

## Private Client Estate Planning

### Estate Stories

#### *Who should have a will?*

Most Canadians devote very little time or thought to the issues surrounding their eventual demise and the implications to their surviving heirs. This common experience is typically a result of basic human nature—most people would rather avoid unpleasant thoughts or events. While thoughts of death are unpleasant, ignoring the issues surrounding death and the estate can have significant repercussions to one's heirs. While little thought is devoted to estate planning throughout an individual's lifetime the foundation of all estate planning, Will execution, is typically considered by individuals in their late thirties or early forties. A common misconception of estate planning is that it is only for affluent persons and those in the later stages of their lives.

What must be recognized is that all persons should develop an estate plan no matter what age or economic status. An estate plan can ensure that taxes are minimized at death, the estate's assets are properly distributed and beneficiaries receive the support necessary to prevent undue hardship.

The complexity of the estate plan will vary from individual to individual but even young adults with few assets should develop a plan to ensure an efficient handling of the estate. The complexity of your estate plan will depend upon the size of your estate and the stage you are at in your life. For example, if you are married with dependent children your estate concerns are likely to be greater than if you are single with few assets. The estate plan may be nothing more than a comprehensive Will that is kept up to date as your situation changes. In any case, the creation of a Will represents the most fundamental component of the estate plan. Consider the following example that illustrates a common family situation and the potential estate problems that can arise.



#### The Story of John and Mary Jones

John and Mary Jones are a young couple, both in their early thirties, with three children ages 2, 6, and 9. John earns the majority of the family's income and Mary's income supplements the family expenses. John and Mary have accumulated a small portfolio which they hold in a joint account. Neither John nor

Mary have given any thought to the creation of a Will since they believe that upon death the surviving spouse automatically inherits the other's estate.

#### What if John died today?

If John were to die without a Will, he would be considered to have died "intestate". In order for Mary to administer John's estate she would have to apply to the Provincial courts requesting that she be appointed administrator of the estate. This does not sound terribly onerous, except that it can take time to make this request as well as cost her money, due to the additional legal fees that would likely be

incurred. This matter could be further complicated if someone chose to contest Mary's appointment as administrator of the estate.

Since John does not have a Will, the courts will divide John's assets between Mary and the three children (except in Manitoba). This could result in a fairly sizable inheritance for the three children. The fact that these children are all minors, will result in their share being held in trust until they reach the age of majority (generally, age 18). This money would not be available to Mary to help support the children unless she applied to the Courts for access.

Ultimately, Mary would probably be appointed administrator of the estate and would have access to the assets inherited by her children but this will only occur after considerable time and money is spent.

## What if Both John and Mary Were to Die?

There is always a chance that both John and Mary could die together in an accident. Since John and Mary do not have a Will, all their assets would be left to their children. The children are both minors, therefore the estate's assets would have to be liquidated and held by the court appointed administrator until the children reach the age of majority. The administrator of the estate would have to post a bond with the court to access the estate's assets so that he/she could provide for the children. The court appointed guardian may not be the person John or Mary would have selected to take care of their children. The fact that Mary and John do not have Wills would result in additional expenses for the estate and potentially some hardship for the children.

## What if John and Mary were not legally married?

If we assume John and Mary are living common law, this will only further complicate the administration and distribution of the estate. In most provinces, if Mary dies without a Will, John would not have a claim on her estate and her assets would pass to her children. If Mary did not have children then her

assets would pass to her parents. The same situation would result if John was to die.

Most Provinces provide some protection for common law spouses upon separation, but in many cases the laws providing this protection do not address the issue of rights of a common law spouse upon death. In the case of John and Mary, John could apply to the courts for support from Mary's estate, but he would not have any legal rights to her assets.

## The Moral of the Story

The potential difficulties that John and Mary's estate would incur upon one or both of their deaths should be apparent from the above scenarios. John and Mary's case is only one of the many situations that may arise if you do not ensure that current Wills are in place. The creation of a Will is a simple step in the estate planning process that all adults should take to ensure the efficient and effective transfer of their assets upon their death. The creation of a Will can serve many purposes such as: the naming of an executor(s) and guardian; the use of tax strategies that may reduce the tax liability of the estate and it is the only way to ensure the welfare of your family upon your death.

## The Next Step

If you don't have a Will or your Will needs to be revised, contact your RBC Dominion Securities Investment Advisor for a copy of our publications on Estate Planning and Will Planning. These publications will help you explore the issues that should be considered when creating a Will.

Once you have decided on the content of the Will and the issues that should be addressed, consider seeking appropriate legal advice to ensure the objectives of your Will are achieved.

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