

FOR 2022: RESOLVE TO UPDATE YOUR ESTATE PLAN

As we look forward to another year, why not resolve to review your estate plan? A comprehensive estate plan should consider four basic elements. Do you have these elements in place? If so, when was the last time you reviewed them?

1. Power of Attorney* — Do you have a plan in place to support you in the event you are unable to speak for yourself or make your own decisions? This important legal document allows the chosen individual(s) to make financial or healthcare decisions on your behalf if you cannot act for yourself. While the name, terms and conditions may vary by province, there are generally two separate documents for financial and medical powers of attorney. Under a financial power of attorney, the individual(s) will make financial decisions and manage your property on your behalf. Under a medical power of attorney, they will make healthcare decisions in the event you become incapacitated.

2. Living Will/Advanced Directive — What kind of care would you wish to receive if you are unable to communicate? In provinces where applicable, a living will/advanced directive allows you to specify certain medical or lifestyle decisions should you become unable. It may be useful to indicate your wishes and provide guidance to caregivers, such as instructions for pain relief and palliative care, life-prolonging preferences, artificial life support and do-not-resuscitate orders.

3. Will — How will you pass along assets to your intended beneficiaries? A will helps to direct this distribution according to your personal wishes. If you have minor children, the will should also appoint a guardian. Without a will, you will be considered to die “intestate” and assets will be divided according to rules laid out by your province of residence. These laws vary, such as differences in the amount of preferential share of the estate to be received by a spouse or how much must be held in trust by a provincial trustee for minor children.

An executor must be appointed within the will: the person(s)/institution

to oversee the estate’s administration and carry out instructions within the will. The duties can be significant and may need to be carried out during a time of grief, such as arranging the funeral, finding, itemizing or managing estate assets, arranging probate (where applicable), calling financial institutions to notify them of the death, managing income tax returns, liquidating or distributing assets and more. As such, it’s not only important to carefully choose the executor, but also ensure they are willing to take on the role.

Planning ahead may help to better pass along assets in the future. For example, the future tax liability of some appreciated assets, such as a business or cottage, may be so significant that an estate will need to liquidate them to cover the expense. Planning today can help address the liability, by reviewing insurance needs analyses and/or applicable tax-planning strategies.

4. Testamentary Trust — If something were to happen to you, would family members need ongoing financial security or support? Establishing a testamentary trust can help to provide asset protection, preservation and growth by limiting access and specifying the timing and amount of distributions to beneficiaries. Trusts can also help to protect assets from creditors, plan to defer capital gains taxes for spouses or safeguard assets from changes in family matrimony.

If you would like an introduction to legal and estate planning professionals to assist with your estate plan, please call the office.

*There are differing names for the power of attorney depending on province of residence. For instance, in Quebec, this is termed a “mandate.”

