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Wills & Estate Planning Essentials

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Wills & Estate Planning Essentials

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Wills & Estate Planning Essentials

Fundamentals: The Documents

- Estate planning involves three main documents
 - Will
 - Enduring Power of Attorney
 - Personal Directive



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Contents of a Will

- Testator
- Personal Representative/Executor
- Beneficiaries and gifts
 - Specific gifts
 - Disposition of remainder/residue of estate
- Guardians for minor children
- Other beneficiary designations (insurance, RRSP's, etc.)



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Executor of a Will

- The role of an Executor
 - Gather and protect assets of the Estate
 - Determine and locate beneficiaries named in the Will
 - If required, apply for a Grant of Probate (discussed later)
 - File taxes and apply for a Final Clearance Certificate
 - Manage and administer the Estate until it is ready to be distributed
 - Provide accounting of Estate to beneficiaries and obtain appropriate releases
- Considerations
 - Residency
 - Age
 - Trust and competence



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Enduring Power of Attorney

- Empowers someone to make decisions for you related to your legal and financial affairs
- Coming into effect: Options...
 - Immediately upon signing
 - Upon being declared incapacitated
 - Upon your written declaration that it comes into effect (but you must have capacity while making declaration)
- Lots of power granted to your decision maker therefore trust is key



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Personal Directive

- Empowers someone to make health care and personal decisions for you
- Comes into effect when you are declared incapacitated
- Opportunity to state your wishes regarding medical care and interventions



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No Estate Planning Documents?

- No Will = Intestacy
- Someone will need to apply to be your Executor
 - Priority given to certain family members
- Estate divided according to the *Wills and Successions Act*
 - You do not get to decide how your estate will be divided
- Someone will need to apply to be named Guardian of minor children



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No Estate Planning Documents? (cont'd)

- No Enduring Power of Attorney
 - Someone will need to make a Court application to be named your trustee
- No Personal Directive
 - Someone will need to make a Court application to be named your guardian
- Trustees and guardians may be required to provide accounting to Court for review at set intervals
- Alternatively, the Office of the Public Trustee and Guardian may step in



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Probate and Estates

- Probate is when the Court confirms that the Will is valid
- A Will only governs what is in the Estate
 - Joint property does not flow into estate (subject to some exceptions)
 - Life insurance and RRSP/RRIF do not flow into Estate (if beneficiary specifically named)
 - Most other things do flow into the Estate and are governed by the Will

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Probate and Estates (cont'd)

- Why is probate (sometimes) required?
 - Land Titles
 - Banks
- If the named Executor chooses not to apply for Probate, he/she still needs to provide notice to beneficiaries and spouses/AIPs
- Probate fees by the Court are capped at approx. \$500
 - In Alberta, it is not based on a percentage of the Estate value (unlike other provinces)

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Tax Planning and Estate Planning

- There is no "estate tax" in Alberta, only probate fees by the Court
- A person is deemed to have disposed of all their assets at fair market value the moment before their death
- Tax liability belongs to the estate
 - Capital gains realized with deemed disposition
 - Income in the tax year of death
 - Income during years that Estate is still active (before distribution)

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Alleviating Taxes: Tax Elections

- There are numerous tax elections available but there are limited time periods
 - Lifetime capital gains exemption
 - Include opting out of a spousal rollover or farm and fishing property rollover
 - Loss carryback if deceased held private corporate shares

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Alleviating Taxes: Donations

- In the year of death, the donation limit is increased to 100% of income (from the usual 75%)
- Planned giving
 - If a registered charity is named as a beneficiary in the Will, RRSP/RRIF, TFSA, or insurance policy then the donation credit may be claimed by the Estate instead
 - The Estate can then claim it in the year that the donation was made or any year that carry it forward for 5 years

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When to Revisit your Estate Planning

- Marriage
- Beginning or ending an Adult Interdependent relationships (“common-law” relationship)
 - Cohabit for 3 years or some cohabitation and have a child together
- Divorce, separation or cessation of cohabitation
- Children
- Changes in your financial circumstances

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When to Revisit your Estate Planning (cont'd)

- Obtaining or dispensing of significant property (ie. RESP)
- Death of a family member (especially beneficiary, executor, or guardian)
- Passage of time - every 3-5 years

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Benefits of Getting a Lawyer

- Ensure that the documents are done correctly and meet legal requirements to be enforceable
- Lawyers provide guidance and advice
 - Highlight blind spots
 - Ask tough questions that need to be considered
 - Can answer questions you may have
 - Ensure estate planning fits in with overall succession planning and tax planning
 - To avoid tax and other implications

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Benefits of Getting a Lawyer (cont'd)

- Ensure capacity is not an issue and that bequests are free of duress
- Can draft technical and specific estate planning documents
- Efficient updating or amending of estate documents
- Familiarity if called upon to assist with administration of your estate
- Safekeeping of records (if requested)

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Practical Considerations

- Keep documents in safe but accessible place
 - Lawyer's office
 - Executor's office
- Advise Executor of location
- Only one original signed Will – you can make copies
- The people you name in your Enduring Power of Attorney and Personal Directive should be accessible and in Alberta, where possible

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Avoiding Family Conflicts

- Pressure to “do the right thing” is usually greatest when it's the children who are named
 - Clear directions in the estate planning documents can alleviate this pressure and stress
- Unintended implications of joint property or accounts
 - Conflict between the right of survivorship and common law presumption of a resulting trust

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Avoiding Family Conflicts (cont'd)

- Designation of beneficiaries in RRSP, life insurance or other policies or plans
 - Benefit bypasses estate and goes straight to beneficiary; however liability to pay the taxes generally falls on the estate
- Executor Compensation
 - If not specified in will, the executor can make an application for reasonable compensation. Generally between 3-5% of estate value, which may not be well received by beneficiaries

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Reference Documents & Questions?



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