<< Return to Table of Contents

What is Estate Planning?

Estate planning is the preparation of a plan that is intended to carry out your wishes to transfer or preserve your assets in the most effective way. An effective estate plan should include a well-drafted Will along with clear objectives, which include ways of minimizing and deferring taxes to ensure you can preserve as much of your estate for your beneficiaries as possible.

Estate Planning Should Include:

- Get Organized – Although it may be time consuming, you should sit down and start organizing and documenting your affairs. Bank accounts, stocks, bonds, insurance policies, real estate, safes, and items in hidden places, family heirlooms and other irreplaceable items should be documented. This will make your executor's job easier as well as minimize the chances that a part of your estate will be overlooked.

- Talk to Family Members – Discuss how you would like your financial and medical affairs dealt with in case you pass away or become incapable of making your own decisions. This would also be a great time to discuss such items as child guardianship.

- Consult a Lawyer – Your lawyer will assist you in drafting your Will or creating a trust to assist in allocating your assets according to your desires.

Estate planning greatly depends on your stage and circumstances in life. When planning your estate be sure to consult skilled professionals with regard to financial planning, legal, and tax information to help you make informed decisions. It is also good practice to make your decisions in consultation with your family members.

What is Power of Attorney?

An enduring power of attorney is a document drafted to give authority to one or more people to handle your legal and financial affairs should you be unable to do so. An enduring power of attorney must be put in place prior to an illness or incapacitation. You can also create a document known as a specific or restricted power of attorney, which would normally pertain to such items as dealing with a specific bank account or having a 3rd party sell your home on your behalf while you are out of the country. A specific or restricted power of attorney is usually drafted for a short period of time and can be beneficial if you have assets or property that require active management.

What is a Representation Agreement?

On February 28, 2000 the Representation Agreement Act was partially proclaimed in British Columbia. The intent of that act was to provide British Columbians the ability to arrange in advance for decisions about health, personal care, financial and legal matters. It was initially intended that Representation Agreements would become the primary tool for incapacity planning. After conducting a review of the provincial legislation surrounding planning for incapacity a report has been submitted to the government recommending that Power of Attorney documents remain the primary planning tool in British Columbia for the management of one's financial and legal matters and that Representation Agreements be used for the appointment of a person to make decisions about ones health and personal care. We continue to await a final determination of this matter however at the present time British Columbians are permitted to use either one or both of a Power of Attorney document and a Representation Agreement in their incapacity plan.

What if you do not have a Power of Attorney or Representation Agreement?

If you do not have a Power of Attorney or a Representation Agreement and are unable to manage your affairs due to illness or incapacitation the person or persons who wish to manage your affairs must first apply to the court. The applicants will then be known as a committee and their conduct will be governed by provincial legislation. To protect your interests, both financial and health, the provincial Office of the Public Guardian and Trustee will monitor the actions of the committee under direction from the court. Government intervention usually brings with it a number of additional delays and expense, which can be avoided by having the right Power of Attorney or Representation Agreement drafted beforehand.

If you are looking to have a Power of Attorney or Representation Agreement drafted, or need more information please contact us.

Use of Joint Tenancy

A joint tenancy can be a helpful part of your estate plan but must be used with caution. There are two ways property can be owned by multiple parties, joint tenancy or tenancy in common. The key difference between the two is the right of survivorship.

If you own property with another person or multiple people as tenants in common, at the time of your death your interest in the property becomes part of your estate and will be handled according to your Will or the provincial intestate laws if you have no Will. If you own property with another person or group of people as joint tenants, at the time of your death your interest in the property will be transferred to the surviving joint tenants.

The law presumes that any asset, other than land, which is owned by two or more people, is owned as joint tenancy unless there is an indication that the owners actually own shares of the asset. This common law presumption in regards to land has been altered by statute and presumes that if the title does not specify the owners as joint tenants then it is held by the owners as tenants in common.

A joint tenancy does not have to be between two spouses. It is possible to create a joint tenancy between others such as a parent and child. Because of the right of survivorship, a joint tenancy can simplify estate administration and even avoid probate. You must however use this estate planning tool cautiously.

Although joint tenancies can be useful there are consequences to be aware, such as:

- Loss of Control – If a parent creates a joint tenancy with a child, the parent cannot cancel the transfer if the parent changes his or her mind. The parent would also not be able to sell or mortgage the land unless the child also agrees and signs.

- Income Tax – The transfer may also have tax implications. When interest in the property is transferred to the child it is considered sold at fair market value and, unless the property is the parents principal residence, a portion of any capital gains will be added to the parents income. This means that the parent would end up paying tax even though they have not been paid for the property.

<< Return to Table of Contents

- Property Transfer Tax – Property Transfer Tax, in the case of land, will be payable upon transfer although exemptions may be available if the property was the principal residence of the parent or child for the appropriate length of time.

- Exposure to Creditors – Once the transfer is made and the child has interest in the property it can become subject to any creditors of the child. This can also mean if the child is married and the property is used for a family purpose, it can be subject to any claims made by the spouse if the child's marriage was to dissolve.

- Death – In the case of the child dying before the parent. If there were other children on the title as joint tenants, on the death of the parent, the property would pass only to the surviving joint tenants and not to the family of the deceased child.

- Incapacity of the Child – If the child becomes ill or incapable or for any other reason was unable to deal with the child's interest in the property then significant delays and expense could be incurred. A power of attorney granted by the child to the parent or some other person may assist in minimizing these problems.

If a parent creates a joint tenancy with a child it is a good idea to put the parents' intentions in writing (ie: is it the parents' intention to make an outright gift, or is the arrangement one of convenience where the child is merely a trustee holding the property in trust for the parent and subsequently the parents' estate). This will avoid the possibility of a dispute between the child involved in the tenancy agreement and the other surviving children of the deceased.

If you would like more information regarding the use of a Joint Tenancy agreement, please contact us.

<< Return to Table of Contents

Beneficiary Designation

There are two types of beneficiary designation:

The first, a revocable designation meaning the insured can change the beneficiary on his or her policy at any time. This is the most common type of beneficiary designation.

The second, an irrevocable designation, meaning the insured has given up his or her right to change the person or people named as the beneficiary. In effect, an irrevocable designation would make both the insured and the beneficiary joint owners in the insurance policy.

An irrevocable beneficiary designation is often seen where there has been a divorce and the spouse wants to ensure that the family will always be protected therefore making it impossible for the insured to change the beneficiary designation if he or she re-marries, starts a new family or tries to use the beneficiary clause as some sort of negotiating item.

If you would like more information regarding beneficiary designation, please contact us.

The information provided in this document is not intended to be legal advice but rather to provide answers to a number of questions that we are commonly asked. If you have other questions, please call us and one of our lawyers or experienced staff will be happy to help you.