

# PLANNING MATTERS

First Quarter 2011

## *DO YOUR HOMEWORK!*

It's January, a time for new beginnings, and time to focus on your new year's resolutions. In the world of estate planners, the most common resolution is to "get an estate plan and Will done". You do your research, make some calls, and find an estate planner who you want to work with. You retain the estate planner, who sends you away with homework: fill out a checklist with personal information about you, including your family and your assets.

This homework causes the well-meaning individual to delay or ignore their new year's resolution and adds to the often-quoted statistic that only 12% of people actually accomplish their new year's resolution.

### *New Tires? New Clothes? Hockey Tickets? Or A Will?*

People are generally more willing to spend time and money on their vehicles, wardrobe and favourite sports team than on the legacy that they will leave behind after a lifetime of work, savings and investment. This is the case even though an estate plan costs the same or less than a set of tires for a car or an annual wardrobe budget, and takes less time than a hockey game to complete. Spend the time and money to prepare your Will and you can forget about it ... until you have a significant change in life circumstances or you simply wish to make changes to your Will. Wills should generally be reviewed at least every two years, so the investment of time and money is nominal given the value of your personal assets.

### *Your Family*

Did you know legislation exists in BC that requires you to provide adequately for your spouse and children? In fact, in a very recent decision (December 2010) the Will of a BC mother was varied to provide \$5.5 million plus interest to her daughter. The daughter was previously provided for minimally under her mother's Will. Estate planners need to know who your legal family is, whether biological or adopted to help you plan for and around your legal obligations. They can consider your personal situation and give you options which you might not be aware of. (As an added bonus, they won't judge you or your family!)

### *Assets And Liabilities*

Did you know that probate fees must be paid on assets that are located in BC and form part of an estate? Probate fees are calculated at a 1.4% rate on assets of a BC resident's estate or on assets located in BC.

By providing an overview of your assets and liabilities, your estate planner can advise you of certain strategies that may be engaged to reduce the amount of probate fees which are paid by your estate. For example, some couples choose to register title to their principal residence in the name of one person (for example, the wife). When the wife passes away, that property falls into her estate and is subject to the probate fee of 1.4%. The estate must pay this fee whether or not the husband wishes to continue to reside in the property.

There may be circumstances where it is preferable that an asset not be held jointly and not all asset holdings should be planned around death. However, even in these circumstances there may be strategies that can be employed which would keep the asset from being subject to probate fees.

### *Help Yourself And Your Executor*

Individuals often ask to keep their estate planning checklist as a summary of their assets, liabilities, family situation, etc. This can be helpful in making decisions as circumstances change. For example, when a child or grandchild is born, do you wish to add that child as a beneficiary (or alternate beneficiary) of a life insurance policy? Your checklist provides a useful summary which can help in making these types of decisions. It can also assist your executor to determine where to locate your assets or relatives.

### *Do You Know What's Going On?*

Did you know that your capacity to write a Will can be challenged, thereby possibly invalidating your signed Will? One of the tests of capacity is whether or not you are aware of your family, those to whom you owe a legal or moral obligation, your assets and your liabilities. Failing to disclose these details to your estate planner could be devastating if there is a challenge to your Will. If a challenge is made, you will not be around to defend your Will and the notes which your estate planner made will be critical in providing that you had sufficient capacity to prepare your Will.

### *You Did It!*

You already have a Will and have made it to point 6 in this article. Good for you! Some circumstances which would require you to revisit your Will include:

- a. marriage (*a subsequent marriage invalidates your prior Will*, unless your Will was made in contemplation of that marriage), cohabitation or divorce;
- b. birth or death of a family member or beneficiary;
- c. significant lapse of time. Even if you do not need to change designations made in your Will, you should make inquiries to determine if the laws have changed since your Will was signed. For example, major changes to BC's Wills legislation are planned to come into force in 2011;
- d. a move; a Will which is valid in BC is not necessarily valid in any other Province, Territory or country, and vice versa; or
- e. title to your assets changes or assets which are listed in your Will are given away during your lifetime.

### *Power Of Attorney*

At the time you prepare your Will, you should seriously consider preparing a Power of Attorney. This will allow you to designate an individual to deal with your assets on your behalf, and can be used in the event of your incapacity. Being married or owning assets jointly does not mean a spouse or co-owner automatically has authority to deal with assets on your behalf. If you are taking the time to plan for your passing, take the time to plan for your life as well.

### *Representation Agreements*

You should also consider whether or not you wish to designate someone to make medical decisions on your behalf in the event you are unable to make your own decisions.

If you have decided to fulfil your new year's resolution, do not procrastinate – do your homework! Get started by speaking to an estate planning practitioner. To review a Wills and Estates Planning Checklist, contact your Leith Wheeler representative.

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