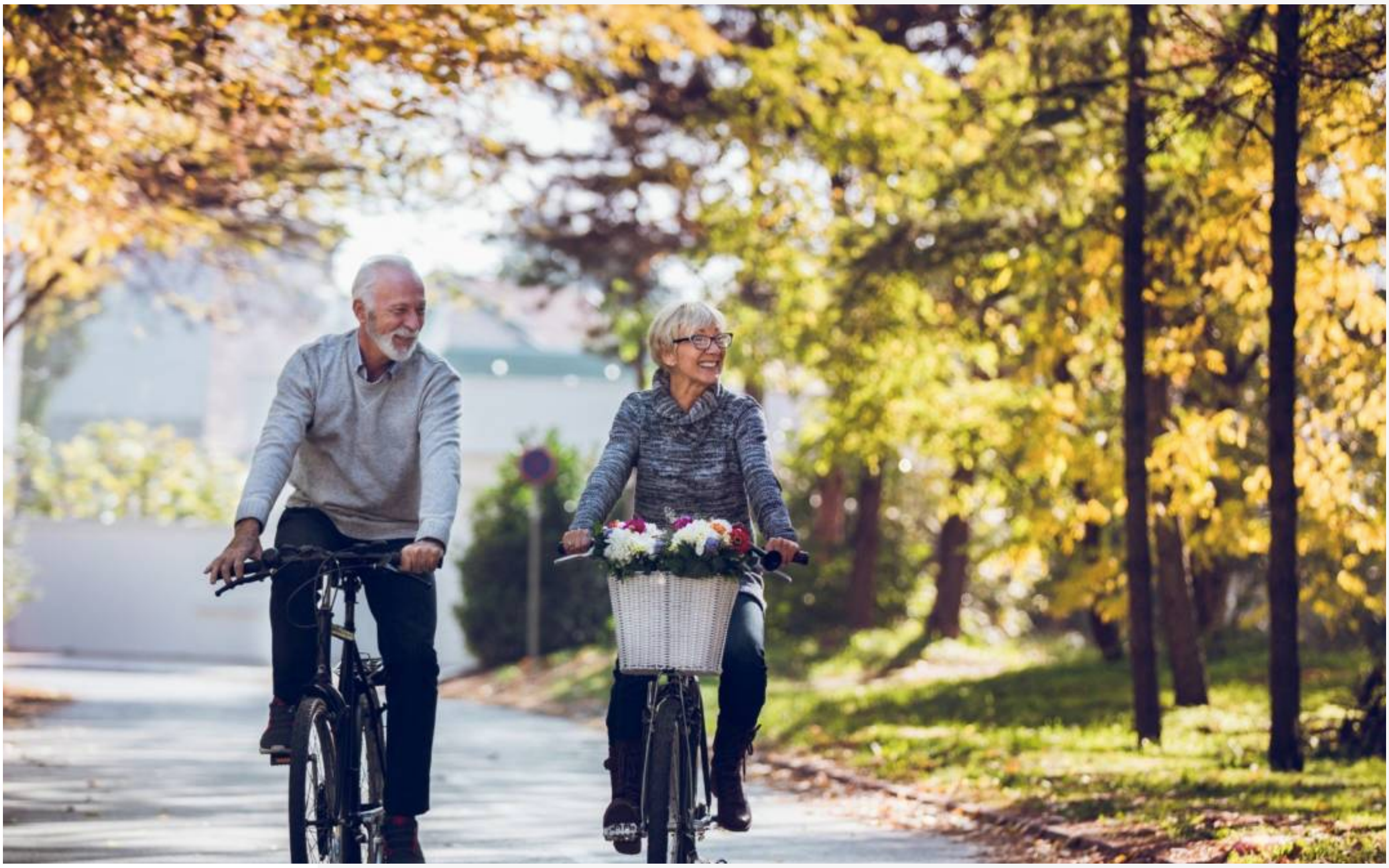
THE ESTATE PLANNING GUIDE



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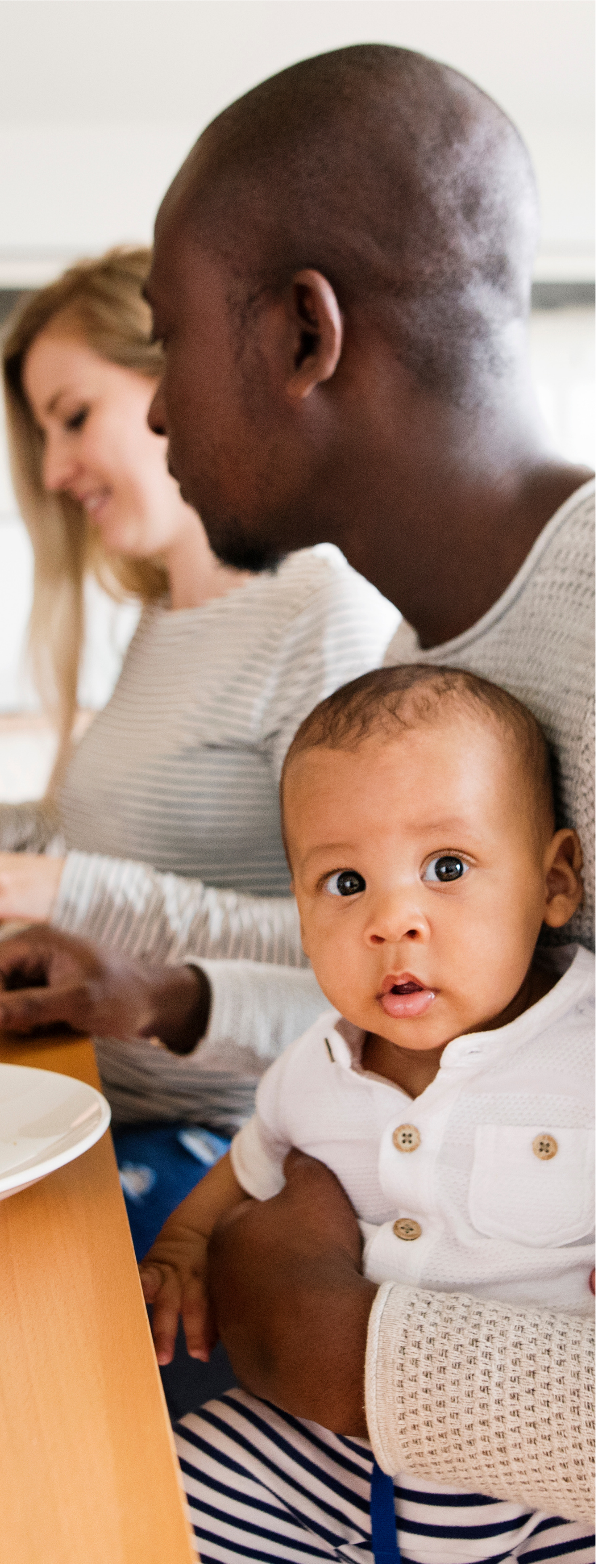

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WHAT KEEPS YOU UP AT NIGHT?

Please rank the following statements based on their importance to you.

1. Wishing to put your financial affairs in order and have an action plan in case of incapacity or death. ______
2. Maintaining your spouse's lifestyle and providing for your spouse should you lose capacity or pass away.______
3. Providing for your children should you lose capacity or pass away. _____
4. Providing for your grandchildren and/or making sure part of your estate will is distributed to them. ______
5. Minimizing taxes at death. _____
6. Minimizing or avoiding legal fees. ______
7. Minimizing administration costs following your death. _____
8. Avoiding a court appointed attorney in case of incapacity. ______
9. Avoiding that your will be challenged in court or avoiding family conflicts following your death.______
10. Protecting your assets against creditors _____
11. Preserving confidentiality of your financial situation and affairs in case of incapacity or death. ______
12. Planning for a child with a handicap or disability or having special needs (medical issues, learning issues, etc.). _____
13. Protecting your children's inheritance in case your spouse should remarry following your death.____
14. Making charitable donations at death. _____

1 MEANS IMPORTANT
2 MEANS SOMEWHAT IMPORTANT
3 MEANS NOT THAT IMPORTANT
4 MEANS NOT IMPORTANT AT ALL

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INTRODUCTION

What Is an Estate?

Simply put, an estate is what you leave behind: it includes your assets and debts at the time of your death. Assets—your “stuff”—can be real estate, personal belongings, vehicles, stocks, retirement plans, registered investments or proceeds from a life insurance policy, to name just a few.

Your estate is distributed according to your will, if you have one. Without a written will, the law decides how your estate is distributed. This can sometimes cause costly problems, such as conflicts among those left behind or the government intervening on behalf of your minor children, among many others.

Which Assets Are Part of an Estate?

A good “rule of thumb” is that assets that are left in your name alone become part of your estate. Assets that are owned jointly with other parties typically don’t

Assets that fall outside of your estate will be distributed according to different rules and are not governed by your will. Sometimes this can be a good thing, helping reduce taxes, legal fees or procedural complications. We’ll go into this in more detail later.

When Does Real Estate Fall Within an Estate?

How you own real estate determines whether it falls into your estate. Generally speaking, there are two ways to own property with someone else: as joint tenants or as tenants in common. These are treated quite differently upon death, so understanding the difference between them is important.

Joint tenants own property together, in the truest sense of the word. Neither owns more than the other and neither is allowed to sell the property without the other’s consent. There are no “shares” or percentages; it simply belongs to both people. When one of them passes away, the other person automatically becomes the sole owner of the property. So, if you and someone else owns a property as joint tenants and you pass away first, the entire property goes to the other person—and so it falls outside of your estate. Likewise, if the other joint tenant passes away first, you become the sole owner of the property—and so it falls inside of your estate. Spouses who own a home together are often joint tenants; that way, they can rest assured that when one passes away, the other continues to own the family home.

Tenants in common own property in a different way. In this case, there are “shares” and percentages. Two people might each own fifty percent of a property or one might own forty percent and the other sixty percent. When an owner dies, their shares in the property—whatever percentage that might be—falls into their estate. So, if you own sixty percent of a property as a tenant in common, that ownership share falls within your estate and can be included in your will: you can direct that one or more people receive your sixty percent of the property.

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SOME PEOPLE SET UP A JOINT TENANCY IN PROPERTY TO AVOID ESTATE ADMINISTRATION TAXES AND HAVE THE PROPERTY TRANSFER AUTOMATICALLY TO A FAMILY MEMBER WHEN THEY PASS AWAY. UNFORTUNATELY, THIS CAN BE A POOR STRATEGY FOR MANY REASONS. FROM OPENING DOORS TO CREDITORS OR MATRIMONIAL CLAIMS, TO CREATING AN UNEQUAL TREATMENT AMOUNG BENEFICIARIES, WITHOUT THE PROPER ADVICE THIS PLAN CAN BE RISKY. ESTATE ADMINISTRATION TAX IS ALSO RELATIVELY SMALL IN MANY CASES, SO THE RISK MAY NOT BE WORTH THE OUTCOME.

What Else Falls Outside of an Estate?

There are other kinds of assets that might fall outside of your estate and a few of these are discussed here. Remember, an asset falling outside of your estate can actually help you out by saving you money on estate administration tax.

Joint Bank Accounts

When someone with a joint bank account passes away, the bank simply takes the deceased's name off the account and gives it to the surviving account holder(s). When setting up a joint account, think carefully about whether you want others on the account to receive the full balance after your death. In some cases—often with spouses—this is a good thing, but it can result in unintended consequences, such as one child receiving significantly more money than the other(s) after a parent's death.

Registered Plans or Investments

If you have a Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF) or another registered plan, the proceeds will go directly to the named beneficiary upon your death. So, if you name your estate as beneficiary, the proceeds will become part of your estate. If you name someone else as beneficiary, the proceeds will go directly to that person and won't form part of your estate.

Life Insurance

Similar to registered plans, a life insurance benefit will fall inside of your estate if you name your estate as beneficiary. If you name someone else as beneficiary, the benefit will go to that person and fall outside your estate.

Debts

Finally, your debts also form part of your estate and they must be paid off before your beneficiaries can receive their inheritance. Debts might include unpaid credit card bills, mortgages, bank loans, lines of credit and unpaid judgments from court cases. Also, if you have an RRSP or RRIF and the beneficiary is someone other than your estate, your estate may be charged income tax on the payout.

What Is Estate Planning?

Basic estate planning involves making a will and setting up powers of attorney. These "just-in-case" documents should be included in almost anyone's basic legal portfolio and they range from simple to complex—it all depends on what your goals are. An in-depth estate plan can do everything from saving you money on taxes to ensuring the longevity of your business; it can reduce family conflict and ensure your assets are properly taken care of after your death. In the end, it's about leaving a well-thought-out legacy.

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A will is a legal document that lets you decide who receives what from your estate and when, after your death. It also lets you appoint an executor to manage your estate and guardians to care for your minor children. It can be especially important for common-law spouses to execute wills, since a surviving common-law spouse is not automatically entitled to anything from their deceased spouse's estate under the law.

Power of attorney documents also play an important role in estate planning and there are two kinds. A power of attorney for property lets someone manage your property if you become unable to do so. And if you can no longer make decisions about your healthcare or personal treatment, a power of attorney for personal care lets someone make those decisions for you.

Why Plan Your Estate?

Estate planning offers peace of mind. It's more than just taking care of your assets—you can also designate guardians for your children and make sure your family is cared for after your death.

There Are Other Important Benefits as Well:

- Having a will makes administering your estate easier for your family, friends and loved ones. If your estate requires an executor and you have not appointed one using a will, your family may need to wait for a court to appoint one after your death. The process is often costly and drawn out
- Having a will makes your wishes clear. This means your goals will be realized, and it often helps eliminate family arguments
- Planning your estate can reduce estate taxes. You can cut down capital gains and estate administration taxes, leaving more money and assets to pass on to family and friends.
- Having a will let's you choose what happens to your property after death.

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POWERS OF ATTORNEY

EVEN BEFORE YOUR DEATH, YOU MAY BECOME MENTALLY OR PHYSICALLY UNABLE TO HANDLE YOUR PROPERTY OR TAKE CARE OF YOURSELF. A POWER OF ATTORNEY IS A LEGAL DOCUMENT THAT LETS YOU GIVE SOMEONE ELSE (OR MORE THAN ONE PERSON) THE AUTHORITY TO HANDLE YOUR AFFAIRS ON YOUR BEHALF. THEY ARE CALLED YOUR ATTORNEY, OR ATTORNEYS. IN THIS CONTEXT, AN ATTORNEY IS NOT NECESSARILY A LAWYER—IN FACT, SOMEONE WHO PRACTISES LAW IN CANADA IS NOT REFERRED TO AS AN ATTORNEY AT ALL; THIS IS AN AMERICAN TERM.

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Continuing Power of Attorney for Property

A continuing power of attorney for property lets someone else manage your property if you become incapable of doing so yourself. That person can buy, sell, invest, maintain or upgrade your property, as well as pay bills, collect pensions and apply for disability benefits on your behalf. Anything you can do with your finances; your attorney can also do (unless the document you sign restricts them from doing so).

This document is a good idea if you own assets or have expenses to pay. It is commonly used to plan for unforeseen events, including serious injuries and mental health issues. In fact, many decide that their attorney will only be given authority if a certain event takes place and require that a medical professional or qualified assessor declare them incapable of managing property. Others, particularly those who travel a lot, leave this restriction out so that, no matter where they are, there is always someone at home to manage their property for them.

A continuing power of attorney for property can also save you money and make things easier on your family. If you become incapable and have not appointed an attorney, the Office of the Public Guardian will step in. This government agency requires that you complete a capacity assessment, which can cost as much as ten times the price of a standard power of attorney document. That cost can be even higher if unforeseen issues or conflicts arise. Once they have a completed assessment, the agency will appoint a family member to perform the role—and if someone disputes that appointment, there may be a long, expensive court battle on top of all the time and money already spent by that point.

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Power of Attorney for Personal Care

An attorney for personal care ensures that your personal needs are met if you become incapable of managing them yourself.

Important decisions your attorney can make include when to place you in assisted living, when to hire a live-in caretaker or even when to “pull the plug,” as the saying goes. They can also help maintain your quality of life, which includes arranging for entertainment, cleaning services or personal grooming. Setting up a personal care attorney gives you a say in how you get treated later in life—or even earlier in life if you get sick or injured.

You can customize what your attorney is allowed to do on your behalf. Some decide that they don’t want to be resuscitated if terminally ill; others set out how long they should receive in-home care and how much of their money can be spent on that. Your attorney won’t only be allowed to take care of you, they will know exactly the sort of care you want to receive.

If you become incapable of personal care and have not appointed an attorney, your healthcare provider will consult the Healthcare Consent Act to find out who can make personal care decisions for you.

This can be a court-appointed guardian, a spouse, a sibling or a child over the age of sixteen. It can be difficult to predict who will be available, which means you can’t be sure who might end up making important, life-changing decisions for you. Additionally, many nursing homes and retirement residences require that you have a power of attorney for personal care.

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Who Can You Choose as Your Attorney?

You can appoint (almost) anyone who is capable of managing property or providing personal care. It is important that you choose someone you trust—after all, you are giving them complete control over your affairs, in one way or another.

Keep in mind, however, that your personal care attorney can't be someone you have been paying to provide you with healthcare, residential, social, training, or support services. The only exception to this is if that person is a family member.

Your attorney for property should not have any conflicts of interest. This means that they should not be tempted to benefit themselves by managing your property in a certain way.

While it isn't necessary to appoint an Ontario resident, it is usually easier for someone nearby to act as your attorney. This is especially true for personal care attorneys, who may be responsible for your ongoing daily care.

Finally, while many choose a close friend or family member to act as their attorney, there are benefits to appointing a professional, instead. Being an attorney often requires careful planning, handling large sums of money and dealing with conflict. It's a time-consuming, stressful job. A professional knows how to do it properly, which means you and your assets are in good hands. There is also an "in between" option, where a professional acts jointly with your family member or friend and guides them through the process.

IT'S A GOOD IDEA TO KEEP A LIST OF ALL YOUR DIGITAL ACCOUNTS AND PASSWORDS. THAT WAY, YOUR POWER OF ATTORNEY OR EXECUTOR CAN ACCESS YOUR BANKING, EMAIL, AND OTHER IMPORTANT ACCOUNTS AND MANAGE YOUR AFFAIRS PROPERLY.

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THE WILL

A WILL IS AN IMPORTANT PART OF MOST ESTATE PLANS. THIS DOCUMENT LETS YOU EXPRESS YOUR WISHES, INCLUDING WHO WILL RECEIVE WHAT FROM YOUR ESTATE, WHO WILL ACT AS GUARDIAN OF YOUR MINOR CHILDREN AND WHO WILL SERVE AS EXECUTOR AND CARRY OUT THE INSTRUCTIONS IN YOUR WILL.

Executors

Your executor(s) will be the one chosen to handle the administrative part of your estate. A will should include one or more executors. After your death, your executor receives your assets and has a legal obligation to transfer them according to the instructions you leave in your will.

If you choose more than one executor, they should be able to cooperate and make decisions together. Co-executors must act in unison, as disagreements can be costly and delay the administration of your estate.

It's also a good idea to choose one or more backup executors, just in case your first choice is unable or unwilling to perform the role. An executor doesn't need to be a Canadian resident, though it may be easier for someone who lives nearby to administer your estate.

WHAT IS PROBATE?

After your death, your estate may be required to submit your will for probate—the process of proving that your will is valid and that your executor has the authority to distribute your assets. If successful, your executor will receive a certificate that they can present to whoever holds your assets (for example, a bank holding your money). The assets will be transferred to the executor, who can then distribute them according to your instructions.

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Keep in mind that being an executor is often time-consuming and stressful. In addition to being at least eighteen years old, an executor should:

- **Know How to Administer an Estate and Have the Time to Do It.** They may need to make funeral arrangements, determine the value of estate assets and debts, submit the will for probate, file your final tax return, collect life insurance proceeds and account for the estate's financial activities. And all of these need to be done quickly, too: an executor is usually expected to "wrap up" or finish administering the estate within a year
- **Not Have Any Conflicts of Interest.** An executor must act in the best interest of the beneficiaries under the will. In other words, they are there to serve the beneficiaries, not themselves. This is difficult to do if, for example, they are owed money by the estate or want to purchase property from the estate at a discounted rate
- **Be Able to Treat Your Beneficiaries Equally and Fairly.** An executor should not favour one beneficiary over another, even if the will let's them decide how to distribute certain assets. So, if you decide to appoint a beneficiary as executor, make sure this is someone who can still act impartially

Many choose a family member as executor and this has its benefits: they will be familiar with your personal affairs and will often perform the role for free. As well, they are usually motivated to administer the estate in a cost-efficient, timely manner—especially if they benefit under the will. However, choosing a family member as executor also has a downside. Administering an estate is not easy, especially when grieving the death of a loved one and you might not have a family member with the time or knowledge required to do it. In that case, you can appoint a professional who can either act as sole executor or co-executor with your family member. And while a professional will charge a fee (paid out of your estate), their expertise can save you and your family money: for example, a tax professional who acts as executor or co-executor will likely be skilled at reducing the amount of tax your estate needs to pay.

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Minors and Dependents

Making a will is about more than distributing your assets; you can also appoint guardian(s) for your minor children. This should be someone you trust and you should also appoint a backup or secondary guardian in case your first choice is unable or unwilling to act. When thinking about guardianship, keep in mind that:

- If you don't name a guardian, the Office of the Children's Lawyer will step in and act as guardian over your children's financial assets, which will only be released to them when they turn eighteen
- If you have dependents who rely on you for their income, such as minor children, a spouse or an adult child with special needs, you are legally required to provide for them in your will. These dependents, if left out of your will or not left enough, can apply to a court and request compensation from your estate
- You are not required to provide for an independent adult child in your will—though you are, of course, free to do so. If you decide not to, however, they are not legally entitled to compensation from your estate

Creating Multiple Wills

Some people have more than one will and there are several reasons to do this. You can separate classes of beneficiaries, perhaps placing children from different marriages into distinct wills so that they don't need to interact to settle your estate. More often, however, using more than one will can separate corporate assets from personal assets, which can reduce estate administration taxes.

Having multiple wills can also speed up the administration of your estate if you have assets outside the country or in other provinces. If you have just one will that deals with assets across the world, your executor will need to submit it for probate in several places, and often one place at a time. Having multiple wills solves this problem. If someone has a will for their Ontario assets and a separate will for their real estate in New York, their executor can submit original copies of both wills at the same time in different jurisdictions.

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Dividing Your Assets

How you divide your assets is largely up to you and there are many possibilities. Some leave cherished possessions to family and friends; others set up a trust fund to finance their child's education or leave money to an adult child who needs financial help. You can even set up a charity in your name or donate to one that exists already.

Whatever your goals, it helps to ask yourself three questions—what, who, and when.

What Do I Want to Give?

There are a few different kinds of gifts that can be made using a will. You can make a specific gift if you want to give someone your car or your house, for example. Or you can make a residual gift and give someone a certain percentage of your estate—a "piece of the pie," if you will.

MANY ESTATE DISPUTES START WITH ARGUMENTS OVER THE FAMILY COTTAGE. IT'S A PROPERTY THAT HOLDS A LOT OF SENTIMENTAL VALUE TO A FAMILY. SO, IF YOU HAVE A COTTAGE, IT'S A GOOD IDEA TO THINK CAREFULLY ABOUT WHAT YOU WANT TO HAPPEN TO IT AFTER YOUR DEATH.

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Who do I Want to Receive the Gift?
If you want to leave an asset to a specific person or to several specific people, you can make a named gift. The asset will go to whoever you name in your will—for example, "to Alex" or "to Alex, Bill and Claire."

You can also leave a class gift to a certain category or class of people—for example, "to all my grandchildren." All living members of the class at the time of your death will share in the gift.

It is important to keep the following in mind when making a class gift:

- Estates law treats adopted children as equal to non-adopted children. So, for example, if you leave a gift to "my grandchildren," your adopted grandchildren will share in the gift (unless you explicitly state in the will that they are not entitled to do so)
- Estates law is still unclear on the status of artificially conceived children, so it is a good idea to explicitly state your intention regarding these children when making your will

When Do I Want Them to Receive the Gift?
You can decide when your beneficiary will receive their gift by attaching a condition to it. You can decide to give a gift outright or to place a condition on when it will be received. For example, a beneficiary might have to finish their education or reach a certain age before being entitled to receive their inheritance.

Often, a secondary or "backup" beneficiary is listed in the will, so that someone else can receive the gift if the intended beneficiary does not meet the condition for their share. Including conditions often results in the creation of a trust. After all, if the beneficiary is not entitled to receive the gift right away, it needs to be held somewhere and looked after properly, in the meantime.

THE LAW CONSIDERS PETS TO BE POSSESSIONS (AS STRANGE AS THAT MIGHT SEEM TO THOSE OF YOU WITH FOUR-LEGGED FRIENDS!). FOR THAT REASON, YOU SHOULD CONSIDER INCLUDING A PROVISION IN YOUR WILL THAT TRANSFERS YOUR BELOVED PET TO A FAMILY MEMBER OR FRIEND IN CASE OF YOUR DEATH.

IF YOU HAVE ANY VALUABLE COLLECTIONS, SUCH ART, JEWELRY, CARS, OR WINE, YOU MIGHT CONSIDER INCLUDING A PROVISION IN YOUR WILL THAT INSTRUCTS YOUR EXECUTOR TO HAVE THE COLLECTION APPRAISED. THAT WAY, YOUR FAMILY CAN BE SURE EXACTLY WHAT IT IS WORTH.

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Trusts

A trust is a legal relationship in which property is held by one party, the trustee, for the benefit of another party, the beneficiary. A testamentary trust (a trust created using a will) works the same as any other trust, but it only takes effect after your death. Its effect is to delay when your beneficiary receives their gift or inheritance—and it can have a few other benefits, too.

Testamentary trusts are highly customizable. Before your beneficiary receives their gift, your trustee can use it to produce income. Your assets can be put to use: money can be invested and real estate rented out. The income can then be given to your beneficiary. If you feel more comfortable keeping your money in a savings account after your death, you can arrange for this. If you want your real estate sold and your money invested to benefit your children, you can do this as well.

An important benefit of testamentary trusts is that money or assets held in trust are protected from creditors, as well as from claims by your beneficiaries' spouses upon marriage breakdown. This is because your beneficiary does not really own the asset—they are just entitled to benefit from it. Creditors can't go after an asset that the person does not own.

Below are a few of the specific kinds of testamentary trusts you can include in your will.

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Spousal Trusts

A spousal trust lets you leave assets to your surviving spouse during their lifetime and have whatever is left over after their death goes to your children, to a friend or to some other party.

There Are Several Benefits to Creating a Spousal trust:

- You can make sure your spouse is taken care of after your death. Your trustee can use trust funds to pay for anything your spouse needs, including rent, food, clothing, healthcare or leisure
- You can control what happens to trust assets if your spouse remarries. You might instruct that income earned from the trust asset (say, rent income on a condominium) goes to your surviving spouse during their lifetime and the asset itself (the condominium) goes to your children after your spouse's death—rather than to the children from their new, blended family

.

You can save money on estate taxes—see Tax Planning to find out how

Minor Trusts

A minor trust is similar to a spousal trust, but instead of benefiting your spouse, it benefits your minor children. These trusts are often used to finance post-secondary education and can be set up so that the trustee only releases funds when tuition or living expenses are due.

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Life Insurance Trusts

You can also create a life insurance trust by directing the proceeds of your life insurance into a trust created by your will. Those trust funds can then be used to support children, family members, your business, or any other party you choose.

Beneficiaries with Disabilities:

If a beneficiary has a disability and especially if they are receiving social assistance, you may want to consider protecting their share in a “Henson trust.” Using this kind of trust will protect them from losing their entitlement to social assistance if they receive an inheritance (which can be considered income), while helping to provide long-term care to a disabled person.

This differs from a spousal or minor trust (see above) in a couple of important ways. First, the trustee has absolute discretion over whether and how to distribute trust funds, meaning you can’t require that the trustee use the assets in a certain way. For
that reason, it is important to choose a trustee you can rely on; they will have complete control over the disabled person’s finances and care.

You may also want to give special consideration to beneficiaries struggling with addiction or mental health issues. Some leave these people out of their will entirely, afraid that they will mishandle money or assets left to them. If you have a similar worry, consider setting up a trust in your will for that person. Someone else will manage their gift for them, and you can rest assured that your friend or loved one will be taken care of after your death.

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TAX PLANNING

AFTER YOUR DEATH, YOUR ESTATE WILL NEED TO PAY A FEW DIFFERENT TAXES ON YOUR ASSETS. THIS SECTION GOES OVER WHAT THOSE TAXES ARE AND SOME OF THE STRATEGIES YOU CAN USE TO REDUCE THEM. THE LOWER YOUR ESTATE TAXES, THE MORE OF YOUR ASSETS YOU CAN PASS ON TO BENEFICIARIES.

TAX PLANNING IS A COMPLICATED PROCESS, AND THIS SECTION IS JUST A BRIEF INTRODUCTION. COME TALK TO US AND WE CAN HELP DEVELOP A STRATEGY THAT'S RIGHT FOR YOU.

Estate Taxes Payable at Death

In Canada, beneficiaries under a will don't pay an inheritance tax. Instead, your estate will pay the following after your death:

- Estate administration tax (sometimes called probate fees)
- Capital gains tax on the deemed disposition of your assets
- Income tax on your final (or terminal) tax return

These taxes must be paid before your estate trustee can distribute assets to beneficiaries.

Estate Administration Tax

If your will requires probate, your estate will be required to pay estate administration tax, or "probate fees," on the estimated value of the assets listed in your will. As of January 2020 estates with assets less than $50,000.00 in value do not pay Estate Administration Tax. Estates with assets over $50,000.00 in value pay $15.00 for every $1000.00 above $50,000.00 in asset value. This is a fairly small tax, at least when compared to capital gains tax (see below).

Capital Gains Tax

Much of estate planning revolves around minimizing capital gains tax, which arises from the deemed disposition of your capital assets at fair market value on the date of your death.

What this means is that your estate must pay capital gains tax on qualifying assets that have increase in value since they were purchased. "Qualifying assets" include personal belongings (cars, jewelry, artwork, etc.), real estate, rental or vacation properties, stocks, bonds, mutual funds, and shares in Canadian-controlled private corporations.

Capital gains are taxed at your marginal tax rate on only half the gain (so on a gain of $100,000, your estate would be taxed on $50,000 at your individual rate). Your estate can also claim capital losses on your final tax return to offset capital gains.

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Some assets are exempt from capital gains tax, including:

- Assets left to a spouse on a rollover basis. However, your spouse will be taxed on any income generated from the assets after your death and they will pay capital gains tax later on when they dispose of the assets themselves (either during their lifetime or through their will)
- Your principal residence, whether or not you leave it to your spouse. Note that you and your spouse can only designate one principal residence between you and the property needs to meet the following requirements:
    - You must own the property (as either sole or joint owner)
    - You must designate the house as your principal residence
    - At some point in the past year, the house must have been lived in by you, any of your children or your current or former spouse or common-law partner

The Lifetime Capital Gains Exemption (LCGE) can help you if you own a small business or operate a farm or fishing property at the time of your death. As of 2019, this exemption allows you to exclude up to $866,912 of capital gains for small business corporation shares and up to $1,000,000 for farming or fishing property. If you don't take advantage of this exemption during your lifetime, your executor can use it to save on estate taxes.

Final Income Tax Return

Your estate must also submit your final income tax return and pay tax on all income from the final year of your life, the same way you would for any other year.

If you have any registered savings plans, such as Registered Retirement Savings Plans (RRSP's) or Registered Retirement Income Funds (RRIF's), they will be withdrawn automatically upon your death. The proceeds will be treated as income and included in your final tax return. However, it is possible to defer this withdrawal if you designate an eligible beneficiary, such as a spouse, common-law partner, financially dependent child or grandchild under eighteen.

What Your Estate Doesn't Pay Tax On

Your estate is not taxed on guaranteed income certificates (GIC's) or cash held in tax-free savings accounts (TSFA's). These may pass tax-free to beneficiaries under your will. .

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Tax-Saving Strategies

There are several strategies you can use to save money on estate taxes, including multiple wills, strategic life insurance policies, charitable donations, testamentary trusts and estate freezes. These strategies fall roughly into one of two categories:

1. Having tax-free money flow into your estate to help cover tax costs.
2. Keeping assets out of your estate to reduce estate taxes.

You can pick and choose strategies from both categories and your unique circumstances will determine which strategies are right for you.

Naming Beneficiaries in Registered Plans or Life Insurance

Many name their estate as the beneficiary of their life insurance policy, RRSP or another registered plan. This allows their estate to receive the proceeds and distribute them to beneficiaries under the will. But under this setup, the proceeds must go through the estate and, as a result, are subject to Estate Administration Tax.

You can have the proceeds of a life insurance policy or registered plan flow directly to a family member, rather than through your estate, by designating them as beneficiary in the instrument itself. This has two benefits. First, there is no Estate Administration Tax, because the proceeds don't form part of your estate. Second, the beneficiary receives the proceeds immediately after your death and does not need to wait for the estate to be administered, which can take up to a year or more.

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Multiple Wills

Having multiple wills can help you save on estate administration tax, leaving more assets in your estate to pass on to family and friends.

Certain assets don't need to go through probate. These "non-probate assets" include personal and household effects as well as shares in private corporations. Other assets —"probate assets"—do need to be submitted for probate. These include: real
estate owned in your name alone or as a tenant in common—but not as a joint tenant*; shares of publicly traded companies; and funds or investments held at a financial institution in your name alone.

***For an explanation of these terms, see page 2.**

In most cases, probate is required if the will contains any "probate assets," even if there are "non-probate assets" mixed in as well. So, if you have both kinds of assets, you have two options when you go to make a will:

1. Make a single will that includes all your assets — "probate" and "non-probate" alike. OR
2. Make two wills—one with only "non-probate assets" and another with only "probate assets."

Most of the time your estate pays less tax under the second option.

OPTION 1—ONE WILL

IF YOU HAVE ONLY ONE WILL, THE COURT WILL CHARGE ESTATE ADMINISTRATION TAXES ON ALL YOUR ASSETS, BOTH PROBATE AND NON-PROBATE. THIS MEANS THAT IF YOU HAVE $500,000 IN NON-PROBATE ASSETS, AND ANOTHER $500,000 IN PROBATE ASSETS, THE COURT WILL TAX THE FULL $1,000,000. THIS AMOUNTS TO A $14,000 TAX: $0 ON THE FIRST $50,000, AND $14,000 ON THE REMAINING $950,000.

OPTION 2—TWO WILLS

IF YOU HAVE A PROBATE WILL AND A NON-PROBATE WILL, YOUR ESTATE IS ONLY REQUIRED TO SUBMIT YOUR PROBATE WILL, MEANING THE COURT WILL ONLY CHARGE TAX ON $500,000 WORTH OF ASSETS. THIS IS A TAX OF $6750: $0 ON THE FIRST $50,000, AND $6750 ON THE REMAINING $450,000..

So, in this example, using two wills saves your estate $7,700 in probate taxes. Savings like this can often be passed on to beneficiaries or used to cover the cost of other estate taxes; and the larger the estate, the more significant the tax savings may be.

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Strategic Life Insurance

The information in this section is only a brief introduction to life insurance and some of its advantages. Always consult a licensed insurance broker if you are thinking of purchasing a policy.

Directing the proceeds of a life insurance policy into your estate by naming your estate as beneficiary can help cover the cost of estate taxes. You can also dictate how the proceeds will be divided among family members, friends, charities, or other parties. But first, a basic understanding of insurance policies will help you understand their tax benefits.

How much a life insurance policy costs depends on several factors, including your age, gender, occupation, whether you smoke, how much the policy is worth and what kind of policy it is.

There are a few different kinds of life insurance policies and each kind has variations. A term policy provides coverage for a specific period of time. Your premium remains the same and you only receive a benefit if the covered party passes away during the term. After the term, you may need to renew at a higher premium if your circumstances have changed; and generally, the longer the term, the more expensive your monthly payments will be.

A permanent or guaranteed policy guarantees a benefit regardless of when the covered party passes away. Monthly payments are higher but are guaranteed to remain the same, even if circumstances change. There are a few varieties of guaranteed policies, including universal life, whole life and term-to-100.

Having a guaranteed policy can help reduce the tax burden on your estate. For example, if a 40-year-old, non-smoking male takes out a term to 100 policy, with a death benefit of $1,000,000, he might expect to pay an estimated $4200 per year in premiums. If he lives to 85, these premiums add up to $189,000 over the course of his life. This might sound like a lot, but the payout would be $1,000,000—a profit of $811,000. The estate can use this money, instead of liquidating assets, to pay off estate taxes.

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UNIVERSAL LIFE INSURANCE POLICIES

A UNIVERSAL LIFE POLICY LETS YOU GROW SAVINGS THROUGH YOUR LIFE INSURANCE PLAN. YOU CAN CONTRIBUTE "EXTRA" MONEY, OVER AND ABOVE THE COST OF YOUR MONTHLY PREMIUMS, WHICH IS THEN INVESTED FOR YOU. WELL–PERFORMING INVESTMENTS, IN SOME CASES, END UP COVERING THE COST OF THE PREMIUMS THEMSELVES, AND DEPENDING ON THE STRUCTURE OF YOUR POLICY, YOU CAN EARN INTEREST ON THE EXTRA MONEY YOU PUT IN. UNIVERSAL LIFE POLICIES ARE SIGNIFICANTLY MORE COMPLEX THAN TERM AND GUARANTEED POLICIES; IF YOU THINK THIS STRATEGY MIGHT BE RIGHT FOR YOU, WE CAN PUT YOU IN TOUCH WITH AN INSURANCE EXPERT.

Corporate-Funded Life Insurance

If you own a small business corporation or have shares in a corporation, it can take out any of the policies mentioned in this section and name you as the covered party (with the corporation acting as the policy holder and beneficiary). The corporation pays monthly premiums and, after your death, receives the death benefit under the policy. It then transfers that benefit to your estate as a tax-free capital dividend and your estate can use the money to cover estate taxes.

A corporate-funded policy is often more cost-efficient than funding a policy yourself. Corporate tax rates tend to be lower than individual rates, which means a corporation needs to bring in less before-tax dollars to cover the cost of insurance premiums.

Charitable Donations

You can leave assets to charity in your will, which lets you support causes you care about while reducing estate taxes payable after your death.

There are federal and provincial tax credits for donations made to registered Canadian charities. On your final tax return, your estate can claim donations of up to 100% of your income in your final year. If the tax credit exceeds your final-year income, your executor can carry it back to the previous year's tax return and claim a
donation of up to 100% of your income for that year as well. So, for example, if your income in each of your final two years is $50,000 (totaling $100,000) and you make a $100,000 donation, your estate can claim a $50,000 donation on each of your final two tax returns.

Your estate can also claim the charitable tax credit on its estate tax return, as long as the gift is completed within 36 months of your death. Estate tax returns must be filed for each year that the estate is being administered.

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Finally, making charitable donations of certain assets can exclude them from capital gains tax. These include publicly traded shares, mutual funds or segregated funds to a registered charity. Similarly, artwork deemed “certified cultural property” that you donate in your will to a designated institution is not subject to capital gains tax. If you think you might donate art in your will, come talk to us. Special rules apply, and we can help you make the most of your donation.

Spousal Trusts Tax

Your estate does not pay capital gains tax on assets you put into a spousal trust. Instead, there is a tax rollover: the assets will incur capital gains tax later on when your spouse passes away or the trust ends. To qualify for this tax rollover, however, the spousal trust must meet a few requirements:

- Within 36 months of your death, the property must be transferred into a trust created by a provision in your will
- Your spouse must receive all income from the trust during their lifetime and nobody else may receive income from the trust during that time. You can, however, restrict how much income your spouse is entitled to take (which allows you to preserve the trust capital for your children); AND
- You must be resident in Canada immediately before your death and the trust must reside in Canada immediately after the property is placed in the trust.

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Estate Freezes

If you own shares in a privately held corporation, there will be a deemed disposition of your shares upon your death, if not going to a spouse then your estate will be required to pay capital gains tax on them. You can use an estate freeze to lower that tax.

How this works: at some point during your lifetime, your shares are “frozen” at their current value and any future growth of the corporation is reflected in new shares that you give to your successors (whoever you want to take over the business).

An estate freeze has a few benefits. First, it means that your estate will pay capital gains tax on what your shares are worth now (whenever you freeze them), and not on what they are worth at your death—which may be a lot more if the business grows. Second, a freeze lets you transfer the business to a new generation. After your death, the new shareholders (perhaps your children) can take over and run the business. Finally, you can still benefit from the frozen shares during your lifetime: you retain control of the business and can provide income for yourself through dividends.

This is a great tool if you have a business and want to make sure it is not forced to wind down at your death. Without an estate freeze, the value of your shares might end up being so high that paying capital gains tax on them would make continuing the business unfeasible; but with an estate freeze, capital gains are minimized and this is not an issue.

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FREQUENTLY ASKED QUESTIONS

WE HOPE THIS GUIDE HAS HELPED YOU AS YOU START TO THINK ABOUT PLANNING YOUR ESTATE. IF YOU HAVE A QUESTION THAT WASN'T COVERED ABOVE, YOU MIGHT FIND YOUR ANSWER BELOW. OF COURSE, YOU'RE WELCOME TO SET UP AN INITIAL APPOINTMENT WITH US AND ASK US YOUR QUESTIONS IN PERSON. LET US BE A PART OF PLANNING YOUR LEGACY.

What happens if I don't make a will?

Dying without a will is referred to as dying intestate, and in that case, provincial law decides how your assets are distributed. If you have a spouse, they will receive the first $200,000 of your assets and then split whatever remains in your estate with your children. If you don't have a spouse, your children will have priority over your assets. Of course, depending on who exactly is left behind, it could become more and more difficult to figure out who is entitled to what. There are also many complications that can arise in actually getting a hold of your assets after death without a will, and that's why we highly recommend having one.

How do I make changes to my will? Can I cancel it?

How you want to divide your estate at thirty might be different than what you want at sixty; by then, you may have a larger family or more valuable assets. You can change or cancel your will at any time, because it only becomes legally enforceable on the date of your death. Until then, you can think of it as "pending."

If you want to make minor changes to your will, you can use a codicil—a legally binding amendment to a will. To cancel your will, you can execute a new will or physically destroy all copies of the existing one.

If you want to make major changes to your will, it is usually easier and more effective to revoke the will entirely and create a new one. Revoking a will is usually done by simply making a new one. The new will does that by stating that any previous will is revoked.

When should I review my will?

A good "rule of thumb" is that you should review your will every five years. It is also a good idea to review your will when you welcome children into your family, when a family member dies, when you get separated or divorced, or when there is a significant change in
your assets. In other words, you should review your will whenever there are important changes in your life.

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Note that if you make a will and later get married, your pre-marriage will is automatically revoked. The only exception to this is if you make your will when you have already arranged to marry someone. It's also good to know that if you make a will and later divorce, your ex-spouse's name is simply removed from the document and all clauses overlook the name as if it were not there.

If you move, your will remains valid, although it's always good to ensure your assets are planned for in different jurisdictions, because the laws change from one province or one country to another.

Is there anything I'm not allowed to do when making a will?

While making a will gives you a great deal of control over your estate, there are still restrictions. If you attach a condition to a gift, the condition must be consistent with public policy. That means, for instance, that you can't require a beneficiary to do something illegal or restrict what they can do with the gift. You can leave a car to a friend, for example, but you can't require them to leave it in their garage and never drive it. What is considered contrary to public policy may change over time, so if you are unsure, come talk to us and we can make sure your condition is okay.

Why should I have my Will made by a lawyer?

You may know someone who wrote their will by hand without a lawyer or who had one made online or at a department store. This might be cheaper and faster, but making a will and planning your estate is supposed to provide peace of mind—to guarantee that your wishes are carried out.

There are several reasons to have a lawyer draft your will:

- A lawyer can help plan your estate, possibly saving you money on taxes and maximizing the value of your assets
- A lawyer uses precise, unambiguous legal language when making your will, ensuring that everything included means and says exactly what you want it to with no surprises
- Because a lawyer reviews your will several times before you sign it, you can rest assured that there are no typos, misprints or other "human errors"
- Generally, a lawyer-made will is easier for your executor to administer after your death because of the benefits mentioned above

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Does an executor or a power of attorney receive compensation?

An executor is usually paid roughly 5% of the value of the estate (in total, not for each year it takes them to administer the estate). This number includes 2.5% of capital receipts and disbursements, and another 2.5% of income receipts and disbursements. The executor may also charge an annual “care and maintenance” fee, and this is 0.4% of the average value of estate assets for the year. However, a family member or friend may choose to perform the role for free. You can also provide for additional compensation in your will.

A power of attorney is typically paid according to a fee scale set out in Ontario legislation: 3% of capital and income receipts, another 3% of capital and income disbursements and annually, 0.6% of the average value of the assets for the year. These are only default amounts and you are free to customize them in your power of attorney document.

Lastly, if a power of attorney for property is paid, they will be expected to perform at the level of a financial professional. An unpaid attorney for property is held to the lowest standard of a non-professional or an “average” person, handling their own property.

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IMPORTANT POINTS TO CONSIDER

When you should consider amending your documents:

- If your marital status changes
- If a named executor or attorney dies or becomes unable or unsuitable to act due to age or ill health
- If there are births or deaths (especially of a beneficiary) in your family
- If a named executor or attorney or anyone else mentioned in your will changes his or her name
- If you sell or otherwise dispose of any property you have specifically bequeathed
- If your estate assets or their values change materially
- If you have included beneficiary designations or RRSPs, RIFs, pensions or life insurance policies in your will and you subsequently obtain additional plans or policies (which won't be covered by the designations made in the will)
- If you leave Ontario and take up residence in another province or country
- If you acquire assets in another province or country

Important information regarding marriage, divorce and separation:

- Marriage will automatically revoke the will
- Divorce does not revoke an existing will, but it does revoke gifts by will to the former spouse and the appointment of the former spouse as an Executor unless the will contains a declaration to the contrary
- Separation does not revoke a will or the gifts by will to a spouse

Amending or revoking your documents:

- ·You may revoke or amend a will or power of attorney at any time provided you have the requisite mental capacity
- Your powers of attorney are automatically revoked on your death but your property attorney can continue to act, and third parties may rely on the attorney's actions until the attorney or the third party knows of your death
- Certain legal formalities must be observed for amendments or revocations to be valid and you will likely require assistance from a lawyer

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GETTING STARTED

While estate planning lets you prepare for your future, we understand it can be a complicated process.

We can help you navigate through this process and advise you on ways to adequately protect you and your loves ones as well as ensure your legacy.

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