NetWorth

8 Tips to Bulletproof Your Will

In a perfect world, your final wishes would be carried out as intended. In Canada, you generally have testamentary freedom, which allows you to distribute your estate in the manner you choose, as stated by your Will. However, there are some limits to this depending on various factors including marital status and family structure.

Our lives are complicated, relationships change, and we continue to accumulate property, investments and other items of value over the course of our lives. The reality is that you cannot please everyone, and dissatisfied heirs may look for any opportunity to claim what they feel is rightfully theirs.

Can you make your Will bulletproof?

So, how can you protect your heirs and manage estate disagreements? One way is being more aware and vigilant in how you distribute your estate. Here are eight tips to help you avoid your Will from being challenged.

Tip #1: Know the law

Each province may have its own rules about obligation. Seek legal advice regarding your province's mandates on providing for specific family members. Consider having a professional prepare a financial plan including total funds required to provide for your family members during their lifetime.

Tip #2: Minimize future conflict

In new romantic relationships, consider a cohabitation agreement or prenup. If you have children from a previous marriage, or a past spouse you wish to provide for, ensure you've addressed that in your Will. The blending of families can add a layer of complexity, but it is possible to minimize disagreements later on.

Let's connect

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Tip #3: Draft when healthy

The best time to draft your Will is when you are sound in body and mind. Health events can occur quickly, so it's best to have complex wishes documented before you're unable to do so.

Tip #4: Keep it confidential

Consider signing your Will in a lawyer's office without your family present. This ensures that no person can claim undue influence, removing a possible source of conflict. Check your province's rules on how many witnesses should be present at signing.

Tip #5: Play a fair game

Life insurance can be an option to ensure equal gifts for your children. If you have a farm worth $500K and investments of $250K, and you give one child the farm, and the other the investments, there would be an obvious imbalance. One way to navigate this is to buy a life insurance policy for $250K or more, allowing you to equalize the inheritance while also covering estate debts and expenses.

Tip #6: Make your voice heard

You may encounter issues if estate planning decisions are not explained. Perhaps you are thinking of leaving someone out of the Will. In this case it may be impossible to make everyone happy, but explaining your reasons (through a letter or affidavit) can help beneficiaries understand and move on.

Tip #7: Choose the right executor

Appointing an executor is key to ensuring your wishes are followed. Be aware of conflicts of interest should a person be both an executor and a beneficiary. It may be worth enlisting the help of a professional executor to mitigate possible issues.

Tip #8: Add a no-contest clause

A no-contest clause is a legally binding clause in your Will which states that if a beneficiary challenges the Will, they forfeit any gifts in the Will. While this doesn't always prevent challenges, it may serve as a deterrent. A lawyer can help you assess whether this is right for your situation.

Plan ahead

Review your Will every few years to ensure it addresses all current family members and assets. Estate disputes can be messy, disagreements can ruin family dynamics and funds could be tied up in litigation.

Any time you experience a significant life change, think about how it could impact your Will. Protecting your beneficiaries requires careful planning. Spend the time and effort to get good advice while updating your estate plan, ensuring that your wishes are respected and your legacy is preserved.

Successfully Investing in Art to Grow Your Wealth

We know that art is subjective, but what isn't subjective is successful investing. As it turns out, the two can actually go hand in hand, as collecting art is proving to be a significant way to grow your wealth.

Getting creative with your investments

Within the last few decades, the idea that art is more than just decoration has become more prevalent. The market has expanded beyond the confines of what we now define as classic art — paintings, sculptures, and antiques — to include fashion, high-end furniture, leisure goods, and perhaps most significantly in recent times, digital art.

Since the advent of internet-based art in the early 1990s, we've seen the ascent of digitally-based art assets such as websites, non-fungible tokens ("NFTs"), augmented reality art, and even biotech art. The world of digital art is experiencing immense growth, and it can be incredibly lucrative. With NFT and digital art transactions being executed using volatile digital currencies, there is a vibrant discourse over how to value digital art, which can significantly increase or decrease in value on a daily basis.

Growing wealth with art

From a tactical perspective, many new collectors start off by selecting works by emerging or lesser-known artists, which usually attract a lower ticket price. Much like investing in a start-up, sometimes this approach works, and sometimes it doesn't.

Similarly to how you might consult with experts before making a big investment, it's best to enter the world of art investment with professional guidance. Partnering with a trusted advisor can be essential in increasing the likelihood of a successful investment.

Though the pandemic brought a greater push for price transparency and an increase in digital platforms that lower barriers to entry — there are still significant issues regarding provenance, authenticity, condition reports, insurance, IP rights assignments, and licensing.

"The increased accessibility of art consumption has made this market even more risky if approached without proper guidance and a well-thought-out art collection plan," says Sara Johnson, from BMO's High Net Worth Wealth Planning team. "Strategically, there are many decisions that must be planned before execution."

Art, estate planning, and the "Four Ks"

Any estate plan for an art collection should consider the executor's experience with art. You can avoid family squabbles and the risk of potentially diminishing the art's value by leaving specific guidance for your executor, including information on whether the art is to be treated as a capital investment item or a personal effect.

Johnson refers to the "Four Ks" when addressing art in an estate plan:

1. Know what you own: Perform a complete disclosure, inventory, and identification with a clear and reasonable valuation of the assets owned.
2. Know how you own it: Depending on whether the art is independently or jointly owned, in a trust, company, or a foundation may determine how and to whom it will be transferred.
3. Know what you want: Knowing what you want to happen to your art after your passing is critical. Determine if you can or should leave it as a collection, divide it, sell it, or donate it.
4. Know who you should leave in charge: Knowing who should execute the transfer is useful for an estate plan. Appoint specialists that understand the goals of the collector, and what needs to be put into place to safekeep, administer, and transfer the art.

Risk management

The market of buying and selling art is a constellation of different forces. Johnson has "experienced all the possible rainbow colours of the good, bad, and ugly," which she describes as "selling for financial distress at a great loss, selling out of boredom, selling to ride the popularity contest wave, donating at death to create tax relief to the estate, and departure for divorce."

Having the good fortune of creating a divestment plan and cultivating an art lover's and expert's network is always a winning strategy — even when the sale is during distressing circumstances.

Mutual funds and pools, or fractional ownership companies are longer term investments that allow relatively small cash investments to be put into the portfolio of a ready-made art collection. The pools are quite illiquid and sometimes come with pre-established maturity dates — but they do exist and cover a desirable niche for overall wealth diversification.

Knowing what to look for

When you're ready to purchase art as an investment, look for original works with a known provenance or collection history that are certified by an accredited conservator. If you're investing in works on paper, ensure that they are signed, limited-edition, and numbered prints.

Seek advice

If you're ready to invest in art, your next step should be to determine an investment focus and the extent of your financial commitment. Once you've done this, consult with a financial professional specializing in art. They can develop a strategy and plan that works for you so that you can successfully invest.

Creating a Contingency Plan to Protect Your Business

As an entrepreneur, it might seem like you have everything in order, but a critical event can quickly leave you unprepared.

Understanding contingency plans

A contingency plan is a developed course of action that's put in place ahead of an unexpected event. While you can't know when or even if certain events will occur, you can prepare for the possibility of them. The overall purpose of a contingency plan is to mitigate risk so that any negative impact on your business is minimized.

What to prepare for

While not all businesses will be susceptible to every type of disaster, John Paniccia, VP and Head of BMO Business Advisory and Succession Planning, says that "Every business should have strategies in place for the four Ds: Death, Disability, Divorce, and Disenchantment." Paniccia says that given the nature of private and family run businesses, business owners are usually a key component to them. Should business owners be impacted by any of the four Ds, a contingency plan ensures that they have the systems and procedures in place to maintain the continuity of their business.

According to PwC, 70 per cent of private and family business owners plan to either sell or pass on their business, 47 per cent don't actually have a succession plan in place, and 70 per cent of business transfers fail between generations. When strategies are already developed well in advance of an exit, the responsibilities of the business owner can be successfully passed on.

What to include

When developing a contingency plan, it isn't always possible to prepare for everything. Rather, contingency planning involves considering reasonable and possible circumstances. According to Paniccia, all business owners should develop a contingency plan that includes a detailed SWOT analysis; outlining Strengths, Weaknesses, Opportunities, and Threats.

He says that businesses often succumb to the concept of overreliance, which means placing too much of their plan on the business owner themselves. Because of the nature of entrepreneurship, private businesses often tie much of their identity, resources, and cash flow directly to their owner. However, if an unforeseen event occurs and they are no longer able to run the business, the company is left unprepared. Developing a SWOT analysis with this in mind prepares you for a variety of scenarios, helping to ensure a successful change in ownership that will see the longevity of your company.

Seek advice

Contingency plans are sometimes difficult to create, especially because they require you to analyze your business through the lens of multiple worst-case scenarios. When you're as close to your business as most entrepreneurs are, this can be a challenge.

When getting started, Paniccia recommends connecting with BMO's planning professionals, who work with clients through a holistic wealth planning process. Using planning that's informed by insight and experience, BMO is committed to helping business owners realize their objectives in all stages of their personal and professional lives.

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