

Estate Planning



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Part 2 Into the Thick of Things

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Disclaimer

This presentation provides information about estate planning.

The information should not be construed as providing specific legal or financial advice.

Use of any information acquired from this presentation is voluntary.

Always obtain a qualified assessment of the accuracy and timeliness of information by consulting legal and/or financial advisors.

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Have You Got A Plan?

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Estate Planning

Estate planning refers to the process required to transfer and preserve one's wealth in an orderly and effective manner.

You should have an estate plan.

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Previous Session

We discussed in broad terms what is estate planning and how the process unfolds

We needed to gather all personal and financial information. We looked at the workbook "You and Your Survivors" as an excellent tool to do so.

With our known assets and liabilities, we could determine if changes are required to ensure our survivors could live well after our departure.

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Estate Planning Recap

A sound estate plan helps you address issues:

1. How your assets will be used by children, grandchildren or other heirs;
2. How you might wish to provide for favourite charities as well as family members
3. How will you avoid family conflict
4. How will you ensure assets are distributed as you wish in a timely fashion
5. How do you may deal with tax consequences in the distribution of assets

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Estate Planning Recap

Be ready for uncertainties – a good estate plan covers all situations that may arise

1. Plan for incapacity – have power of attorney for property and health
2. Plan for wealth transfer – designate beneficiaries, understand tax consequences, minimize disputes
3. Select the right persons for executor, for PoAs, for trusts
4. Plan for internment – get your funeral wishes known
5. Plan to review

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Joint Ownership
 Powers of Attorney
 Living Wills
 Wills
 Beneficiary Designations
 Finding an Executor
 Engaging Your Executor

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Estate Planning

Why do you want joint accounts?
 Are joint accounts suitable?
 Are there pitfalls to joint accounts?
 Do you need to designate trading authority on your investment accounts?

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Estate Planning

Do you have a power of attorney (PoA)?
Who is your attorney?
How many PoAs do you need?

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Estate Planning

Do you have a will?
When was the last time you reviewed it?
Have situations changed?

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Estate Planning

Do you need to designate beneficiaries?
Do beneficiary designations override your
will?

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Estate Planning

Do you have an executor?
Do they know your wishes?
Do they know what is required to
close your estate?
Can they do what needs to be done?

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Joint Ownership



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Joint Ownership

Why?

Holding property jointly has become a popular estate and incapacity planning technique, perhaps because it's simple and inexpensive.

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Joint Ownership

JOINT TENANTS VS TENANTS IN COMMON

TENANTS IN COMMON - each owner has a fixed, divided ownership interest, whether it be 50% each or some other combination. On death, each owner's respective interest falls to his or her estate.

JOINT TENANTS - is a form of shared ownership and creates an undivided ownership in the property as a whole. If there's a right of survivorship, the last survivor is entitled to all the property on the death of the other joint tenant or joint tenants.

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Joint Ownership

Joint Tenant with Right of Survivorship

(not applicable in Quebec)

- Unity of Interest – each owner has equal interest
- Unity of Possession – each owner cannot have exclusive ownership; it must be equal
- Unity of Term – each owner must own interest at the same time and for the same period
- Unity of Title – each owner's interest must be the same and created at the same time in the same document.

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JTWROS

Potential Opportunities

- **Probate Avoidance (or merely delay?)**

Assets held in JTWROS pass outside the estate to the surviving owner. Probate is charged on the fair market value passing through the estate so probate tax savings happen with JTWROS.

- **Incapacity**

With assets held jointly, it simplifies access when one owner becomes mentally incapable.

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JTWROS

Potential Risks

- **Immediate Tax Consequences**

Assets can be rolled over tax free only to a spouse. Property transferred is considered for income tax purposes to be immediately disposed, creating unrealized capital gains and immediate tax.

- **Exposure to creditor and matrimonial claims**

A sale of property could be forced to pay or contribute to the payment of debts and claims of a joint owner

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JTWROS

Potential Risks

- **Loss of Control**

The other owner(s) can add to, or withdraw from an account without the original owner's knowledge or approval, e.g, drain a bank account; misuse funds.

With real property, a joint owner can force the sale to resolve conflicts.

A joint owner can also sever the joint tenancy, turning into a tenancy in common, allowing the asset to pass down through their own will.

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JTWROS

Potential Risks

- **Estate Disputes**

If the joint account is between a parent and one adult child, other children may dispute the ownership, believing the assets are held in trust, not passing to the one child especially if the will names all children as equal beneficiaries.

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JTWROS

Potential Risks

- **Decisions cannot be made for incapable joint owner**

If joint owner is not also appointed as the incapable owner's guardian of property (PoA), a different appointed attorney could have a legal obligation to liquidate an asset such as a cottage or family home to pay medical costs.

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Trading Authority

Trading Authority (TA)

- **Specific Purpose:**

It's primarily used for investment management, allowing someone to trade on behalf of the account owner.

- **Limited Scope:**

The TA is specifically granted the authority to execute trades within a designated account(s).

- **No Financial Management:**

The TA cannot handle financial transactions, deposit or withdraw funds, or manage other aspects of the account.

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Power of Attorney

Power of Attorney (PoA)

- **Broad Scope:**

A PoA can grant authority to manage various aspects of the principal's life, including financial, legal, and even personal matters.

- **Financial Management:**

The attorney-in-fact can handle banking, sign checks, manage investments, and make other financial decisions.

- **General or Specific:**

PoAs can be broad (General PoA) or limited to specific tasks or periods of time.

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TA vs PoA

Key Differences

- **Scope:** TA is limited to trading, while a PoA can be significantly broader.
- **Financial Control:** TA does not involve financial control, while a PoA can include full financial management.
- **Legal Status:** A PoA is a legal document that requires notarization.
- **Purpose:** TA is often used for investment management, while a PoA is more broadly used for various financial and personal matters.

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TA vs PoA

Key Differences

- **In essence:**

If you need someone to manage your investments and execute trades, a TA is a suitable option.

If you need someone to manage your finances, make decisions about your property, or handle legal matters, a PoA is a more comprehensive solution.

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Powers of Attorney



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Powers of Attorney

In Ontario there are basically three types of power of attorney:

- General Power of Attorney
- Continuing Power of Attorney for Property
- Continuing Power of Attorney for Personal Care.

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Powers of Attorney

General Power of Attorney

- Gives authority to someone else to look after *ALL* your financial affairs.
- Give all the powers now, but protect yourself by not giving the original document.
- Alternatively, triggered on specified event.
- Unless the PoA has an enduring feature, it is void if you are mentally incapacitated.

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Powers of Attorney

Continuing Power of Attorney for Property

- Gives authority to someone else to represent your interests in financial matters.
- It remains valid even if you are mentally incapacitated.
- Generally must be reviewed every three years unless there is a clause to the contrary.

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Powers of Attorney

Continuing Power of Attorney for Personal Care

- Gives authority to someone else to make decisions regarding your health and medical treatment.
- It becomes valid if you become mentally incapacitated or unable to look after your health affairs.

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Powers of Attorney

Limited Power of Attorney

- Gives authority to someone else to look after a specific matter for you, such as selling a home.
- Criteria for the authority are very clearly spelled out.
- It is not valid if you are mentally incapacitated.

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Powers of Attorney

Bank Power of Attorney

- Gives authority to someone else to act on your behalf on financial matters with a specific financial institution.
- The bank wants to see you personally and watch you sign their own documents.
- May or may not include an enduring clause if you become mentally incapacitated.

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Powers of Attorney

Benefits

- Establishing a power of attorney is inexpensive.
- You can decide who should make decisions on your behalf.
- You control whether the agent has general or specific power.
- The PoA can require the agent to become bonded or to give an account of his or her transactions.

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Powers of Attorney

Limitations

- Competence at time of writing the PoA might be questioned later.
- Multiple PoAs may be in place as some financial institutions recognize a PoA only if prepared on their forms.
- Some institutions will not recognize a PoA after six months to one year.
- If powers are too general, open to abuse.
- The attorney could turn out to be untrustworthy.

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Powers of Attorney

Forms for Continuing Power of Attorney
for Property and Personal Care

[Powers of Attorney \(PDF version\) –
Publications Ontario](#)

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Powers of Attorney

*Upon your death all
Powers of Attorney documents
become void.*

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Living Wills



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Living Wills

- *Designed for those concerned with the quality of life when death is near.*
- *Written statement of your wishes to those most likely to have control over your care.*
- *Expressly for the event where there is no reasonable expectation of recovery from physical or mental disability.*
- *Make it known you have a living will.*

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Living Wills

- *You must specify your wish to die naturally, with dignity, and not be kept alive by artificial means or “heroic medical measures”.*
- *As it an expression of your wishes it is not legally binding upon your doctor or hospital in charge of your care.*
- *Give a copy to your family doctor.*
- *Keep a copy where it can be accessed quickly.*

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Living Wills

Is a “living will” the same thing as a “Power of Attorney”?

- No.
- A Power of Attorney is a legal document in which you name a specific person to act on your behalf.

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Living Wills

Is a “living will” the same thing as a “Power of Attorney”?

- A “living will” just addresses your treatment and personal care wishes.
- It does not need to name anyone or be written in any specific way.

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Living Wills

Is a “living will” the same thing as a “Power of Attorney”?

- As part of your Continuing Power of Attorney for Personal Care you can write your treatment wishes (“living will” or “advance directive”)
- Allows you to make sure your attorney is aware of them.

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Wills



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No Will

What if there is no Will?

Creates problems for those you leave behind.

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Dying without A Will

- *Property is divided according to the laws of Ontario, which may not be the same as your wishes.*
- *The court will have to appoint someone to act as your personal representative.*
- *Count on extra time delays and expenses to wrap up your affairs.*

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Dying without A Will

Ontario Succession Law Reform Act
governs how your property will be
distributed

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No Will

- 1) **If you have a spouse, but no children**, your spouse inherits everything. Common-law spouses do not automatically inherit everything.
- 2) **If you have a spouse and children**, your spouse first takes a *preferential share* - up to \$200,000 worth of assets. Of the residue, 1/2 each for one child; or 1/3 to spouse and rest divided equally among all children

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No Will

- 3) **If you have children, but no spouse**, then the children each inherit an equal portion of your estate.
- 4) **If you have no spouse and no children**, your parents inherit your entire estate.
- 5) **If you have no spouse, no children, and no parents**, your brothers and sisters divide your estate equally.

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No Will

6) **If you also have no brothers and sisters**, then your nieces and nephews each inherit an equal portion of your estate.

7) **If you have no nieces and nephews**, then all other next of kin inherit an equal portion of your estate, and

8) **If you have no living next of kin**, then your estate goes to the Ontario government.

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Types of Wills

- Attested Wills
- Holographic Wills

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Attested Wills

- Most common, “formal” will
- Attested = signed by witnesses
- Most typed or fill-in-forms
- Must be signed in front of two witnesses
- Each page initialled by you and the two witnesses

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Attested Wills

- Witnesses must sign an affidavit, a written statement that the witnesses saw you sign and that they have no reason to believe you are not capable of making the will.
- Witnesses should not be receiving a gift in the will, nor spouses of anyone receiving a gift.

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Holographic Wills

- Less formal
- Must be entirely handwritten
- Must be signed and dated
- Does not require witnesses
- May not be valid if unclear or missing important legal details

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Wills

- Basically three ways to prepare a will:
 - *Do it yourself*
 - *Get a lawyer*
 - *Get a trust company to arrange a lawyer to do it.*

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Wills

- *Do it yourself is the poorest choice*
 - Defects or inadequacies could result in legal, financial and administrative grief for your family, relatives and beneficiaries.
 - Ambiguities could void a clause in the will or the whole will could be considered void for various technical reasons.

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Wills

- *Get a lawyer*
 - qualified to provide legal advice, and knowledgeable about how to complete the necessary legal work.
 - a lawyer specializing in wills could recommend various tax and estate planning experts to assist you.

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Wills

- *Get a trust company to arrange a lawyer to do it.*
- Trust companies have expertise or access to expertise to perform an all-encompassing role to assist with all aspects of estate planning.

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Will Contents

- *Your full name and where you live*
- *Cancel any previous will*
- *Appoint an executor*
- *Direct debts to be paid*
- *Specify gifts to named beneficiaries*
- *Residue directed as per your wishes usually in equal shares*
- *Testify you are signing*
- *Witness declaration*

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Will Contents

“per stirpes”
If a child predeceases you, the child’s share of the estate goes to their children in equal shares.

“per capita”
If a child predeceases you, the child’s share is divided equally among the surviving siblings.

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Will Contents as a Couple

Typically wills between couples are

- *Mirror Wills -*
- *Mutual Wills -*
- *Joint Wills -*

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Will Contents as a Couple

Mirror Wills

- Each spouse's will is similar, often leaving everything to each other, with a provision for children upon the surviving spouse's death.
- This choice gives the surviving spouse maximum control and the flexibility to change their will after their spouse's death especially if circumstances change (remarriage, new children, grandchildren).

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Will Contents as a Couple

Mutual Wills

Similar to mirror wills, but the surviving spouse agrees to limit their ability to change their will after the first spouse's death. This agreement often needs to be in writing to be enforceable.

Mutual wills can create potential conflicts if the surviving spouse's circumstances change significantly after the other spouse's death.

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Will Contents as a Couple

Joint Wills

Less common, joint wills bind both parties, and once one spouse dies, the surviving spouse cannot change the will.

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Will Contents as the Survivor

As the survivor, issues arise, particularly with the estate now sharing its proceeds with the provincial and federal governments in the way of probate and income taxes.

The survivor should begin to look at ways to reduce estate taxes or ameliorate their impact. The assistance of financial advisors, accountants and lawyers need to be considered as long as the tax savings benefits outweigh the fees paid to undertake any tax savings strategies.

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Revisiting Your Will

*If you already have a will
do you need to revise it?*

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Revisiting Your Will

Here are some possible reasons

- You are at a different point in your life
- Your child is getting married
- Your beneficiaries have issues that concern you
- Your lawyer is deceased or no longer your attorney

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Revisiting Your Will

- You want your heirs to access their legacy without unnecessary delays
- Your executor does not have the capability to manage your estate; maybe they have suffered a decline in health or no longer wish to have the responsibility to handle your estate
- Estate planning laws have changed
- You have concerns about taxes

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Beneficiary Designations

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Beneficiary Designations

- Appointing beneficiaries on the various products you own (RRSPs, RRIFs, LIRAs, Life Insurance policies, TFSAs) is one of the key decisions made when setting up your estate plan.
- Payment of proceeds goes directly to your beneficiaries bypassing your estate, saving time and money.

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Beneficiary Designations

- Irrevocable Beneficiary
- Revocable Beneficiary
- Contingent Beneficiary

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Irrevocable Beneficiary

- Beneficiary cannot be changed without their consent.
- Not easily changed, so careful thought and consideration should go into naming a beneficiary.
- Additional documentation required by financial institutions.

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Revocable Beneficiary

- Most familiar type; you can name and change at any time your designated beneficiary.
- **Remember that re-writing your will or any family change does not change the beneficiary on any financial products.**

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Contingent Beneficiary

- Always consider naming a contingent (alternative) beneficiary.
- Your primary beneficiary may die before you do.
- Later in life, you may not be in any condition or ability to appoint a new beneficiary at that time.

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Minor Children as Beneficiaries

- Make sure you appoint a trustee to receive and manage the proceeds on behalf of the minor child or children named as beneficiaries.
- Discuss the implications of naming children as beneficiaries with your financial planner.

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Tax Planning Aspects of Appointing Beneficiaries

The key to tax deferral is designating your spouse, minor children or financially dependent, mentally or physically infirm child or grandchild as the successor annuitant.

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Tax Planning Aspects of Appointing Beneficiaries

- For RRSPs and RRIFs the value at time of death is included in the income of the deceased, except the taxes can be deferred if the beneficiary is
 - Spouse (including common-law partner)
 - Financially dependent child or grandchild under 18 years
 - Financially dependent mentally/physically infirm child or grandchild of any age

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Summary

- Appoint beneficiaries when possible and review them regularly.
- Change of circumstance (marriage, divorce, re-marriage, having children, grandchildren, or death of a beneficiary) is a trigger to review and change your beneficiary designations.

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Finding an Executor



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What is an Executor?

- In Ontario an executor is legally called an estate trustee.
- An executor is responsible for settling an estate according to the deceased's wishes while complying with provincial laws.

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Key Executor Responsibilities

- Deal with immediate issues
- Make preliminary arrangements
- Secure the assets
- Value the estate
- Pay debts, resolve tax issues
- Carry out administration
- Distribute the estate

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Issues to Consider for an Executor

- Family dynamics may be complex
- Time constraints may be present
- Lack of expertise
- Living outside Ontario or Canada
- Personal liability

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Typical Duties of an Executor

- Meet beneficiaries to set expectations and give them an overview of the process
- Arrange funeral, memorial, cremation or burial as required
- Locate and prepare a detailed inventory of assets
- Review insurance coverage for the assets

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Typical Duties of an Executor

- Arrange for the residence to be emptied, cleaned, locks to be changed and if required the property to be sold
- Find, review and file claims for life insurance and pension benefits
- Prepare and file up to five separate income tax returns
- Consider executor liability coverage

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Typical Duties of an Executor

- Determine, if possible, an RRSP contribution should be made to reduce taxes, or to transfer assets
- Locate missing beneficiaries
- Pay legacies and other bequests
- Distribute the residue of the estate

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Executor Liabilities

- Not paying the probate (EAT) fees
- Not acting in good faith
- Not paying taxes to CRA
- Leaving unpaid creditors
- Not granting share of estate to common-law spouse
- Releasing estate too soon
- Not distributing estate in a timely manner
- Failing to obtain beneficiaries releases

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Executor Compensation

Entitled up to 5% of estate value

- Now this compensation will be considered taxable income to your executor; one option you may wish to explore is the idea of the executor receiving a gift defined in the will in lieu of fees (**personally, this option is not appropriate, as it can lead to disputes**).

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Appointing an Executor

- Large responsibility.
- Can be time consuming.
- Must have and exercise business judgement.
- May deal with emotions and/or mediate conflict.
- May have to settle a complex estate.

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The Ideal Executor

- Lives in the same area as you.
- Has experience handling money and dealing with financial institutions.
- Can deal with relatives and beneficiaries objectively.
- Is comfortable dealing with lawyers and accountants.

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The Ideal Executor

- Has the time to spend settling your estate (P/T job for 1.5 to 2 years).
- Has the patience to deal with government agencies (CRA).
- Is organized and willing to do lots of paperwork.
- Is not afraid to ask for professional help when needed.

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Appointing an Executor

- Should appoint a primary and alternate executor in your will.
- Married couples often name each other as their executor.

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Appointing an Executor

Married couples often name each other as their executor.

- Good if everything goes to the surviving spouse.
- Not good if surviving spouse is elderly, unhealthy or financially inexperienced.
- Also not good if spouse is the second spouse and family members from the first marriage are adversarial.

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Appointing an Executor

- Appointing more than one executor helps to share the burden.
- Not a good idea if they do not live locally.
- More than two is never a good idea because group decision-making is rarely easy.

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Appointing an Executor

Consider a trust company or lawyer experienced in handling wills – Why?

- As you and your executor(s) age, competency may become an issue.
- The executor(s) may not have the depth of knowledge or experience to handle your estate well.
- The executor(s) may not fully understand the liabilities or time commitment to complete your estate.

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Appointing an Executor

Consider a trust company or lawyer experienced in handling wills

- You can enter into an agreement regarding their fees.
- Like any executor they will also demand repayment of expenses for example: legal, accounting and realtor fees.

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Engaging Your Executor



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Things to Do to Assist your Executor

- Spend some quality time with your executor to make sure all your wishes will be addressed.
- Make your executor aware of where you will be; where your personal inventory is, where your key documents can be found.

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Things to Do to Assist your Executor

Basically you need to answer questions now before you are not here to answer them!

If you really love your family take the time now to get organized so you do not leave them with a big mess to sort later.

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Things to Do to Assist your Executor

Manage your affairs intelligently:

- Consolidate accounts.
- Review financial statements with executor.
- Hire a financial planner.
- Go over your funeral arrangements.

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Things to Do to Assist your Executor

Manage your affairs intelligently:

- Review your estate plan.
- Prepare a financial data organizer.
- Itemize all your personal information and personal inventory of assets and liabilities in one book.

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Things to Do to Assist your Executor

Manage your affairs intelligently:

- Make sure your will is up to date.
- Make sure you have designated beneficiaries.
- Evaluate the need for trusts.
- Evaluate impact of probate.

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Action Plan



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Actions To Take

- Do a physical items inventory
- Do a non-physical items inventory
- Credit card & debts list
- Organization and charitable memberships
- Send copy of assets to executor
- Review successor annuitant and beneficiary designations and RRSP, RRIF, TFSA accounts

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Actions To Take

- Update life insurance and annuities
- Select a responsible executor
- Create a will
- Review & update documents
- Send copies to your executor

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Actions To Take

- Visit a financial planner or estate attorney
- Initiate important estate plan documents
- Simplify your life

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Summary



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Summary

Avoid Procrastination - Prepare an estate plan

- Make your accounts joint
- Generate PoAs
- Have the correct beneficiary designations for RRSPs, RRIFs, TFSAs
- Have an up to date will
- Choose your executor for the right reason and communicate with your executor

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Summary

Hopefully this presentation has:

- Explained the use of joint accounts.
- Provided an understanding of powers of attorney, living wills and wills.
- Clarified beneficiary designations.
- Given some insight into executor duties and the selection of an executor.
- Provided steps to take for you to assist your executor to close your estate.

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Take Away

Finally, there are additional documents with helpful material that will be sent to you:

- Will preparation checklist
- What needs to be included in wills
- Estate planning checklist
- Executor duties

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Next Session

In the next session we will discuss:

Trusts
Probate
Tax Minimization Strategies
Life Insurance
Segregated Funds
Advisors

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Questions??



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Thank you for your participation today



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