

Estate Planning – What We Need To Know

Defining Generic Key Terms and Concepts:

What is an Estate?

An estate is defined as everything that a person owns or controls at the time of incapacity or death – money, property, and personal and business assets. An estate includes more than *real property* (the land and the things permanently attached to the land). It also includes a client's interest in jointly owned property, real estate, registered plans (RRSP's/RIF's), investment accounts, promissory notes, and money owed to them by others, collectibles, insurance, intellectual property, and personal belongings. In addition, it includes debts such as mortgages, credit card balances, and estate and income taxes. Any person who owns any sort of property has an estate.

What is the Purpose of an Estate Plan?

When an estate plan is done well, it considers the lifetime needs of the individual doing the plan and the needs of his or her loved ones. In its fullest sense, an estate plan addresses an individual's desire to:

- Provide for personal health care and manage personal affairs and assets if they become incapacitated
- Leave a legacy – of property as well as memories, life experiences, care and support for loved ones and special causes (charities)
- Manage and reduce income taxes so the maximum amount of assets is transferred to heirs and beneficiaries.

List 5 Estate Planning Tools:

For individuals of any age to make legally binding their desires for passing on a legacy, they must use the following legal documents or tools:

- Legal and health care directives including powers of attorney: legal, health, and medical decisions on behalf of another person
- Wills – probate property (property owned solely by an individual for which there is no named beneficiary; joint tenancy property or property owned as tenants in common or jointly)
- Property titles, particularly titles with rights of survivorship
- Trusts – property placed under the management of a third party for the benefit of individuals or organizations

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- Named beneficiaries – property owned solely by an individual that is designated to be given to another person or organization after death

What is a Durable (or Enduring) Power of Attorney?

Durable powers of attorney get their name from the fact that they “endure beyond incapacity”. These documents are used to name the individuals who may make legal and medical decisions on one’s behalf if one becomes incapacitated. The documents most commonly used to plan for the possibility of making health care decisions for an incapacitated senior are medical powers of attorney, advance directives and living wills, and representation agreements.

What is a Will?

A will is an individual’s set of instructions for how to distribute his or her *probate assets* after death. Probate assets are items an individual can legally pass on to others through a will because he or she is the sole owner of the property and there is no beneficiary named for the property.

What is Probate?

Probate is the legal process through which a court makes sure that property is distributed to beneficiaries. The court’s concerns are to assure that valid creditors are paid and all assets are properly distributed in accordance with the individual’s will.

Define Joint Tenancy with Rights of Survivorship.

If the decedent (person who died) owned property as joint tenants with rights of survivorship, the survivor (or survivors) who also own the property will automatically inherit it. Individuals do not have to be married couples to own property jointly with rights of survivorship. Submitting proof of death will place the title in the name of the survivor.

What are the basic elements of a ‘trust’?

A trust is a legal structure created when an individual *grantor* (also called a settler or trustor) transfers personal assets to the trust and appoints a *trustee* to hold and manage those assets. The person who receives the benefit of the assets in the trust is the *beneficiary*. A trust creates a relationship between the trustee and beneficiary. The trustee has the power over the assets and must use them to the advantage and for the best interests of the beneficiary. Several types of trusts are useful strategies in estate planning.

What is a Testamentary Trust?

A testamentary trust is established under a will, which describes the terms of the trust, but it is not actually created until the will is probated. This means the testamentary trust is irrevocable when the grantor dies but can be changed while the grantor is alive (and as long as the grantor has the mental capacity to change his or her will). A testamentary trust may provide for asset management for minors, asset protection for adult heirs, or estate tax planning.

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What is another name for a Living Trust?

A living trust is also called an *inter vivos trust*. It is called a living trust because it can be changed or revoked any time by the grantor who established it.

