skills. Concentra Trust, as their appointed trustee, would ensure the money was prudently managed.*



*Beth and Bill were much more confident that they knew what they needed to do. The next day, Beth made an appointment with a lawyer to draw up their Wills.*

Typically, the testamentary trusts created by your Will are used to achieve one or more of the following objectives:

- **Spousal trusts** – the trust is established for the benefit of the surviving spouse for his/her lifetime.
- **Trusts for minor children** – to support the children until they reach the age of majority, or some later age identified in the Will.
- **Trusts for adult children** – used to provide care for dependant adult children, to safeguard assets where the child is unable to prudently manage their own affairs or to protect an inheritance from potential creditors or a divorce settlement.

Trusts can be funded by a variety of sources including your estate assets or, through the proceeds of life insurance policies. Since trusts can last for decades, it's very important to clearly document the purpose and the operation of the trust as well as who is entitled to receive the remaining funds when the trust terminates.

While it's common to name the same person as both executor and trustee, because trusts usually last for several years, serious consideration should be given to separating these two roles or appointing a professional trustee.

### **Appoint a guardian**

This is the person you select to be responsible for the care of your minor children. A guardian has legal authority over your children's care, education and welfare. When selecting a guardian you should consider the age of both your children and your named guardian.

It's also important to choose a guardian who you believe will raise the children according to your moral and ethical standards. Although not mandatory, children often reside with the guardian.

It's important to ensure the individual is willing to assume this responsibility before naming them in your Will. It's also advisable to name an alternate, who would assume the role if the first person was unwilling or unable to accept these responsibilities.

Although you can name the same person as executor, trustee and guardian, it may be beneficial to name different people, as the requirements are quite distinct.



## **Beth & Bill's Story**

*continued*

*When they met with their lawyer, he was impressed by how much they had already put together. However, he had a few other considerations for them to think about.*

*He told them that their Wills wouldn't cover the distribution of certain types of assets. This would include any where they had named each other versus their estate as the beneficiary and where the asset, like their home and bank accounts, were jointly registered.*

*Beth hadn't known that these types of beneficiary designations or registrations could simplify things. She and Bill would take a closer look at how their assets were registered.*



*Their lawyer also mentioned the benefits of a Power of Attorney for Personal Care to govern personal care should either, or both of them become incapacitated.*

*This was an aspect they hadn't even considered when preparing their estate plan information.*

## **Distributing Assets Outside of your Estate**

Your Will does not control the distribution of all of your assets. Examples of assets that are not usually governed by the Will and do not typically form part of your estate include those:

- on which you have *designated a beneficiary* such as:
  - registered plans - RRSPs, RRIFs, TFSAs
  - life insurance proceeds
  - pension plan proceeds
- that are *registered jointly with right of survivorship* such as:
  - real property
  - investments
  - joint bank accounts
- that are *held in trust*:
  - living or inter vivos trusts (trusts created while alive)

Careful use of beneficiary designations and asset registrations can simplify the administration of your estate and assist in minimizing estate costs, taxes and fees.

## **Establishing Powers of Attorney**

(Mandate in Quebec)

Planning for possible illness, accident or other disability is part of a comprehensive estate plan. In many provinces, it is possible to establish two different Powers of Attorney.

**A Power of Attorney for Personal Care** allows you to name a person to make decisions concerning nutrition, shelter, clothing and consent for medical treatment, should you become incapacitated. Depending on the province, these types of documents are also referred to as **Living Wills or Health Care Directives** and can provide direction on the type of treatment you may or may not wish to receive.

**A Power of Attorney for Property** empowers a person or company to manage your financial affairs during your lifetime. The authority that you grant can be limited to specific activities or assets, called a limited Power of Attorney or it can be general, providing your attorney with broad control over your financial affairs.



## **Beth & Bill's Story**

*continued*

*After discussing it, Beth and Bill agreed that a Power of Attorney for Personal Care would complement their estate plan and Wills. Their lawyer agreed to draw up Powers of Attorney for Personal Care for each of them, with the other named as Attorney.*

*In this way, they would have immediate authority and instructions on personal care, should the other spouse become incapacitated.*



*Beth and Bill executed their Wills and Powers of Attorney for Personal Care a few days later. They felt much more confident that they had done everything possible to make it easier if one or both of them suddenly died.*



*Bill's protective nature emerged even more strongly, however. A few weeks after receiving their Wills, he adjusted his life insurance to ensure that Beth and Maggie would be quite comfortable should he unexpectedly die.*

A Power of Attorney can be temporary or indefinite, however, unless it contains a clause to make it **enduring**, the authority provided by this document ends if the donor becomes incapacitated. In all cases, it ends upon death of the donor. An enduring Power of Attorney may come into effect immediately or not take effect until the expiration of a stated time or after the occurrence or non-occurrence of a specified event (referred to as a "springing" Power of Attorney.)

When preparing a Power of Attorney, it's important to engage a lawyer to ensure that you are fully aware of the powers and authority you are granting.

Powers of Attorney can be revoked at any time by the donor, so long as s/he has the mental capacity to do so. The appointment of a committee or guardian by a court order will also terminate a Power of Attorney.

It is most appropriate to appoint a family member or close friend as your Attorney for Personal Care.

However, when selecting your Attorney for Property it may be more appropriate, efficient and cost-effective to appoint a professional. Concentra Trust, your credit union's trust company offers professional services as Attorney for Property.

## **Life Insurance**

Generally, life insurance assists you in achieving one of two objectives - creating an estate for your heirs or preserving your existing estate. Common uses of insurance proceeds include providing:

- funds to an estate to pay off liabilities such as taxes and mortgages
- income for individuals such as a spouse, children or grandchildren
- a donation to charity

Life insurance premiums are generally not tax deductible; however, the benefit paid to the estate or a beneficiary is not subject to income tax.

The amount and type of insurance required will depend on your estate objectives and current financial status. It is important to consult with a licensed insurance professional to select the policy that meets your needs.



## **Beth & Bill's Story**

*continued*

*Beth knew that dying without a Will could lead to unexpected consequences, based on the experiences of her friend's family.*

*They had incurred substantial legal fees, and because several family members applied, an administrator was appointed by the Court. In the end, the distribution of assets was not what beneficiaries were expecting.*



*Beth and Bill also learned more about the taxation implications of their estate plan.*

*By carefully looking at designations and joint registration on their investments and real property, they were able to make decisions to minimize the probate fees that would be charged to the estate.*

## **If You Have No Will**

Dying without a Will (referred to as dying intestate) can lead to unwanted and unintended consequences. When you choose not to prepare a Will:

- You forfeit the ability to select your executor; the courts appoint an administrator for intestate estates.
- You will not be able to distribute your estate according to your wishes – each province has a set of intestacy rules that define who the estate's beneficiaries will be and how much each will receive. The end result may be quite different from what you wanted.
- The distribution of assets to your beneficiaries will be delayed.
- Additional legal fees may be required to settle the estate.
- Additional income taxes may be payable.
- The court will appoint a guardian for your minor children.

## **Death and Taxes**

While there are no "estate taxes" in Canada, there are taxes that may be imposed at death.

### **Deemed Dispositions**

In the year of death, the executor must file a final tax return that includes all income earned by the deceased up to the date of death. Included as income is the net capital gain realized under the deemed disposition rules.

The deemed disposition rules of the *Income Tax Act* treat all capital property owned by the deceased as if it was sold immediately prior to death. All unrealized capital gains are triggered and the net capital gain (gains less losses) is included in income.

The *Income Tax Act* allows for the deferral of the tax owing if the asset is left to a surviving spouse or to a special trust for the spouse (spousal trust) created by the deceased's Will. The spouse or spouse trust can take ownership of the asset at the deceased's original cost and no tax is payable until either the spouse or spousal trust sells the asset or until the surviving spouse dies.

### **Provincial Probate Fees**

Upon death, the executor may be required to file for probate with the provincial court. The executor must submit the original Will and an inventory of the deceased's assets and the probate fee. Upon acceptance



## **Beth & Bill's Story**

### **Epilogue**

*Two years after Beth and Bill had completed their estate plans and Wills, things had changed quite significantly in their lives.*

*They'd sold their business and with some of the profits had taken a well deserved three week vacation in Hawaii. Neither Beth nor Bill had ever travelled outside of Canada and really liked seeing the sights and absorbing the culture, but the best part of their vacation was just spending some quality family time on the beach with Maggie and watching her play in the sand.*

*They were also expecting; triplets. Three times the fun and, in the next few months, their small family was going to double in size.*

*Finally, the best friends they'd named as executors had moved to Brazil. That would prove very challenging should they be called upon to fulfill that important role. Bill and Beth were very glad that they had named Concentra Trust as their alternate executor.*



*"Bill, I think it's soon going to be time for us to take another look at our estate plans and update our Wills," announced the very pregnant Beth.*

*"You're absolutely right, Beth." He replied. "Now, where did you put our Wills and the inventory again?"*

of these documents the court issues **Letters Probate** (Certificate of Appointment of Estate Trustee in Ontario).

Probate fees are based on the value of the assets that are governed by the Will. The rates vary between provinces, with some provinces having a maximum tax. In situations where the estate is simple and does not require the involvement of a third party (such as a financial institution), the Will may not need to be probated.

## **Keeping Your Plan Up-to-date**

Life happens; it's extremely unlikely that your personal and financial situation will remain unchanged. Consequently, it's good idea to review your estate plan at least every 3 to 5 years to ensure that it continues to meet your needs.

You should likely take another look at your plan, and your Will, if any of the following events has occurred:

- Has your marital status changed?
- Has there been a change in your family?
- Do you now have another child or grandchild?
- Have the children who are beneficiaries of your estate reached the age of majority?
- Is the charity you named as a beneficiary still in existence?
- Has the executor named in your Will moved away or is s/he now unable to accept the appointment?
- Are the guardians named in your Will no longer the right people to care for your children or are they unwilling or unable to accept the appointment now?
- Are any of the beneficiaries deceased?
- Have there been changes in the Income Tax legislation which will affect the distribution of your estate?
- Has there been a major change in the nature and extent of the property you own? Did you win the lottery?

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# Glossary

<b>beneficiary</b>	The people or entity named in a will or financial contract as the inheritor of property when the property owner dies. A beneficiary can be a spouse, child, charity or any entity or person to whom the property owner would like to leave his or her possessions and assets.
<b>estate</b>	The net worth of a person at any point in time. It is the sum of a person's assets – legal rights, interests and entitlements to property of any kind – less liabilities at that time. The estate of a deceased person consists of all the property, whether real or personal, owned by the person at the time of death.
<b>Power of Attorney</b> (Mandate in Quebec)	An authorization to act on someone else's behalf in a legal or business matter. A power of attorney may be limited to one specified act or type of act or it may be general. A power of attorney becomes ineffective if its grantor dies or becomes incapacitated unless the grantor specifies that the power of attorney will continue to be effective even if the grantor becomes incapacitated. This type of power of attorney is called an enduring power of attorney.
<b>probate</b>	The legal process by which a person's Will is reviewed and, if valid, authenticated by the court as the individual's "last Will".
<b>Letters Probate</b> (Certificate of Appointment of Estate Trustee – Ontario)	Court orders that prove the authority of the person or persons named as executor to deal with the property of the deceased person.
<b>testamentary trust</b>	A trust created within a Will which does not take effect until the death of the testator.
<b>Will</b>	A legal declaration by which a person, the testator, names one or more persons to manage his estate and provides for the transfer of his property at death; a document or legal instrument in which a person specifies the method to be applied in the management and distribution of his estate after his death.