

ESTATE PLANNING 101

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A comprehensive estate plan...

Three important documents in the estate planning process:

- Will
- Power of Attorney for Property
- Power of Attorney for Personal Care

What is a Will?

- a will is a legally enforceable document which sets out your wishes for how to distribute your estate after you have died

Types of Will

- holograph will
- attested will

Here's why you need a Will

- freedom to choose who will benefit and who will not benefit from your estate
- ability to appoint guardians for your minor children
- decide the age at which children receive their share of your estate
- make special provisions for disabled beneficiaries
- avoid extra cost and delay
- ability to appoint executors

Who to Appoint as Executor:

- Are they willing to accept the responsibility?
- Will they have the time?
- Must be at least 18 years of age
- Are they trustworthy?
- Do they have good judgment and business sense?
- Will they outlive the testator?
- Are they good record keepers?
- Are they capable of being impartial (i.e. acting without a conflict of interest)?
- Are they sensitive to the needs of the beneficiary?
- Do they live in Ontario?
- Consider appointing co-executors and alternates
- Can appoint more than 1 but they must unanimously agree (unless Will provides for majority decision)

Did you know.....

50% of adult Canadians still do not have a Will

75% of those over age of 65 have an outdated Will

What is a Power of Attorney?

- a power of attorney authorizes a person to act on behalf of another person
- the person receiving the power is called the attorney or the substitute decision maker
- the person giving the power is called the donor or the grantor

Types of Power of Attorney for Property

1. general power of attorney for property
2. limited power of attorney for property
3. continuing power of attorney for property

Attorney's Powers

- attorney has power to deal with all of the grantor's assets
- attorney cannot make the grantor's will or alter the distribution scheme of the grantor's estate on death
- if grantor has capacity and the attorney is assisting the grantor, the attorney has to act in accordance with the grantor's wishes
- if grantor is incompetent then the attorney has a duty to protect and preserve the assets
- attorney's powers may be restricted within the power of attorney document
- may be conditional upon the happening of a certain event

Attorney's Duties

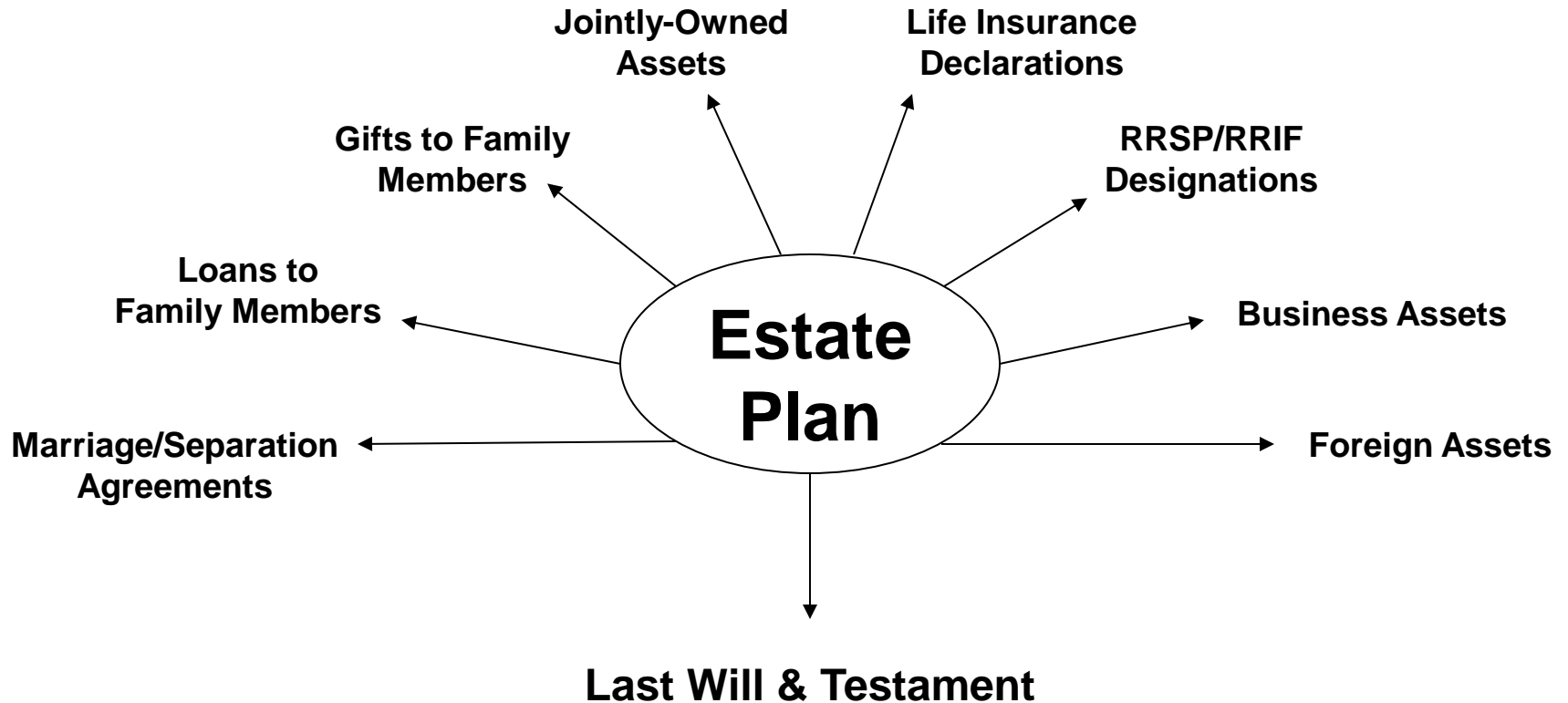
- attorney is defined to be a “fiduciary” and as such must:
 - exercise reasonable care
 - keep accounts of all transactions
 - act in the best interests of the grantor
 - act personally
 - avoid conflicts of interest
 - prevent secret profits
- involve grantor in decisions if possible
- consult and foster contact with grantor's family

Power of Attorney for Personal Care

- gives grantor the freedom to choose who will make personal care decisions when the grantor has been declared incapable of making such decisions
- allows grantor to state what medical treatment (i.e. type and intensity) they want when they become incapacitated (also known as “living Will” or “advanced directive”)
- if no previously stated wishes then attorney will decide what is in best interests of the grantor

**There is no such thing as a
“Simple Will”**

Complex Assets



Complex Laws

1. Estates Act
2. Income Tax Act
3. Insurance Act
4. Trustee Act
5. Pension Benefits Act
6. Estates Administration Tax Act
7. Children's Law Reform Act
8. Land Titles Act
9. Substitute Decisions Act
10. Succession Law Reform Act
11. Family Law Act
12. Estate Administration Act

Complex Families

- marriage rate is declining
- common law relationships doubled in past 15 years
- divorce rate rising – one divorce for every 2 marriages
- mortality rate is declining
- dementia is increasing
- blended family situations
 - second marriages
 - stepchildren/step-grandchildren
 - same-sex relationships
 - common law relationships

The Estates Crisis

- + Trillion \$ Wealth Transfer
- + Many Advisors
- + Complex Assets
- + Complex Laws
- + Complex Families
- + Increase in Dementia
- + Litigious Society
- = MANY EXPENSIVE LAWSUITS

An Effective Estate Plan Should:

- Maximize wealth for you and your heirs
- Minimize the impact of liabilities
- Reduce the burden on your family
- Assure continuation of your interest and values
- Include a plan for the unexpected
- Provide peace of mind

Probate Planning

VS

Estate Planning

What is Probate?

- Process whereby the Will is approved by the Court as the valid and last Will of the deceased
- Confirms the appointment of the Estate Trustee
- Court issues Certificate of Estate Trustee with a Will (“Probate”)
- Not all estates have to be “probated”

Assets that don't require Probate

- Assets owned jointly with right of survivorship
- Assets payable to a designated beneficiary (i.e. RRSPs/RRIFs/Insurance Policies)
- Shares in a private corporation
- Investments/bank accounts less than \$10,000
- Personal property
- Real estate outside of Ontario

Probate Fees?

- Known as Estate Administration Tax
- Calculated:
 - \$5.00 per \$1,000 of first \$50,000
 - \$15.00 per \$1,000 of excess
- Approx. 1.5% of value of estate
- Payable at time application submitted

Pitfalls of Joint Ownership

- Loss of control over asset
- May trigger capital gains tax
- Possible exposure to family law claims
- Possible exposure to creditors
- Possible unequal treatment of beneficiaries

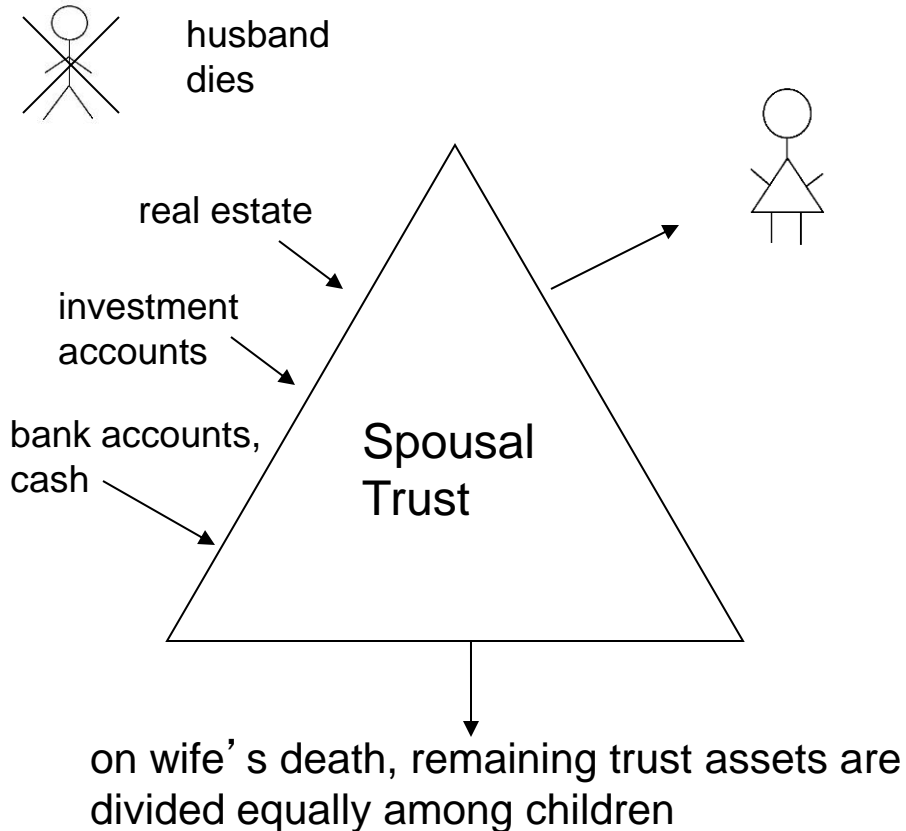
Pitfalls of Joint Ownership

- Increased risk of litigation
 - Presumption of resulting trust
 - May be rebutted – what did parent intend?
 - Gift or Resulting Trust?
 - Depends on facts

Trust Benefits

- Asset Preservation and Protection
 - second marriages
 - spend thrift beneficiary
 - disabled beneficiaries

Spousal Trust for Asset Protection and Preservation



- wife and child/children as trustees control trust assets
- assets protected against wife's incapacity/re-marriage
- all income earned by trust assets paid to wife
- can include right to encroach on capital during wife's lifetime

Disabled Beneficiaries - Special Needs Require a Special Trust

- to preserve the inheritance for the beneficiary's future needs
- to preserve the beneficiary's disability pension under the Ontario Disability Support Program ("ODSP")
- strict asset limits – single person = \$5,000 (increases to \$7,500 if have a spouse) + \$500 for each dependent

Disabled Beneficiaries - Special Needs Require a Special Trust

- exempt assets:
 - home (“principal residence”)
 - motor vehicle
 - trust funds created or derived from inheritance up to \$100,000 (i.e. Disability Expense Trust)
 - life insurance policy up to \$100,000
 - Registered Disability Savings Plan
 - Henson Trust

Henson Trusts

- an absolute discretionary trust usually established in a Will and prevents the legal control of the assets from entering directly into the hands of the beneficiary
- trustee given the absolute discretion to provide funds to the beneficiary as required
- beneficiary has no control over the money

Henson Trusts

- unlimited amount of money may be placed in the trust and can be spent on “disability related expenses” (i.e. anything that can be used to make life easier for the disabled person in their day-to-day life)
- up to \$6,000 (in any 12 month period) can also be paid to the beneficiary from the trust

Lawyer Fees for Estate Planning

| | |
|--|-------------------------------------|
| Standard Will/Power of Attorneys for a couple (i.e. all to spouse with gift-over to children, no trust structures or other special requirements) | \$650 + HST |
| Multiple Will Structure (to deal with corporate interests) | \$1,500 + HST |
| Complex Will Structure | Fees calculated on time spent basis |
| Codicil (i.e. simple amendment to an existing Will) | \$300 + HST |
| Power of Attorneys for a couple | \$350 + HST |

Putting it in Perspective - the Cost of Home Insurance vs. the Cost of a Will

- on average you will spend \$40,000 (i.e. \$1,000 per year x 40 years) in home insurance vs. \$2,000 (i.e. \$600 x 3 in your lifetime) in Will costs
- risk of loss very low vs. the certainty of death and taxes
- home represents 30-50% of your estate value (i.e. spend \$40,000 to protect 30-50% of your estate) vs. your Will covers 100% of your estate (i.e. spend \$2,000 to protect 100% of your estate)

The Cost of a Poorly Planned Estate

| | |
|--|--------------------------------|
| the cost of a squandered inheritance | ? |
| the cost of an inheritance split with an outlaw | ? |
| the cost of disinherited children due to a second marriage | ? |
| the cost of broken family relationships | ? |
| the legal costs to settle your estate | ? |
| TOTAL | <hr/> \$ \$ \$ \$ <hr/> |

One final thought...

“You never really know someone until you share an inheritance with them”

Mark Twain