

THE NAVIGATOR



WHEN SHOULD YOU REVIEW YOUR WILL OR ESTATE PLAN?

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We all know the importance of regular health check ups 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 check up? 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.

CHOOSING A SPOUSE OR LIFE PARTNER

Unless specifically stated within the Will, in many jurisdictions marriage cancels any Will prepared by either spouse prior to the union. As well, many couples wish to appoint their new spouse or life partner as the beneficiary of their estate. This change needs to be reflected in your Will and estate plan including bank and investment accounts, pension plans, RRSPs/RRIFs/TFASAs, real estate and insurance policies. A common misconception is that savings and other assets automatically pass to the surviving spouse in the event of one's death. If this final wish is not documented in a valid Will or if

your Will cannot be located, you are considered to have died "intestate" and your estate will be administered under the provincial or territorial intestate succession legislation for the province or territory where you live.

Partners also often wish to designate each other for both their "power of attorney for property" and "power of attorney for personal care." These need to be updated accordingly if either partner has prior powers of attorney in place. Depending on the province or territory where you live, other health care directives and instructions for your personal care may be available. For instance, if you live in Quebec, you would prepare a Mandate instead of a Power of Attorney.

RAISING A FAMILY

It should be a priority for every parent to appoint guardians in their Will for the care of their minor children, should 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. This applies not only with your first child, but it is also crucial to update your Will to include new additions to your family.

The birth of a child also brings with it the question of "How will my children manage financially if something



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happens to me?" Life and disability insurance may become cornerstones of your estate plan. As your family grows, your insurance coverage should be reviewed.

DISABILITY OF A BENEFICIARY OR DEPENDANT

Parents of children with a disability must make appropriate provisions in their Will for that child. It is important to get legal advice and understand the interaction between government benefits and the laws surrounding the transfer of property after death. For instance, a trust or Registered Disability Savings Plan (RDSP) may be appropriate options for estate planning in this situation. A trust enables assets to be held by one individual (the trustee) for the benefit of another (the beneficiary). An RDSP is a tax-deferred account, similar to an RESP, to which anyone including family and friends can contribute.

DIVORCE

It's very important to know that unlike marriage which cancels any previous Wills, in many jurisdictions, separation and divorce do not cancel an existing Will so you should both have new Wills prepared unless you want to leave your estate to your former spouse. The same applies to Power of Attorney documents and any beneficiary designations in place, such as RRSP/RRIF or insurance policy designations. This is even more important if you have children together. You both need to indicate in your Will your wishes for your children's care and support, should either of you die.

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 from both a personal and business perspective. This includes asking yourself who will step in if something happens to you. Are there partners who will buy your shares and if so, who will get the proceeds? What are the tax implications?

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?

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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 life partner will also necessitate an update to your own Will and estate planning tools. If your late spouse is named as the executor of your Will, beneficiary of your estate or any life insurance, retirement or pension plans, these documents will all need to be revised. If you have minor children, you should also review your choice of guardian.

DEATH OF AN EXECUTOR OR BENEFICIARY

If your executor dies you should change your Will as soon as possible 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 should name a new executor as in some jurisdictions, an out-of-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 need 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 power of attorney are valid in the jurisdiction where your property is located. You may need a second Will. As well, your estate may be exposed to double taxation upon your death. Consult with a 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 legal and tax advisor to ensure both 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 advice applies to your powers of attorney.

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 legal and tax advisor to find out the impact of any changes on your personal situation.

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.

Please contact us for more information.

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

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