

Estate Planning and RESP Options

Many who open Registered Education Savings Plan (RESP) accounts to save for their children or grandchildren wonder what will happen with these savings should they die. We suggest that you consider designating a successor Subscriber only in your Will. If there is no directive specifically for the RESP instruction in the Will, the legal representative¹ may become the subscriber of the plan. The legal representative can also designate a successor Subscriber by means of a Letter of Direction to the financial institution.

Except in Quebec, if you are one of two joint subscribers, the surviving subscriber becomes the sole subscriber upon your death. This is because a joint RESP is considered to be a Joint Tenants with Rights of Survivorship (JTWROS) situation, where the plan assets belong to the surviving subscriber. In Quebec, the concept of JTWROS is not recognized. Consequently, your RESP share forms part of your estate. Instructions regarding this portion of the estate may be given by the Liquidator of the estate upon receipt of proper estate documentation. The deceased Subscriber's name can be changed to "Estate of" but unlike other provinces, it cannot be removed. No tax receipts are issued specifically as a result of the death of the joint Subscriber. Unlike an RRSP or RRIF, an RESP does not become taxable in the year after following the year of death if it is not settled.

Other than in Quebec, if you die intestate (without a Will), your surviving spouse (including common law) or the next-of-kin or both can make an application to the court to be appointed as Estate Administrator (in Ontario, this is called Estate Trustee without a Will. In Quebec, this is called a Notarial Declaration of Heirship or Transmission and Nomination of Liquidator. A Notarial Marriage Contract with a Mutual Donations Clause should apply. In each case, a court-endorsed or notarized copy of the relevant court document must be provided to the financial institution in addition to the foregoing items.

Finally, if you do not currently have specific instructions in your Will regarding the RESP, it is not necessary to incur the cost of updating your entire Will. You may have a codicil, which is like an addendum done at lower expense. Holographic Wills are rarely recognized and as such may not be reliable. We strongly recommend that you seek a lawyer, or Notary (in Quebec) for professional assistance.

Prepared by:

Lisa M. Gillette

Vice President & Portfolio Manager

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¹ "Legal Representative" means an Executor, Estate Trustee, or Administrator [appointed by a court when a client dies intestate - without a valid will] and, in Quebec, a Liquidator or Testamentary Executor [in most wills made before 1992].