



September 2013

Written by: Louise Massé

## The Importance of Estate Planning

According to a 2012 survey released by Lawyers' Professional Indemnity Co. (LawPRO), the majority of Canadian adults (56%) do not have a signed Will. Out of the 56% respondents, 29% of those Canadian adults reported they do not have a will because they either do not know how to get started or believe they cannot afford one. In addition, 71% of Canadian Adults do not have a signed power of attorney.

Not having a will, power of attorney, and Personal Directives documented for your final wishes can be more problematic than you think. This "little" oversight can cost thousands of dollars in legal bills, unnecessary tax bills, bitter family disputes, as well as legal battles between siblings and/or their spouses. All of this would be avoided with a proper Will from a qualified lawyer. Prices for a simple professional Will and Power of Attorney can be as little as \$99.00 and \$75.00 respectively for peace of mind.

### Young people need a will the most

The LawPRO study also reported that 88% of Canadians between the ages of 27 and 34 do not have a will. The most common reason for not having a will at this age is because they believe they are too young. However, people in this age group probably need a will the most because they experience significant life milestones like having children and buying a home.

### So what are the 7 biggest Mistakes people make?

The biggest blunder by far is not having an estate plan, maintains Ed Olkovich, a Toronto estate lawyer and author of *Breakthrough Estate Planning*. Short-sightedness here can wipe out everything you worked for during your entire life. Once you're gone, you have no chance to recover the loss. Here are the 7 most common estate planning mistakes you should be aware of:

#### 1. Never Finding Any Time

For many people, estate planning falls under the same category as going to the dentist. Ignore it if at all possible and deal with an uncomfortable problem only when it is absolutely necessary. Except that is always too late in estate planning once you passed away. Are we really too busy or is it human nature to procrastinate when we just don't know where to get started? For most people, the problem is trying to figure out all the answers by themselves, Olkovich maintains — something that's pretty much impossible for most of us. You can, however, make some progress by arming yourself with some basic knowledge about estate planning before you seek out professional help he suggests.

## 2. Not Having Any Plan

Many people leave things to chance because they think they're not rich. It's a mistake thinking the people you leave behind will automatically manage and figure things out. In every family there are differences of opinion concerning money. Problems can occur whenever someone else must try to interpret what you want done. If you don't bother making an estate plan, the government will provide one by default. Their idea of what happens to your money leaves no room for your personal wishes, flexibility, or tax savings. Your personal estate plan lets you decide what happens to your money and everything else that is valuable to you. You need to learn how to give away all your stuff to keep the government rules from doing it for you.

## 3. Paying Way Too Much Tax

The government has ways to make you pay taxes even after you're gone. At the time of your death there is generally a requirement that your last will and testament be legally approved by the courts under the laws of your province or territory. The probate process also confirms the appointment of your executor, and each province specifies what documentation is required as part of the probate process. Not all wills have to go through the probate process (this will depend on the nature of the assets, among other things), but as a practical matter, most estates end up going through this process, and until this process is complete, it may not be possible for the executor to manage or distribute the assets of the estate. Most provinces charge a fee for probating a deceased's will - and make no mistake, this is a type of tax. The fees can be as high as approximately 1.5 per cent in Ontario, to no fees in Quebec (for notarial wills). There's nothing to stop the Province from increasing the tax rate in the future. The following chart illustrates the amount of estate taxes payable in Ontario with respect to estates of varying values:

Size of Estate	Estate Taxes Payable
\$750,000	\$10,750
\$2 million	\$29,500
\$5 million	\$74,500
\$10 million	\$149,500
\$15 million	\$224,500

Because the probate tax is imposed on the value of an estate when a probate application is filed, the need for probate and exposure to probate fees can be minimized by using any or a combination of planning methods, such as: If an individual has life insurance, Segregated Funds, RRSPs, RRIFs or other registered plans, it is advisable to designate a named beneficiary to directly receive the policy or plan proceeds on death. Under the *Ontario Insurance Act*, proceeds of a life insurance policy do not form part of the deceased's estate if there is a designated beneficiary of the policy, and instead are directly payable to the beneficiary and bypass probate. In addition, if assets are held "joint with rights of survivorship" on the death of the first joint owner they do not form part of his or her estate. The surviving joint owner in the normal course automatically becomes the owner of all property, thus bypassing the probate process.

## 4. Not Making Your Will. What happens if you do not have a will?

When you die without a will, you are said to die "intestate". Essentially, this means that the Intestate Succession Act governs your estate which can cause problems, frustrations, delays, and add unnecessary costs. Dying without a Will means letting the government decide on how your estate will be settled and being charged to have this done. You can't choose who your beneficiaries will be, choose who will administer your estate, it's too late to minimize estate taxes, and choose a guardian or trustee for your minor children. Wills are legal documents that must pass certain legal tests. Judges are often called upon to interpret or declare homemade wills invalid. Don't try to make a will by yourself. Invest in a professionally prepared will to get peace of mind.

## 5. Becoming a Target of Financial Abuse

Who can protect you and your money if you no longer can? Don't think that your family, spouse, or children will automatically have access to your bank accounts to pay your bills. Your estate plan should include power of attorney documents. You sign these written legal documents to designate someone as your agent to make financial and/or health decisions for you. You can choose who will control your money and make health-care decisions when you no longer can.

## 6. Not Dealing with Insurance, Business, and Charities

Missing an opportunity to deal with these items in an estate plan can be devastating. There are certain tax-free advantages with insurance or a qualified incorporated business. Your estate plan should always consider these items to capitalize on the benefits. Donating to charity, religious, or public causes as part of your estate plan can reduce your income tax liabilities. Giving to charity can be rewarding in more ways than one.

## 7. Not Updating Your Plan

No estate plan will work if it is out of date. Learn why updates are necessary when changes occur including:

- a change in your personal relationships (marriage or divorce), new children, grandchildren, or stepchildren
- changes in your legal and moral obligations
- moving to another province such as Quebec, state, or country

For additional information on common definitions and questions concerning estate planning in Ontario. Please refer to [http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/estate\\_planning.asp](http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/estate_planning.asp).

In conclusion, during the past 27 years in the insurance industry, I have witnessed some unfortunate circumstances which could have been avoided. As a recent executor of an estate, I was fortunate to have first-hand knowledge on the importance of having your "T's crossed and I's dotted" with a professional will, power of attorney, and personal directives. The attention to detail you place in these documents makes the execution of your final wishes a loving process for your loved ones and reinforces your legacy. ☺

If your company is interested in providing an estate planning employee session or lunch and learn, please contact your account executive.

Sources:

<http://www.lawpro.ca/news/pdf/Wills-POAsurvey.pdf>,

Ed Olkovich, Toronto estate lawyer and author of *Breakthrough Estate Planning*,

[http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/estate\\_planning.asp](http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/estate_planning.asp)

Louise Massé, Senior Benefit Consultant and Financial Insurance Advisor

### The MultiCare Group

523 The Queensway, Suite 100,  
Toronto, Ontario M8Y 1J7

Ph: 647-260-4367

Toll Free: 1-888-279-0008

<http://multicarebenefits.com>