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INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC FAMILY OFFICE SERVICES

When should you review your Will or estate plan?

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

Everyone generally knows the importance of getting regular health checkups with a doctor or regular car maintenance with a mechanic, but when was the last time you looked 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 three to five 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

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 haven't properly documented your wishes with respect to how you want 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 reside on death. Under these intestacy rules, it's 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's therefore prudent that you ensure you have a valid and up-to-date Will and estate plan that properly address your estate planning objectives with respect to your new spouse or common-law partner.

In some 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 want 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/TFASAs, and insurance policies to reflect your new circumstances.

You and your new spouse or common-law partner may also wish to designate each other as attorney under powers 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 consider when approving your choice and formally appointing a 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 want 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. 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, also known as a Henson Trust, for the benefit of your disabled beneficiary. Alternatively, you may want to consider whether contributions can be made from your assets to a Registered Disability Savings Plan (RDSP), 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.

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Divorce

If you’re separated or divorced from your spouse or common-law partner, you may want to consider whether your Will, POA or beneficiary designations on registered plans or life insurance policies need to be updated or changed.

Unlike marriage, which may cancel any previous Wills in some 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/liquidator (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’re 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/liquidator. As well, divorce or separation may have no impact on your beneficiary designations on registered plans and insurance policies.

In some provinces, divorce or separation does not revoke an appointment of your spouse or common-law partner as your POA.

Starting, buying or selling a business

Buying or selling a business is an event that should prompt you to review your estate plan. If you’ve sold your business, for example, you may wish to update your Will to remove any bequests of corporate shares or business assets that are no longer personally owned by you to avoid any ambiguity or confusion.

If you’ve purchased a business, you’ll want to consider how the management and ownership of the business should be transferred if something happens to you. If you’re 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. These considerations should be addressed in a Will that also reflects any shareholder agreements that may be in place.

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 pass away, become badly injured or too ill to make decisions. Your estate plan should be updated to reflect any changes in your financial circumstances. 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 of 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 plan. If your late spouse or common-law partner is named as the executor/liquidator of your Will, or as the beneficiary of your estate, 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/liquidator or beneficiary

If your executor/liquidator dies, you may wish to review and update your Will to ensure you still have a primary and alternate executor/liquidator named. Also of note, if your executor/liquidator moves out of the province in which you reside or moves out of Canada, you may wish to name a new executor/liquidator. One reason for doing so is that in some jurisdictions, an out-of-province or out-of-country executor/liquidator may be required to provide a surety bond to the court before they are given the authority to administer your estate. 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, a Canadian Will or POA may not provide your executor/liquidator or attorney with the

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authority to deal with your foreign property in the case of your death or incapacity. In this case, creating a separate Will and/or POA that complies with the requirements in that jurisdiction may help your executor/liquidator or attorney navigate the foreign jurisdiction's legal process more easily and facilitate any dealings with your foreign property.

Change in residence

Every jurisdiction has its own laws and requirements pertaining to Wills and estate planning. If you move to another province or country, it's important to ensure with a qualified legal advisor that your Will is still valid and the provisions of your Will can be carried out by your executor/liquidator. You should also confirm that your choice of executor/liquidator 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 these mentioned life changes, reviewing their Will and estate plan is probably not top of mind. However, the sooner it's 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 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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