

## ***Is a Will Enough?***

Many people believe that all there is to Estate Planning is a Last Will and Testament. However, in any carefully thought out Estate Plan there are many other considerations and documents that should be considered and prepared. The goal of Estate Planning is to make use of Wills, Powers of Attorney, each for the Management of Property and for Personal Care, our current assets and tax avoidance in order to maximize our assets for today, tomorrow and the next generation. While making a Last Will and Testament is an important step in your Estate Plan, the following should also be reviewed and considered with your professional advisors:

1. If you are married, and if you have no other liability concerns, assets should be held jointly with your spouse. This ensures that on the death of the first spouse, assets will automatically flow to the surviving spouse and thereby not be “frozen” or attract unnecessary probate fees and expenses. Assets that can be held jointly are homes, cottages, bank accounts and so on. It is also a good idea to name your spouse as your beneficiary under life insurance, RRSP's and GIC's and so on.
2. While most of us wish to benefit our children and other family members upon our death, it is also possible to give a gift of cash during our lifetime without attracting taxes. The effect is to take cash out of your hands so you don't pay taxes on it. The recipient of your largesse has the benefit of the money often when they need it most. The down side of course is that you relinquish control over the asset and lose the benefit of it.
3. A device that is sometimes called a “Living Trust” may also be created during our lifetime. Assets are re-registered from our name into a trustee's name. Income that is earned by the trust is taxed. In effect, the trust pays the tax. There are also special tax rules and considerations that may enable the income earned by the trust to be taxed in the hands of the beneficiary of the trust. The reason to set up a trust is to reduce personal income tax, however, it is a complicated procedure and will require professional advice from a lawyer and a tax accountant.
4. Enduring Powers of Attorney for Property and for Personal Care are essential tools in the Estate Plan. Powers of Attorney for Property allow the person(s) named to deal with your property in circumstances where you become incapacitated. The Power of Attorney for Personal Care permits the person named to make decisions in relation to your personal health care, again in circumstances where you are disabled and unable to make these decisions for yourself. Decisions affecting your property may include such things as paying your bills, depositing money in your bank accounts, cashing cheques, making repairs and selling your property. Decisions about personal care may include very basic things such as medical health care, what you eat, where you live and what you wear.

Obtaining professional advice is advised as there may be certain restrictions that you wish to place on the decision making power of the person you name as your attorney. If you are self employed you may wish special considerations to be included in relation to the ongoing operation of your business.

5. In relation to the personal care it is also possible to complete an Advanced Health Care Directive. This document, while it does not replace a Power of Attorney for Personal Care, is a very specific recording of your wishes for your own health care should you become incapacitated by disease or injury and cannot otherwise communicate for yourself at some time in the future. Instead of abdicating decision making in relation to your personal care, you are recording, and making part of your medical record, your very specific wishes in relation to future health care. This type of document must be reviewed and completed with your medical doctor.
6. There are also many special trusts that can be established in order to benefit our favorite charity, provide for spouses and/or children and to protect and provide for special needs children.

7. It is possible and advisable to preplan your own funeral. Preplanning can be as simple as discussing and arranging for the type of service that we wish upon consultation with a funeral director. You can also go one step further and actually prepay funeral expenses. It is also essential that we communicate our thoughts and wishes in this regard to our loved ones. Preplanning and prepaying will obviously lift a great burden off loved ones in a time of a great turmoil and stress.

What is essential to understand is the need to seek professional advice from your lawyer, tax accountant, investment advisor, banker and other professional advisors. A carefully thought out and drafted Estate Plan will help you to maximize your assets for your use today, tomorrow and hopefully, permit you to provide for your loved ones to enjoy after you are gone. It is important to assemble a professional team to provide you with Estate Planning advice in order to ensure that what you worked so hard to earn remains yours to enjoy, and yours to benefit your loved ones and your communities.

*The opinions expressed are for information purposes only and readers should consult with a lawyer in relation to specific cases.*