

The Consequences of Dying Unprepared

Up to this point in your life, you may have not established a plan for handling your finances after you die. Crucial questions regarding the method and place of your burial, how your assets should be distributed, what happens to any property or who has authority to deal with your assets after death may be unanswered. Whatever the reason for prolonging your estate planning – whether you’ve been avoiding these questions or have been too busy – there’s no better time than the present to take action; otherwise, several unpleasant consequences may be in store for your spouse, partner, children, or other loved ones.

The key to any estate plan is a Will – a written document that directs how your assets are to be distributed upon your death. It should appoint an executor and provide instructions for all your assets, including your business holdings (if applicable), real estate, cash, personal effects, as well as the timeline and manner of their distribution.

Dying without a Will

If you haven’t prepared a Will with a trusts and estates lawyer, you should consider doing so immediately. If you die without a valid Will, some of the negative consequences may be:

Loss of control over the distribution of your assets

If you die without a Will, you are said to have died intestate and provincial law dictates who will receive the assets of your estate. If you die intestate, there is no executor to carry out important tasks ranging from funeral arrangements to filing income tax returns with the Canada Revenue Agency (CRA), and someone must apply to the court to get permission to carry these duties out. If you pass away with no surviving family, however remote, your assets will go to the government. If you have surviving family members, your assets are divided and distributed to them according to provincial rules. A Will that was improperly drafted or left important

issues unaddressed may be invalid, resulting in a partial or whole intestacy. Dying without a Will in Quebec has different consequences.

Loss of investment and management powers

In the absence of a Will someone would have to attend court to apply to be the Administrator of the estate. This individual may have to post Bond (as security) in an amount of up to twice the pre-tax value of your estate. The Administrator will have only those powers of investment and management provided by applicable legislation, the common law, and the court order. For example, if there are minor heirs, a provincial Children’s Lawyer will be involved. Once the estate is distributed, the share of a minor will be invested by the Children’s Lawyer and paid in full to the child when he/she reaches the age of majority whether the child is mature enough to manage the money or not. In Quebec the provisions of the Civil Code will apply. These can be substantially different in many situations.

Higher cost and greater delay

Without a valid Will in place, it is likely there will be extra cost and time involved in settling your estate – especially if your dependants launch court challenges with respect to the distributions. As well, as discussed above, the court must appoint someone to act as Administrator of the estate since there is no executor appointed in the Will. This proceeding is very time consuming and the legal fees associated with attendance in court for the court appointment of an estate Administrator and settling your estate can be quite high. In Quebec, there is no court process unless there is a litigation. The administration of the estate is carried out privately by the heirs acting in quality of liquidator(s) of the estate.

Business concerns

If you own a business and die without appropriate provisions in your Will with respect to the succession

of the business, a partial or whole intestacy can be the outcome. In that case, the rules of intestacy which differ from province to province, will determine who will receive your business interests. This distribution may be tax inefficient (i.e., certain post mortem tax planning opportunities may be lost), and, may result in certain individuals owning your business that you did not want to give the business to.

Protecting the family cottage

Have you prepared for what might happen to the beloved family cottage in the event of death? If you haven't, the transfer of ownership may be in question among family members, possibly resulting in internal disputes and a failure to maintain ownership within the family for future generations. As well, not considering the capital gains tax due when the cottage is sold or inherited after you pass away may result in your family having to sell the property in order to pay the tax. Assessing whether your cottage appreciated in value or if your estate will be able to cover the tax liability is crucial.

If you do not have a Will, now is the time to make one. Your BMO Nesbitt Burns Investment Advisor can assist in finding a legal professional who knows the right questions to ask to help you deal with each of the essential aspects of a Will.

Consider final arrangements

Most Canadians don't think about or choose to avoid thinking about a funeral until they are directly confronted with the death of a loved one. Not considering the financial impact, however, can pose a significant financial burden in addition to emotional stress for loved ones. It is recommended to regard this expense as part of your retirement plan to provide peace of mind for yourself and loved ones.

Some may prefer to alleviate the stress on family members by pre-planning their funeral details.

Pre-planning means that all the arrangements for one's funeral are made ahead of time. This may or may not include paying for the funeral costs in advance. Options for pre-planning a funeral include:

Pre-paying funeral home:

- Prepaid funeral deposits in a qualifying "eligible funeral arrangement" are allowed to accumulate tax-free income (based on the CRA's special regulation). Individuals can cancel their prepaid funeral contracts at any time (principal and income are refunded less a small administrative fee), however, income taxes will be payable on any investment income portion refunded if not used for eligible funeral or cemetery services.

Buying funeral insurance:

- These policies cover the costs of burial and service and can be purchased at any age with a value between \$2,500 to \$20,000. However, some insurers require health information to determine premiums. Funeral insurance should only be purchased after some pre-planning has taken place to ensure the individual understands how much coverage is required to cover their costs.

Individuals who choose to pre-plan funeral arrangements or pre-pay their funeral costs should make sure their loved ones are informed in advance of their plans including which items have been prepaid.

Getting started

To make sure your final wishes are carried out after you die, your BMO Nesbitt Burns Investment Advisor can recommend a BMO Nesbitt Burns Estate and Insurance Advisor* from BMO Nesbitt Burns Financial Services Inc. These specialists can help evaluate all aspects of your estate and recommend solutions to mitigate unintended financial consequences your beneficiaries may face.

*In Quebec - a Financial Security Advisor

All insurance products are offered through BMO Nesbitt Burns Financial Services Inc. by licensed life insurance agents, and, in Quebec, by financial security advisors.

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