

February 2024

## ***Key Estate Planning Topics***

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As we embark on this new year, we want to start with a few topics near and dear to us, namely updating your will, fair or equal distribution of assets to beneficiaries, and digital assets.

### **1. Updating Your Will**

One Sports + Entertainment Group continues to offer the services of estate planning. For well over five years now, we engaged with our clients on establishing a full range of estate services, specifically preparing the will document. In addition, we work closely with clients who had a will prepared in the past, but as circumstances and situations change, they need their original estate plan updated.

#### **Change in Circumstances**

There are some basic changes in circumstances that automatically affect the contents of your will, such as divorce and separation. These impact the terms of your will and the person making the will (the testator) needs to assess how those changes affect his or her original intentions.

In Canada, a will is not automatically revoked by a divorce, unless it is specifically addressed in the will. Only in certain circumstances is a former, but not yet divorced, spouse excluded from inheriting under your will—even more reason to seek professional advice for these two very specific circumstances.

Changes in circumstance that do NOT automatically affect your will, include:

- Marriage
- Change of residency or citizenship
- Significant change (acquiring or disposing of) assets/property, including signing a big new contract
- Birth or adoption of children
- Death of a beneficiary, executor, or other significant agent named in your will

If you have, or anticipate, any changes like these, it is time for us to talk.

#### **Change in Situation**

Your will covers everything you own when you die. By going through the exercise of documenting all your assets and how you want them distributed, we have formalized the estate plan, so your family will know exactly how you felt when you originally wrote the will.

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*ONE Sports Power Play*

There are typically three components to every will:

- 1) Introductory information (who is making the will),
- 2) Detailed description of the estate assets and distribution of those assets, and
- 3) Appointment of agents such as executor and power of attorney.

Specifically, we want to address a couple of situational changes that would warrant some consideration within a typical will, such as:

- If there is a death or situational change to your executor or to one of your agents under a power of attorney, there will be a need to address this in writing.
- If there is a situational change to any guardians you appointed for minor children. For example, some common situational changes we have come across are when a guardian becomes too old or incapacitated to be able to care for the children as time goes on. Or, when an older sibling reaches age of majority, the testator may wish to have the older sibling act as a guardian for any younger siblings. These situational changes would constitute a reason for deeper consideration and perhaps an update to the official will document.
- If there is a change in your estate assets. The estate assets are a component of the official will document. Any new estate asset will flow through to your final “bucket” for dispersion to your beneficiaries with an allowance of course for debts and taxes, as well as any initial gifts you have already identified in the original document. If there any new assets, such as a Stanley Cup ring or an unforeseen inheritance, for example, and you wish to do something specific with these new assets, a new will is required.

Clients have also discussed establishing a codicil to the will. This is a testamentary document similar but not necessarily identical to a will. In some jurisdictions, it may serve to amend rather than replace a previously executed will. In others, it may serve as an alternative to a will. In Ontario, it republishes the will, so the date of the will becomes the date of the codicil. Any unattested changes (changes not proven or stated to be true) made to the previous will document become validated under the new document. Clearly, care and expert advice are needed when considering a codicil for your estate plan.

We recommend you let us know if you identify anything in the above description that may pertain to your situation. As always, we are pleased to help.

## **2. Fair or Equal Distribution of Assets to Beneficiaries**

We have had many discussions with our clients over the years regarding dispersing assets to beneficiaries. The question “Is equal fair?” always becomes a concern. In 2023, we wrote about [Letters of Wishes](#) (refer to

our August 2023 blog at [www.onesports.ca](http://www.onesports.ca) for more detail). A Letter of Wishes is an informal document that allows you to specifically notify the people who may (or may not) benefit from the way you distribute your assets and share why you came to those decisions.

With respect to your beneficiaries, we believe there are some distinct scenarios where an equal distribution may not necessarily be appropriate, such as:

- A caretaker child or a child living with a parent
  - In a situation like this, where one child primarily takes the responsibility of caring for an elderly parent, consideration may be made for providing a little extra when the assets are being divided. Oftentimes, this involves care provided by a child who lives with the parent, whether in the child's or the parent's home.
- A special-needs child
  - If a parent has been the primary caregiver for a special-needs child, the estate plan can take this into account to ensure the child will be properly taken care of after the death of the parent.
- A child with issues
  - If a child has issues, such as mental illness or substance abuse, or if a child is challenged with money management, it may not be wise to leave an outright sum of money to that child. The same may apply to an estranged child. There are ways to deal with this situation.
- Children with wealth disparities
  - Occasionally there may be families where there are disproportionate levels of income or wealth amongst the named beneficiaries. Sometimes a wealthy child may tell a parent to treat him or her differently and give more to other siblings. Likewise, a parent may feel that a wealthy child does not need the money as badly as another child. Clearly, as wealth can change over a lifetime, careful consideration must be shown in these circumstances.

These are obviously very personal situations, and some that may include some soul-searching. We believe that the Letter of Wishes, as mentioned above, is very helpful in conjunction with some guidance by professionals with expertise in this area.

### 3. Digital Assets

Dealing with digital assets upon death is an area that is gaining increased scrutiny. A digital asset is defined as anything that is created or stored digitally, is identifiable, and has a specific value attached to it. Some examples include (but are not limited to):

- Media, such as music, videos, etc.
- Written documents, websites, emails, electronic documents (like a will)
- Digital photos stored in the cloud
- Social media
- Reward points

In your will, the executor is responsible for dealing with all your assets, including the digital assets. It makes sense that when you are considering who to choose for this very important role, you think of someone who may be familiar with these types of assets or at least someone who knows where to turn to for advice.

Consideration can also be given to who will inherit these digital types of assets. Depending on the specific asset, it may be difficult to divide or share this type of holding, and therefore you may wish to exclude them from your estate. As with any decision you make regarding these parts of your will, documenting your decisions in a Letter of Wishes may be helpful.

A final word on digital assets: some accounts can be accessed after death but others are more difficult to access or obtain information on. Your executor is responsible for locating all assets including digital assets and making the appropriate decisions. It is better to decide the fate of these assets during your lifetime. Many clients appoint a legacy contact who can manage the digital accounts.

As always, One Sports + Entertainment Group is ready and willing to help you with all of your estate planning needs.

Happy 2024 and we will be in touch with other planning updates.