

SCOTIA WEALTH MANAGEMENT

# ESTATE PLANNING AND ADMINISTRATION

PAULA LESTER  
ESTATE AND TRUST CONSULTANT  
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# DISCLAIMER

This presentation includes general information about estate planning and administration in Ontario. The content of this presentation should not be construed as legal or tax advice. You are strongly encouraged to work with your legal, tax and other professionals in the development and execution of your estate plan

# AGENDA

- Will 101
- Estate Planning: Beyond a Will
  - Factors in estate planning
  - Charitable gifting
  - Incapacity planning
- Estate Administration
  - Choosing an executor
  - Executor tasks
  - Executor duties and liabilities
  - Common mistakes in estate administration

# WILL 101



# THE BASICS

## What is a Will?

A **legal** document which disposes of your **estate assets** that takes effect upon your **death**.

## Why have a Will?

- Ensures YOUR wishes are carried out after your death
- Someone YOU choose will administer your estate
- Without a Will:
  - Intestacy – rules prescribed by legislation apply to distribution
  - Government approved administrator to administer your estate

# PARTS TO A WILL

- Revocation clause
  - “I revoke all previous Wills and Codicils”
  - Generally should **not** revoke all previous testamentary dispositions
- Executor appointment
- Distribution
  - The main part of your Will
  - Should capture all scenarios as best as possible
- Administrative clauses
  - Often missed, but so very important!
  - Gives your executor the ability to do his/her job properly

# DISTRIBUTIONS IN THE WILL

- Can leave gifts of:
  - Specific objects (small or large)
  - Specific amounts (e.g. \$10,000)
  - Specific percentage/share of remainder (e.g. 50%)
- Can leave gifts “outright” or “in trust”
- If beneficiary has predeceased, the gift in the Will can either “lapse” (no gift given) or can go to an alternate beneficiary
- Where the Will leaves gaps, distribution will be decided by law of “intestacy”

# ADMINISTRATIVE CLAUSES

- Power to pay debts and taxes
- Power to assume custody of assets
- Power to invest
- Power to borrow
- Power to retain investment advisors
- Power to appoint agents (e.g. estate solicitors, etc.)
- Power to exercise discretion
- Power to deal with corporate assets
- Power to pool, separate and wind-up trust funds
- Power to call, convert and/or retain investments
- Liability for negligence, willful default or fraud
- Community of property exclusion (i.e. *Family Law Act* clause)
- Age of majority
- Exclusion of issue born outside marriage
- Power to distribute assets *in specie*
- Power to settle claims
- Power to deal with real estate
- Authority to make tax and other elections
- *Cy-près* and charitable release
- Survivorship clause (30 clear days)

***...But WHY?***



Disposal Confront Trusts  
Retain Contingent Value  
Incapacity Avoid Plans Death  
Life Estate Expenses Property Ownership Maximize  
Settle Multiple Inclusion  
Will Deferring  
Income Transfer Obligation Certified Accountant Beneficiaries Documents Mediation Anticipating Insurance  
Planning Administration Family Rights Decreasing Probate  
Goals Plan Conflict Attorney Disputes Litigation Vehicle

# ESTATE PLANNING: MORE THAN JUST A WILL

- Some people think of estate planning as getting a Will done
- Some lawyers think of estate planning as drafting a Will
- **Good** estate lawyers will look at much more!
  - State of your assets and liabilities
  - Tax implications
  - Family situation
  - Support and other financial obligations
  - Jurisdictional issues



# ESTATE PLANNING FACTORS: ASSETS

- Your Will only decides what happens to assets that are included in your estate
- However, many assets may fall outside of your estate!
  - Assets held jointly with right of survivorship\*
  - Assets with a beneficiary designation
    - Registered accounts
    - Life insurance
    - Death benefits
  - Assets held in a trust

\*Be careful about holding assets jointly with an adult child – the law does not like this for estate planning purposes

# ESTATE PLANNING FACTORS: TAX IMPLICATIONS

- When you pass away, you are deemed to have disposed of all of your property. It is as if you:
  - Withdrew your entire RRSP/RRIF
  - Sold all of your property
  - Liquidated all of your stocks

... all in the same tax year!

- This can lead to a huge tax liability and can leave much less in the estate than you thought
  - RRSP/RRIF taxed at roughly 50%
  - Capital gains (stocks, property) at roughly 25%



# ESTATE PLANNING FACTORS: TAX IMPLICATIONS

- How will the taxes be paid?
- RRSP/RRIF
  - Often have beneficiary designation
  - Beneficiary receives the whole RRSP/RRIF
  - Estate pays the taxes
- Also true where specific property is given
  - E.g. piece of real estate gifted to Bob, residue gifted to Jane -- if there is capital gains payable on the real estate it's paid out of the residue (Jane's share)
- NOTE: Can defer taxes (rollover) where a spouse is a beneficiary

# ESTATE PLANNING FACTORS: FAMILY AND BENEFICIARY SITUATION

- Some situations which may call for special estate planning:
  - Minor beneficiaries (under 18)
  - Disabled beneficiaries
    - Including beneficiaries in receipt of ODSP or other benefits
  - Blended families and second marriages
  - Pets
  - Beneficiaries in “fragile” relationships

# ESTATE PLANNING FACTORS: SUPPORT AND FINANCIAL ISSUES

- Financial support for spouse and children
  - Dependent's relief claim
  - Spousal support orders/agreements
  - Child support orders/agreements
- Creditor claims
  - Many debts are immediately payable on death
  - Poor planning can mean the loss of house or other secured asset
- If support/creditor claims are a concern, life insurance may be appropriate

# ESTATE PLANNING FACTORS: OTHER PROVINCES / COUNTRIES

- Most common:
  - Property in other provinces (particularly Quebec) or countries
    - May require a second Will in that country/province
    - Other country may restrict how/to whom the property can be gifted on death
    - May lead to taxation issues on death
  - USA testator or beneficiary – can become very complex!
- USA property
  - This includes USA stocks!
  - May need to file USA estate tax return, and may even need to pay USA estate taxes



# ESTATE PLANNING: CHARITABLE GIFTING

- Gifts of up to \$100,000 may be best left as a legacy in the Will
- Larger gifts can be left through:
  - Charitable trust
  - Charitable foundation
  - Donor advised fund (e.g. Aqueduct)
  - Direct gifts with advanced planning direct with the charity
- Large tax advantages with charitable gifting, which can be enhanced through “gifting in kind”

# ESTATE PLANNING: INCAPACITY

## ▪ **Power of Attorney for Property**

- controls all of your property
- Should be someone you trust, with the time and financial expertise to manage your property, ideally younger than you
- Generally entitled to compensation

## ▪ **Power of Attorney for Personal Care:**

- makes all decisions about your lifestyle and medical care
- Should be someone you trust, ideally younger than you
- Can do a Living Will to give guidance on lifestyle and medical decisions

# ESTATE ADMINISTRATION



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- Average estate takes 1.5 to 2 years to fully administer
  - Some estates can take 5 years or more!
  - Average amount of hours – 100+ for professionals, 200+ for non-professionals
  - Around 100 individual tasks
- Estate administration is becoming more complex and executor liability is becoming a larger issue

# ESTATE ADMINISTRATION: THE EXECUTOR

- No one can be forced to act as an executor
- Qualities of a good executor:
  - Has time
  - Has expertise
  - Is honest and has no conflict of interest with beneficiaries
  - Should live within Canada, ideally Ontario (and close by)
  - Is younger than you
- Can name multiple people as joint executors
- Can (and likely should) name alternate executors
- Can name a professional executor
- Executor entitled to approximately 5% compensation

# ESTATE ADMINISTRATION – EXECUTOR TASKS

- Take preliminary steps
- Protect estate assets
- Assemble, inventory & value assets
- Obtain probate from court
- Administer estate
- Distribute estate assets
- May be responsible for ongoing trusts set up in the Will

# EXECUTOR DUTIES AND LIABILITIES

## Executor Duties

- Duty of loyalty
- Duty of good faith and care
- Duty of impartiality and avoid conflicts of interest
- Duty to inform and account

## Executor Liabilities

- Arising from loss of value/assets
- Arising from claims where estate has been paid out
- Arising from negligence
- Multiple executors liable for each others' actions
- CRA and charities are often the biggest concerns

# ESTATE ADMINISTRATION – COMMON MISTAKES

- Do not identify all assets, or all beneficiaries
- Liquidate (sell) all assets by default and/or too soon
- Delay in the administration
- Do not make the right tax elections, or do not make them in time
- Do not secure or maintain the assets properly
- Fail to keep accounts of assets, income, expenses, etc.
- Make distributions too soon
- Take steps not permitted by the Will



## ESTATE ADMINISTRATION – OTHER COMMON ISSUES

- Can take a long time to liquidate (sell) assets
- Beneficiaries and executor may not get along
- Multiple executors may not get along
- May be challenges to the Will
- May have claims against the estate

# PLANNING FOR ESTATE ADMINISTRATION

- What can you do from now to help your executor?
  1. Have a conversation – do they want to be your executor?
  2. Prepare and share:
    - a) Beneficiary contact information
    - b) Information about assets and debts
    - c) Important documents (including the Will itself)

If you don't feel comfortable doing this with your executor, consider whether you should have a different executor.

# QUESTIONS?

