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TAX MATTERS

Properly documenting your estate wishes will avoid trouble

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I recall reading about the German poet, Heinrich Heine who died in 1856 and was clearly bitter about his marriage. In his will, he left his estate to his wife, Matilda, on the condition that she remarry so that he could be sure “there will be at least one man to regret my death.”

Your last will and testament, of course, is just one part of your estate planning. There are other documents you should have as well. Last week, I introduced the five “Ds” of estate planning: define, design, document, discuss and distribute, and [discussed the first two](#). Today, let’s talk about documentation.

The rationale

Documenting your wishes is important for a few reasons. First, it will allow you to gain clarity around what should happen when you’re gone. Second, it will increase the likelihood that your wishes will be carried out. Third, you’ll avoid the government stepping in and dictating what should happen to your assets upon your death. Fourth, documentation will also clarify for your heirs what your intentions were (there’s no shortage of court cases revolving around the

intentions of the deceased). Finally, documentation is going to make life a lot easier for your executor and heirs who may have no idea what you own, where it’s located, and what your wishes are.

The documents

So, what exactly is proper documentation? I’m going to suggest three types: (1) your last will and testament, (2) your powers of attorney, (3) and other information.

When it comes to your will there’s no better advice than to have one. Dying without a will is called dying intestate, in which case your provincial intestacy laws will apply, and your assets will be divided according to that law. Not only will you have no say in the matter, but it will cost more time and money to administer your estate and can result in much more tax owing on your death.

By the way, I don’t recommend using a [will kit](#) where you prepare your own will. You’ve worked hard to accumulate what you have, so spending a few dollars to make sure your affairs are dealt with properly, taxes are minimized, and an

experienced estate lawyer advises you on what can go wrong (and how to avoid those problems) is worth it.

As for powers of attorney, these documents go by different names and may look a little different in each province. The purpose is to provide another person with the ability to make decisions over your finances and personal care in the event you're unable to. These documents are effective while you're still alive. Once you've died, your will becomes the key document governing your affairs. It makes sense to prepare powers of attorney at the same time your will is prepared.

[Explainer: How to create a legal will in Canada](#)

Now, what about other information? My suggestion is that you document the following, update it once each year (or as needed), and e-mail your executor about where to find it:

Your intentions: There can be misunderstandings about your intentions in certain situations. If you put an asset into joint names with you and one of your children, for example, it may not be clear whether you intended for that child to inherit that asset alone. Assets held jointly with right of survivorship generally pass directly to the other joint owners when you're gone – to the exclusion of everyone else.

What about loans you've made to your heirs during your lifetime? Do you intend for these to be part of their inheritance? And what about specific bequests? Is there something specific that you intend to leave to one particular heir? Do your heirs all understand this? Your intentions regarding all these things can be spelled out in a letter of wishes.

Personal information: Document your legal name, current address, place of birth, citizenship, social insurance number, occupation, all e-mail addresses, phone numbers and similar information.

Family and heirs: List the legal names, addresses, dates of birth, citizenship and contact information for your immediate family members and heirs. Last year, my great-uncle died and left money to a person that no one in the family knew – or could find. It was crazy and inconvenient.

Professional advisers: Document the names, addresses and occupations of each of your professional advisers, including your doctors and dentist.

Assets and liabilities: List all your assets, including bank, investment, RRSP, RRIF, TFSA, pension plan or similar accounts (include account numbers, financial institution names, and named beneficiaries), real estate (locations, values, and location of deeds), and all other assets (locations and values), including businesses. As for debts, be sure to list the name of the lender, account numbers, and amounts owing (credit cards, mortgages, promissory notes, student loans, unpaid taxes, and other debts).

Next time, I'll continue with the five Ds.

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