



The Navigator

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When Should You Review Your Will or Estate Plan?


We all know the importance of regular health checkups with our doctor or regular car maintenance check ups with our mechanic but when's the last time you took a look at your Will or estate plan? Is it due for a checkup? Have you experienced any life changes recently that require an update to your Will or estate plan? Most legal professionals recommend reviewing your estate plan every 3-5 years or any time you experience a major life event. A life event refers to any significant change in your life such as marriage, divorce, birth of a child, death of a spouse or changes to your financial position, to name a few. This article provides some examples of circumstances which may warrant a change or update to your Will and estate plan.

Entering a New Relationship

In many jurisdictions, marriage cancels any Will prepared by either spouse prior to the union, unless the Will is made in contemplation of marriage. As well, many couples wish to appoint their new spouse or common-law partner as the beneficiary of their estate. For these reasons, your Will and estate plans may need to be updated once you get married or enter a new common-law relationship. In addition to updating your Will, you may wish to consider changing the ownership structure of your holdings, such as bank and/or investment accounts or real estate. You may also wish to change beneficiary designations on certain assets such as pension plans, RRSPs/RRIFs/TFSA's, and insurance policies to reflect your new circumstances.

A common misconception is that your assets will automatically pass to your surviving spouse or common-law partner in the event of your death. In general, if you have not properly documented your wishes with respect to how you wish your estate assets to be distributed on your death through a valid Will or beneficiary designation, you may be considered to have died "intestate" with respect to those assets. This means those assets will be administered under the provincial intestate succession legislation for the province where you live. Under these intestacy rules, it is possible that your spouse or common-law partner may not receive all of your estate assets. Moreover, in certain provinces, your common-law partner may not even be entitled to any of your estate assets. It is therefore prudent that you ensure you have a valid and current Will and estate plans that properly addresses your estate planning objectives with respect to your new spouse or common-law partner.

Please contact us for more information about the topics discussed in this article.



Reviewing and updating your Will and estate plan is essential not only on the birth of your first child but upon any new additions to your family.

You and your new spouse or common-law partner may also wish to designate each other as power of attorney (POA) for both property and personal care. These documents should be updated accordingly, particularly if you or your spouse or common-law partner has prior POAs in place.

Raising a Family

Reviewing and updating your Will and estate plan is essential not only on the birth of your first child but upon any new additions to your family. It should be a priority for every parent to appoint guardians in their Will for the care of their minor children, to address a situation where both parents pass away. Although choosing a guardian can be a very emotional decision, parents must consider the best interest of their children when making their choice. This is also what the Court will have in mind when asked to approve your choice and formally appoint the guardian.

The birth of a child also brings with it the question of “How will my children manage financially if something happens to me?” Life and disability insurance may become cornerstones of your estate plan. As your family grows, your insurance coverage should be reviewed. Speak with a licensed life insurance representative to evaluate your insurance needs.

Disability of a Beneficiary or Dependant

Parents of children with a disability may wish to make appropriate provisions in their Will and estate plan for that child. You may wish to review your Will and estate plan with a qualified legal advisor to determine how it might impact your disabled beneficiary's eligibility for income and/or asset tested provincial disability benefits and make any changes if necessary. Rather than leaving your assets outright to your disabled beneficiary, you may wish to consider having your assets flow on death to an absolute discretionary

trust created in your Will for the benefit of your disabled beneficiary. This type of trust is often known as a Henson Trust. Alternatively, you may wish to consider whether contributions can be made from your assets to a Registered Disability Savings Plan, a tax deferred savings plan for the benefit of a person who is eligible for the disability tax credit. In many provinces, funds held in these types of vehicles do not impact a person's eligibility for provincial disability benefits.

It is important to get legal advice and understand the interaction between government disability benefits and the laws surrounding the transfer of property after death.

Divorce

It's very important to know that unlike marriage which cancels any previous Wills in many provinces, separation and divorce do not cancel an existing Will. Generally, getting divorced will revoke any gifts in the Will left to the spouse and any appointment as executor (unless a contrary intention is expressed in the Will) and your Will will be construed as though your former spouse pre-deceased you. In some provinces, your spouse or common-law partner may be disinherited from your Will if you are separated from them for a certain time period. In other provinces, separation has no impact on any gift left to your spouse or common-law partner or appointment as executor. As well, divorce or separation may have no impact on your beneficiary designations on registered plans and insurance policies.

Divorce or separation also does not in many provinces revoke an appointment of your spouse or common-law partner as your POA.

Accordingly, if you are separated or divorced from your spouse or common-law partner, you may want to consider whether your Will, POA or



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beneficiary designations on registered plans or life insurance policies need to be updated or changed.

Starting, Buying or Selling a Business

If you sell a business that you've included in your Will, it's time for an update. Similarly, if you are buying or starting a business, you should review your estate plan to ensure it covers both your personal and business assets. This includes asking yourself who will step in as your successor if something happens to you. If you are a co-owner of a business, will your co-owners buy your shares or interest in the business should you become incapacitated or die? How will this purchase be funded? You may also consider the potential tax liability related to your business that your heirs or estate may face upon your death and whether any steps should be taken to minimize this potential liability.

Mid-Life, Peak Earning Years and Changes to Your Financial Position

In general, mid-life is a good time to revisit your Will and estate plan. Consider how your family would carry on financially should you die, become badly injured or too ill to make decisions. As well, as your financial position changes, so must your estate plan. For instance, if your net worth has increased significantly since you initially drafted your Will and estate plan, you may have new opportunities, such as additional tax planning strategies available to you that were not previously.

Retirement

Your goals for, and needs from, your estate plan may change as you prepare for retirement depending on your personal situation as well as that of your family members. This presents another good opportunity to review your estate plan and Will to ensure they both meet your requirements and wishes. Is everything up-to-date?

Are there ways to reduce costs such as taxes and probate fees at the time of your death? Are all your named beneficiaries current?

Death of a Life Partner

Usually the death of a spouse or common-law partner may also necessitate an update to your own Will and estate planning tools. If your late spouse or common-law partner is named as the executor of your Will, beneficiary of your estate or any life insurance, retirement or pension plans, these documents may need to be revised or updated if you have no alternate beneficiaries named. If you have minor children, you should also review your choice of guardian.

Death of an Executor or Beneficiary

If your executor dies you may wish to change your Will to ensure that you still have a primary and alternate executor. Also of note, if your executor moves out of the province in which you reside or moves out of Canada, you may wish to name a new executor. This is because in some jurisdictions, an out-of-province or country executor may be required to provide surety, in a required form, before receiving formal authority to administer an estate in a jurisdiction other than the one in which they are resident. Similarly, if one or more of your beneficiaries dies, you may want to update your Will and any other documents with new primary and alternate beneficiaries, as necessary, for your entire estate.

Acquisition of Foreign Property

There are a number of considerations when purchasing foreign property and the resulting consequences to your estate. For instance, you need to determine if your Canadian Will and POA are valid in the jurisdiction where your property is located. You may need a second Will and/or POA. As well, you may wish to consider whether there is any potential

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exposure to double taxation of this particular property when you pass away. Generally, on your death, all of your property (including foreign property) is deemed to be disposed of for Canadian tax purposes. The property may also be subject to tax in the foreign jurisdiction in which it is located. Consult with a qualified legal or tax advisor to determine how you might be impacted.

Change in Province or Country of Residence

Every jurisdiction has its own laws and requirements pertaining to Wills and estate planning. Make sure you consult your qualified legal and tax advisor to ensure your Will and POA are still valid when you relocate. In addition to confirming that the provisions in your Will are still executable, you should confirm that your choice of executor and trustee, if applicable, are also valid in your new province or country. The same applies to your POA.

Changes to Legislation

In addition to any personal life changes that may affect your Will and estate plan, it's important to stay abreast of any changes to legislation

that affect estate planning. Federal and provincial laws can have a significant effect on estate planning and taxation so it's important to consult your qualified legal and tax advisor to find out the impact of any changes on your personal situation.

Plan Ahead

Not surprisingly, as people experience the joy or sorrow of any one of the aforementioned life changes, reviewing their Will and estate plan is probably not top of mind. However, the sooner it is addressed the better, and the less chance of larger issues presenting themselves in the future with a Will or estate plan that is out of date.

This article may contain several strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax, or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal, and/or insurance advisor before acting on any of the information in this article.



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