



Agenda

1. Estate Planning
2. Preparing Your Will
3. Your Obligations to Dependents
4. Powers of Attorney



Estate Planning



What is an Estate Plan?

A tool or collection of tools used to transfer and manage your assets during life and after death with may include:

- A Will
- Beneficiary designations
- Joint ownership of certain assets
- Insurance policies
- Trusts
- Power of Attorney for Property
- Power of Attorney for Personal Care



Why have an Estate Plan?

- To preserve and protect testator's/testatrix's assets during lifetime
- To transfer assets to your loved ones during life, and after, in an orderly and tax effective manner with minimum expense and delay
- To plan to prevent or minimize conflict
- To deal with inter-family debt and obligations, finances, legal and moral issues



What happens if you die without a Will?

The *Succession Law Reform Act* (not you) will govern the distribution of your estate

Result:

1. You will not have the ability to choose **who will benefit** from your estate
 1. Example: Spouse is entitled to a “preferential share” of the estate: \$350,000, and then a portion of the residue depending on number of children
2. You will not get to decide who your **estate trustee** will be
3. You will miss an opportunity to do **tax planning**
4. You will have generated **extra legal work, extra expense** and **unnecessary delays**
5. You may create **conflict and confusion**

How do assets pass on death?

- By a **Will**
- By naming a **Designated Beneficiary**
(ex. RRIF, RRSP, TFSA or Life Insurance Policy)
- By **Joint Ownership**



Preparing Your Will



What is a Will?

If properly prepared, it is a legally binding written document which:

- Properly identifies you
- Revokes prior wills
- Names your estate trustee (executor)
- Gives your estate trustee power to pay debts, taxes, funeral expenses and then distribute your assets in accordance with your stated wishes
- Sets out contingencies in the event of the death of a named beneficiary

What is a Valid Will?

- Holographic Wills,
 - Prepared by the deceased in his or her own handwriting and signed and dated
 - The validity of such a document depends on provincial legislation
- Will kits, Electronic Wills (what is a non-complicated estate)
 - May not address contingencies
 - May not optimize tax liabilities
 - May have interpretation issues
 - Use of terms may not be understood by the testator/testatrix
- Will should be properly executed (signed) to be effective and valid
- If not holographic – should be properly signed and witnessed to be considered valid.

New Rules on Validity of a Will

- Substantial compliance:
 - Recent amendments to the *SLRA* give Ontario Courts authority to validate improperly executed documents if the documents possess clear testamentary intention (i.e. an intention by the deceased to revoke, alter or revive a Will)
- **HOWEVER:** Err on the side of caution
 - Still recommended to take the time to properly execute your Will
 - Having a Court validate an improperly executed Will subjects the Estate to the time and costs associated with making a court Application

The Famous Fender!





Using a Lawyer to Prepare a Will

- It may be prepared by a lawyer with the appropriate witnesses
- More costly but will accurately reflect your wishes
- Will be designed to minimize taxes to the extent possible
- Evidence of both capacity and absence of undue influence, duress etc, if the Will is challenged later



How do I change my Will?

Changes to a will

- Generally speaking if a change is minor it can be done by a codicil
- It is highly recommended that you review your Will each tax season to ensure it is always current



Amendments to the SLRA Summary

1. “Audio-visual communication technology” is now permitted for virtual witnessing of Wills made on and after April 7, 2020 if one of the witnesses is a licensee under the *Law Society Act*. The execution of a Will in counterparts is also allowed.
2. A Will is no longer revoked by marriage
3. Separated spouses are presumed to have predeceased the testator/testatrix (must be separated three years or have an agreement or order in place)
4. *SLRA* now excludes separated spouses from inheriting on an intestacy
5. Substantial compliance for improperly executed wills (as discussed previously)

Changes came into effect January 1, 2022



Your Obligations to Dependents



What my Will cannot do?

Can I use my Will to **avoid my obligations** to my spouse and/or my dependants?

- No. Your Will cannot be used avoid your obligations to your:
 1. Married spouse, or
 2. Dependants

New Rules on Marriage/Divorce

1) A Will is no longer revoked by Marriage

2) A Will survives Divorce and Separation

Divorce from a spouse does not invalidate your Will. A spouse is simply presumed to have predeceased the testator/testatrix

Amendments to the *SLRA* now apply this rule to include a separated spouse, meaning a separated spouse will also be presumed to have predeceased the testator/testatrix

New rules do not apply to common-law spouses.



Powers of Attorney



What is a Power of Attorney?

A Power of Attorney is a legal document that gives someone else the right to act on another person's behalf.

In Ontario, there are two types of Powers of Attorney:

1. Power of Attorney for Property
2. Power of Attorney for Personal Care

Power of Attorney for Property

- Attorney can do essentially anything you can do with respect to your property except make a Will or change your beneficiary designations

What is its scope?

Limited to certain assets/powers *vs.* General to everything



When does it take effect?

Immediately upon signing *vs.* Upon incapacity



Who can you appoint?

Sole appointment *vs.* More than one person



Power of Attorney for Personal Care

- Attorney is able to make personal care decisions on your behalf when you are incapable: food, clothing, shelter, hygiene, medical care and end-of-life measures
- Living Wills
 - You direct your attorney to not use “heroic measures”
- Medical Assistance in Dying (MAID)
 - At this time, you cannot give advance consent to MAID
 - At this time, your attorney for personal care cannot consent to MAID on your behalf



MAID - Criteria

- Be 18 years of age or older and have decision-making capacity;
- Be eligible for publicly funded health care services;
- Make a voluntary request that is not the result of external pressure
- Give informed consent to receive MAID
- Have a serious and incurable illness, disease or disability (excluding a mental illness until March 17, 2024)
- Be in an advanced state of irreversible decline in capability
- Have enduring and intolerable physical or psychological suffering that cannot be alleviated under conditions the person considers acceptable

MAID – Procedural Requirements

1. Have 2 independent medical assessments
 2. Make a written request signed by an independent witness
 3. Know that you can withdraw your request at any time
 4. Provide final consent before receiving medical assistance in dying
 5. Give advance consent, if applicable
- Additional requirements in the event that your death is **not** naturally foreseeable.



Summary

This material is general in nature and is not intended to be legal advice. The purpose of this presentation is to alert you to issues that you should discuss in depth with appropriate professionals. Each Will and estate plan is as unique as you and your family



Thank you!

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