



ESTATE PLANNING TOOL BOX



GENERATIONS WELL SERVED IN PERSONAL, COMMERCIAL & ESTATE LAW.

ESTATE PLANNING OVERVIEW

Estate planning is the process of determining the management and distribution of your estate.

The tools involved in estate planning include:

1. Wills

A legal document that reflects your wishes on how your estate is to be distributed upon your death.

2. Power of Attorney

Gives your authority to trusted individuals to attend to your financial and legal affairs when you cannot do so.

3. Representation Agreement

Gives your authority to those you trust to manage not only your financial/ legal affairs, but also your health and personal care matters.

4. Trust

An important tool to organize your assets for tax planning estate freezes, and other purposes.

5. Committeeship

If a person is deemed incapable of managing his or her personal affairs and in the absence of an enduring power of attorney and/or representation agreement, a committee (legal guardian) will be assigned, or appointed by the Court to make decisions for the well-being of such a person when and if required.

6. Joint Bank Accounts

Adding another family member's name to a bank account for convenience, provided the right of survivorship is addressed before doing so.



Wills

A Will is a legal document by which a person directs the distribution of their property upon death. It is important to determine what will and will not form part of one's estate upon death in order to accurately reflect one's intention in the Will. The potential effects of the *Wills Variation Act* (British Columbia) on the person's intentions should also be considered prior to drafting a Will.

Wills must conform to the requirements of the *Wills Act* of British Columbia. When it does not, or where a Will does not exist, the *Estate Administration Act* provides a set of default rules for the distribution of a person's estate, which may not necessarily coincide with the person's intentions. An improperly drafted or improperly signed Will may be declared void and could become the subject of litigation between the beneficiaries and potential beneficiaries, normally at the expense of the Deceased's estate.

Power of Attorney

A Power of Attorney grants the appointed person the ability to deal with the Grantor's financial and legal affairs. It can only be used while you are alive, and is terminated upon the following events:

- your death
- the subsequent bankruptcy of the Attorney
- conviction of the Attorney for fraud
- if you become a "patient" under the *Patients Property Act* (British Columbia)

A Power of Attorney can be revoked at any time as long as one has the capacity to do so. A Power of Attorney can be restricted in scope to deal with a specific asset, for a limited period of time, or it can be general. Upon being declared incapable of managing one's person and/or affairs, the Power of Attorney becomes void, unless specifically stated.

A Power of Attorney should contain an enduring clause so that it continues in the event you become incapable of managing your personal and/or financial affairs.

The Grantor should choose an Attorney who is completely trustworthy and dependable. An Attorney must act always and only in the best interests of the Grantor, and the appointment of a secondary Attorney should also be considered.



Representation Agreement

Representation Agreement is commonly known as a Health Care Directive and serves two purposes when and if a person becomes incapable of making decisions independently:

1. To allow adults to arrange in advance how, when and by whom, decisions will be made for matters such as their health care, personal care, or financial affairs.
2. To avoid the need for the court to appoint a person to help or to make decisions for the individual by way of a committee order.

Until the contrary is demonstrated, every adult is presumed to be capable of:

- making decisions about their own personal care, health care, legal matters, financial affairs, business and assets;
- making, changing or revoking a Representation Agreement.

Where such presumption has been rebutted, hospitals prefer to deal with a representative appointed by a Representation Agreement before proceeding with major health procedures. In cases where there is no immediate family and health care decisions have to be made by a friend, this agreement becomes essential.

Trusts

A Trust can be set up to take effect, either during your life time (Inter Vivos Trust or Alter Ego Trust) or upon your death (Testamentary Trust). Any decisions regarding the setting up of a Trust should always include income tax considerations reviewed with your accountant.

Committeeships under the *Patients Property Act* (British Columbia)

Under the *Patients Property Act*, when two physicians have declared a person ("Patient") incapable of managing his or her own affairs, any interested party can make an application to be appointed the Patient's Committee to make health and financial decisions on his or her behalf. An individual can also nominate a specific person to act as his or her Committee when making a Representation Agreement. If such a party does not exist or has not been designated, then the Public Guardian and Trustee office will take over and act as Committee. The Public Guardian and Trustee then acts on behalf of the Patient and can make all health care, living, and financial decisions for them, without having to consult anyone, including the Patient's family.

Upon a grant of Committeeship, all previous Powers of Attorney and Representation Agreements become void. All fees charged by the Public Guardian and Trustee are charged to the Patient's estate.

Joint Bank Accounts

When creating a joint bank account with a child or any other party, it should first be determined whether:

- the funds are to be held in trust and used solely for the benefit of one party while they are alive and are then to form part of the estate of that person upon their death or;
- the funds are to pass to the surviving party as a gift, upon the death of the other party

The legal and financial consequences will depend on the purpose of the joint account. The parties should seek advice as to the true purpose for a joint account, and have the agreement committed to writing.



ESTATE PLANNING CHECKLIST

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WILL

Do I have a Will? Should I consider updating it?

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POWER OF ATTORNEY

Should I consider giving one or more of my children, or trusted friend(s), my Power of Attorney?

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REPRESENTATION AGREEMENT

Do I need to make a Representation Agreement?

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TRUST

Should I establish a Trust for my family or myself?

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COMMITTEESHIP

(if a Committeeship is granted, all Powers of Attorney and Representation Agreements are void)

Should I consider nominating a Committee as part of my estate planning process?

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JOINT BANK ACCOUNTS

Should I create a joint bank account and with whom, and for what purpose?



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