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TRUST



# Planning Your Estate

**A Guide**



## **You've spent your lifetime working and establishing your personal wealth.**

How will your assets be distributed to your loved ones or favourite charities when you're gone? What if your health compromises your ability to make necessary decisions?

Estate planning will help bring peace of mind by outlining your wishes and articulating how your affairs should be handled at the end of your life. Estate planning will help you define your current situation, describe your goals, and identify options for ensuring your assets are transferred according to your wishes.

Estate planning also ensures creation of your Will, power of attorney (POA) and other essential documents.

There are three questions to consider as you think about estate planning, as your answers will help you work through the process:

1. Who is important to you?
2. What do you own?
3. How do you own it?

Concentra Trust is a national trust company specializing in estate and trust solutions for over 60 years. Concentra's strength comes from deep roots in the co-operative system, built on shared values to grow and serve communities across Canada.

Our professional team has expertise in administering estates and trusts of all sizes and complexities. We offer personalized service, impartial guidance and peace of mind for Canadians. We're here to help you through your personal estate planning process.

Concentra Trust is a wholly-owned subsidiary of Concentra Bank.

## Understanding estate planning

A carefully considered and up-to-date estate plan is one of the most thoughtful gifts you can leave for your loved ones. Your estate plan ensures your wishes and directions are known and can be carried out, even if you are not able to provide direction.

Have you ever considered what would happen to your estate:

- if you don't have a Will?
- if your Will is out of date and doesn't reflect your current needs?
- if your Will doesn't anticipate a beneficiary predeceasing you?
- if your handwritten Will isn't complete?

The questions above highlight issues that may emerge without proper planning for the distribution of your estate.

Reviewing your estate plan regularly is a sensible approach, whether you want to ensure your estate is distributed fairly amongst children, given to charities within the community, or used to care for a loved one with special needs. It's important to review your estate plan whenever there is a change in your circumstances, perhaps a change in relationship status, death of a spouse or beneficiary, or the birth of a child or grandchild.

### **People often mistakenly believe the value of their estate is too low to warrant a Will.**

This is rarely true. Consider all of the assets that will come into play at the time your estate is administered. Without a Will, no one has the right to manage your affairs until an administrator is appointed by the court. Your estate will be in limbo until this step is complete. And, when the application is made, the court may require the potential administrator to post a bond to ensure assets of your estate are protected in the event of mismanagement.

### **Many think if their assets are held jointly with their spouse or common-law partner, a power of attorney isn't required.**

Consider if this person was to become mentally incapacitated, and you needed to sell your family home. Without a power of attorney, you would need to apply to the courts - in a lengthy and costly application - to be named guardian or committee, before being able to proceed with the sale.

### **Your estate plan will help to address these issues and will clearly outline your intentions, but it is still common for people to avoid the estate planning process.**

For some, it can be an unwelcome reminder of the painful loss of a loved one or of their own mortality, or perhaps a trigger highlighting unfortunate family dynamics. Whatever your personal and family circumstance, preparing your estate plan should be considered an essential component for your long-term security.



Concentra Trust has specialized expertise in estate and trust administration services, whether you need a little or a lot of assistance.

After your complimentary consultation, you can select the services you require. The estate pays for those services, and nothing more.

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250.713.0172  
estatespecialist@concentra.ca

Coastal Community experts  
888.741.1010  
service@cccu.ca

## Getting started

Right now is a great time to take the first steps in planning your estate, or to begin making updates to your plan.

### Prepare a financial inventory

Your first step is to consider the ownership details of your assets and liabilities. These may be owned solely by you, or jointly with another person, such as your spouse or common-law partner, or perhaps a business partner.

You'll want to record the value and locations of **assets** including:

- real property - your home, rental and vacation property
- registered investments – RRSP, RRIF, TFSA, RESP
- pension assets
- mortgage or loan insurance
- investment accounts
- bank accounts
- annuities and insurance policies
- personal property – vehicles, jewelry, collectibles (art, coins, etc.),
- details of any business ownership – nature of the business, names of other owners (and their ownership share), business assets and current value.

Examples of **liabilities** to be recorded include:

- mortgage(s) on real property
- investment related debt - RRSP loans
- personal debt - car loans, consumer loans, etc.
- credit cards and lines-of-credit
- personal obligations - spousal or child support, debts owed to friends or family members
- outstanding property or personal taxes

Creating a list of where to find your important personal documents is also recommended so they can be easily found by your spouse or executor.





## Defining your goals

There are a great many details to consider when contemplating your estate plan. For example:

- Should my spouse and I both pass away, who will care for our minor children?
- Who will take charge of my assets if I'm unable to make financial decisions?
- Who will make health decisions for me if I cannot?
- Who are the beneficiaries I want to inherit my assets?
- What do I want each beneficiary to receive?
- Should my beneficiaries receive their inheritance immediately, or should some, or all, be held in trust?
- If one or more of my beneficiaries predeceases me, what should happen to their inheritance?

## Defining your marital status

Defining marital status today isn't as easy as it used to be.

Each province, and in some circumstances, each piece of legislation, has different definitions for common-law partnerships. Someone could be legally married, but living common-law with another partner. Separation and divorce can add increased levels of complexity.

If you are unsure of how your marital status will be interpreted under current legislation, discuss it with Concentra Trust or your lawyer.



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## Estate planning solutions

Following is a description of some of the most common estate planning solutions. Working with your legal advisor or Concentra Trust can provide information on additional options available to you.

### Preparing your Will

Although you can legally prepare your own Will, or create one using a do-it-yourself option, if you want to ensure your Will is properly written, correctly executed and provides your executor with the clearest direction, you should involve a qualified legal professional.

Through your Will, you:

#### **Name an executor<sup>1</sup> or personal estate trustee representative**

Administering an estate while grieving can be a difficult and emotionally charged experience. Dealing with complicated duties, probate matters, claims and debts can be overwhelming. The list of responsibilities is long, and there is potential for personal liability for your executor.

Naming a family member or friend as your executor may not always be your best option. In certain circumstances, a corporate executor may be more appropriate.

When should you use a corporate executor?

- If your estate is extensive or complex, for example, you have a diverse investment portfolio, business or farm assets.
- Your family situation is complicated or your estate has many beneficiaries, such as with a second marriage, common-law relationship, or children from a previous relationship.
- Your spouse, family and/or friends do not have the time, experience or expertise required to be an executor and trustee.
- You need to balance requirements of multiple parties, such as adult versus minor children, dividing assets fairly among your children with different needs, spousal rights and the needs of children from a previous relationship.
- It is anticipated there could be conflict between executors and/or beneficiaries while your estate is being administered.
- You have no family in the province.

<sup>1</sup> Estate trustee in Ontario; liquidator in Quebec



- You have a child with physical or mental disabilities.
- A beneficiary is not financially responsible or has addictions.
- You have minor children and a trustee would be required to administer long-term trusts.
- You are concerned family conflict could develop or escalate if family members are involved in administering any trusts resulting from the Will.
- Perpetual charitable trusts or multi-generational trusts are planned, requiring a trustee who is continuous and permanent.

An executor or trustee's inexperience, lack of judgement or neglect can lead to delays, conflict, unnecessary fees and even financial loss. A corporate executor and trustee offers objective, unbiased, experienced professionals who are available to assume the responsibilities of handling your estate and trusts.

To do the job properly, your executor must have the appropriate knowledge, ability and time. Your executor is expected to understand and make decisions regarding real estate, taxes, investment management and trust law. They will need to treat all beneficiaries equitably and fairly and, at the same time, ensure all decisions comply with the terms of your Will, considering all applicable laws and administrative requirements. Your executor may be exposed to personal financial risk if the administration of the estate is handled improperly.

An executor has the option to engage agents (such as Concentra Trust, accountants and lawyers) to assist with estate administration. However, by law, your *executor retains full legal liability* for the actions undertaken by those agents.

All executors are entitled to charge a fee for their services. This fee may be based on a percentage of your estate's value, by agreement, or it could be set by the court. Your estate will also pay expenses for any agents engaged by your executor to assist with administration.

Consider naming Concentra Trust as your sole, co or alternate executor. Our seasoned professionals are experts in estate administration and we have more than 60 years of experience in serving Canadians from coast to coast. In addition to our personalized service and expertise, Concentra Trust will take care of your estate and:

- be impartial when family dynamics are challenging
- provide long-term, stable administration for specialty trusts and circumstances.

Concentra Trust offers competitive fees and we are happy to work with estates of all sizes and complexities, making our services accessible to everyone. Our company is rooted in co-operative values.

## Identify your beneficiaries

Your beneficiaries are the people or organizations you have designated to inherit the assets from your estate. One of the primary reasons for preparing a Will is to ensure you can determine which beneficiaries will be entitled to receive the assets from your estate.

In most jurisdictions, legislation requires you to ensure your spouse or common-law partner, dependent adult children, and minor children are adequately cared for when you're gone.

Although it's often "immediate family" who are named as beneficiaries in a Will, beneficiaries can also include extended family, friends or charitable organizations. These are decisions you will want to thoughtfully consider and then document accurately.



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## Design the distribution

Your distribution decisions outline how and when you want the assets of your estate distributed to your beneficiaries. Your Will directs your executor to distribute your estate's assets in one of two ways:

- an outright distribution – assets are released to your beneficiaries as soon as the required estate administration has been completed (including the payment of debts and the final Clearance Certificate from the Canada Revenue Agency); or
- a testamentary trust - assets are transferred from the estate into a testamentary trust to hold, manage and invest until a certain pre-defined event occurs, or for a specified period of time.

Typically, the testamentary trusts created by your Will are used to achieve one or more of the following objectives:

- Spousal trusts are established for the benefit of your surviving spouse for their lifetime.
- Trusts for minor children support your children until they reach the age of majority, or some later age, as identified in your Will.
- Trusts for your adult children are used to provide care for dependent adult children, to safeguard assets where the child is unable to prudently manage their own affairs, or to protect an inheritance from potential creditors or relationship breakdown.

Trusts can be funded from a variety of sources, including your estate assets, or through life insurance policies. Since trusts can last for decades, it's very important for you to clearly document the purpose and the operation of the trust, as well as who is entitled to receive the remaining funds when the trust terminates.

While it's common to name the same person as both your executor and trustee, this decision still requires serious consideration. Trusts usually last for many years, so you may want to consider separating the roles of executor and trustee, or appointing a professional trustee.





## Appoint a guardian

The guardian you select will be responsible for the care of your minor children. This person will have legal authority over your children's care, education and welfare, and although not mandatory, children will often reside with their guardian. You'll want to choose someone who you believe will raise your children according to your moral and ethical standards. It is important to note that a Godparent you've named in a religious ceremony will not be the legal guardian, unless this person is also named as guardian in your Will.

When selecting a guardian, you'll want to consider the age of both your children and your named guardian, and ensure this person is willing to assume responsibility for your children before naming them in your Will. It's also advisable to name an alternate who would assume the role if the first person was unwilling or unable to accept these responsibilities.

Although you can name the same person as executor, trustee and guardian, it may be beneficial to name different people, as the requirements are quite distinct and could be overwhelming for an inexperienced individual.

## Distributing assets outside of your estate

Your Will does not control the distribution of all assets. Instances when your assets would not typically be part of your estate or governed by your Will include:

- when you've designated a beneficiary under a:
  - registered plan such as an RRSP, RRIF, TFSA, RESP
  - life insurance policies
  - pension plan proceeds
- when you've registered assets *jointly* with right of survivorship with a spouse or common-law partner such as:
  - real property
  - investments
  - bank accounts

Using beneficiary designations and asset registrations carefully can simplify the administration of your estate, and assist in minimizing estate costs such as probate fees and taxes.

## Joint accounts

There can be significant risk and cost associated with registering your assets jointly with someone other than your spouse or common-law partner.

Consider if the proposed joint holder went through a relationship breakdown or creditor issues. Consider also deemed disposition\* and capital gains, as well as your loss of control of the asset.

Just because an asset is placed in joint names doesn't mean it will be considered a joint asset on death. If someone other than your spouse or common-law partner is the surviving owner, it may be considered an estate asset, unless the survivor can prove it was intended as a gift on death.

Always seek professional advice before re-registering an asset.

\* See page 11.



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## Powers of Attorney<sup>2</sup>

Planning for a possible illness, accident or disability should be considered as part of your comprehensive estate plan. In many provinces, it is possible to establish two different Powers of Attorney.

**A Power of Attorney for Personal Care<sup>3</sup>** document allows you to name a person to make decisions for you with respect to personal matters. These may include your accommodations, participation in social, education or even employment activities. Depending on the province, these documents are also referred to as a personal directive or representation agreement. It is appropriate to appoint a family member or close friend as your attorney for personal care.

**A Power of Attorney for Property** empowers a person or company to manage your financial affairs during your lifetime. The authority you grant can be limited to specific activities or assets, called a limited power of attorney, or it can be general, providing your attorney with broad control over your financial affairs.

A power of attorney can be temporary or indefinite. Unless it contains a clause to make it enduring, the authority provided by this document ends should you become mentally incapacitated. In all cases, the authority ends when you pass away. In some provinces, the power of attorney can come into effect on a specified future date, or the occurrence of a specified contingency, such as your loss of mental capacity.

When preparing a power of attorney, it's important for you to work with a lawyer to ensure you are fully aware of the powers and authority you are granting to your designated attorney. It's also important to note your attorney may be entitled to charge a fee for their services.

Powers of attorney can be revoked by you at any time, as long as you have the mental capacity to do so. Having a committee or guardian appointed by a court to act on your behalf will terminate a Power of Attorney.

The individual selected to act as your attorney for property should be both trustworthy and competent to handle the responsibility. As a power of attorney grants a tremendous degree of authority to the appointed attorney in handling your financial affairs and property matters, you'll want to very carefully consider your appointment.

<sup>2</sup> Mandate in Quebec

<sup>3</sup> Not currently available in all provinces



Handling another person's property and finances can be a time-consuming and frustrating role, especially for an inexperienced attorney. By naming a corporate attorney, such as Concentra Trust, you will have access to professional services, and not need to be reliant on a family member or friend when the need arises. We will ensure your assets are managed and your financial transactions are completed in a timely manner. We'll also make certain your records are maintained accurately with regular statements provided.

## Life insurance

Life insurance can help you create an estate for your heirs, or preserve your existing estate. Common uses of insurance proceeds include providing:

- funds to pay off your liabilities, including income taxes and mortgages
- funds to cover capital gains, such as for a cottage
- income for individuals such as your spouse, children or grandchildren
- a donation to your charity of choice

The amount and type of insurance required will depend on your objectives, current financial status, your age, and your health. Consulting with a licensed insurance professional will help you select a policy best suited to your needs.

## Preplanned Funeral

Preplanning your funeral takes the burden of making decisions out of the hands of your grief-stricken family. Options for preplanning arrangements are available from local funeral providers.

Any preplanned funeral should allow for flexibility should your circumstances change, such as a move to a different province. You also have the option of prepaying for the products and services.

It is recommended this information be shared with your family and with your executor, who is legally responsible for making these final arrangements.

## If you have no Will

Should you pass away without a Will, referred to as *dying intestate*, there can be many unintended consequences. Should you choose not to prepare a Will:

- You lose your ability to select an executor, leaving the courts to appoint an administrator for your estate.
- You lose your authority to appoint a guardian for your minor children, leaving the court to make this appointment instead.
- Your estate cannot be distributed according to your wishes. Instead, the established intestacy rules in your province will define who your beneficiaries will be, and how much each will receive. The end result may be quite different from your intentions.
- Distribution of assets to your beneficiaries will be delayed.
- Additional legal fees may be required in order to settle your estate.
- Additional income tax may be payable.



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## Final taxes

While there are no “estate taxes” in Canada, taxes may still be imposed after you pass away.

## Deemed dispositions

When you pass away, your executor must file a final tax return for that calendar year. The return will include all income earned up to the date of passing. Net capital gains realized under the deemed disposition rules will also be included as income.

The deemed disposition rules of the *Income Tax Act* treat all capital property owned by the deceased, as if this property was sold immediately prior to their passing. All unrealized capital gains are triggered, and the net capital gain (gains and losses) is included in their income.

The *Income Tax Act* allows for deferral of the tax owing, if the asset is left to a surviving spouse, or to a spousal trust created by the deceased’s Will. The spouse or spousal trust can take ownership of the asset at the deceased’s original cost, and no tax is payable until either the spouse or spousal trust sells the asset, or until the surviving spouse passes away.

## Provincial probate<sup>4</sup> fees

Probate fees are based on the value of the assets governed by the Will, and rates vary between provinces, with some provinces designating a maximum.

In some situations when the estate is simple and does not require the involvement of a third party such as a financial institution, it is possible the Will may not need to be probated.

When probate is required, your executor will file for probate with the provincial court by submitting the original Will, along with an inventory of your assets, and the probate fee. Upon acceptance of these documents, the court will issue Letters Probate<sup>5</sup>.

Probate is the legal process to validate a Will and formally confirm the appointment of the executor. Probate is a process to be respected, not feared.

<sup>4</sup> Estate administration tax in Ontario

<sup>5</sup> Certificate of Appointment of Estate Trustee in Ontario





## Keeping your plan up-to-date

Life happens! Your personal and financial situation are likely to change as you go through life. Consequently, it's a good idea to review your estate plan at least every three to five years, ensuring your plan continues to meet your needs.

When reviewing your plan and your Will, consider the following:

- Has your marital status changed?
- Has there been a change in your family?
- Do you now have another child or grandchild?
- Have the children who are beneficiaries of your estate reached the age of majority?
- Is the charity you named as a beneficiary still in existence?
- Has the executor named in your Will moved away or are they now unable to accept the appointment?
- Are the guardians named in your Will no longer the right people to care for your children, or are they unwilling or unable to accept the appointment now?
- Are any of the beneficiaries deceased?
- Have there been changes in income tax legislation which will affect the distribution of your estate?
- Has there been a major change in the nature and extent of the property you own?

**Even one of these life changes can have a significant impact on the administration of your estate, so it's important to regularly revisit and evaluate your plans.**



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## What now? My next steps:

- Contact your financial advisor or Concentra Trust to get a copy of the Concentra Trust Estate Planning Information document so you can review it.
- Complete the Estate Planning Information document.
- If you don't have an estate lawyer to prepare your Will, Concentra Trust will provide you with an appropriate referral. Not all lawyers specialize in estates and trusts.
- Meet with your lawyer and provide them with your completed Estate Planning Information document, as well as your instructions for your power of attorney and Will.
- Your lawyer will draft your estate documents and share them with you to review thoroughly.
- If there's a clause or section you don't understand or feel comfortable with, ensure your lawyer explains it so you can fully understand each component.
- When you're ready, you can execute your estate documents.

When you decide to appoint Concentra Trust as your sole, co or alternate executor, attorney or trustee, your lawyer will forward your original signed documents to us for safe keeping, a service we provide free-of-charge in these instances. Concentra Trust will acknowledge receipt of your documents via fax to your lawyer and advisor.

Speaking to your family about your Will and estate plan can be uncomfortable, but letting them know you have a plan in place can provide peace of mind and allow them to feel secure in the knowledge you have thoughtfully completed your estate plan.

Concentra Bank/Concentra Trust encourages individuals to seek the advice of trained professionals with experience in estate planning and administration.

While the information presented in this guide is intended for a general audience, suitability will depend upon a number of factors, such as the current laws and practices in your jurisdiction, your individual situation, and your personal needs and preferences.

The information in this guide cannot be considered to be legal, tax, real estate or financial planning advice, nor a substitute for professional advice. Concentra does not warranty, guarantee or otherwise represent that any information in this guide will be effective, accurate or reliable for use by you without professional advice. Concentra shall not be liable for any errors or omissions in the information provided, nor for any loss incurred by you, organizations or their clients, either directly or indirectly, through the use of, or reliance on the documents or the information.

## Glossary

<b>beneficiary</b>	A person or entity named in a Will or financial or insurance contract as the inheritor of property when the property owner dies. A beneficiary can be a spouse, child, charity or any entity or person to who the property owner would like to leave his or her possessions and assets. Caution must be exercised where someone other than a qualified beneficiary has been named on registered plans such as RRSP or RRIF.
<b>estate</b>	The net worth of a person at any point in time. It is the sum of a person's assets – legal rights, interests and entitlements to property of any kind – less liabilities at that time. The estate of a deceased person consists of all the property, whether real or personal, owned by the person at the time of death.
<b>power of attorney</b>	An authorization to act on someone else's behalf in a legal or business matter. A power of attorney may be limited to one specified act or type of act or it may be general. A power of attorney becomes ineffective if its grantor dies or becomes incapacitated unless the grantor specifies that the power of attorney will continue to be effective even if the grantor becomes incapacitated. This type of power of attorney is called an enduring power of attorney.
<b>probate</b>	The legal process by which a person's Will is reviewed and, if valid, authenticated by the court as the individual's "last Will".
<b>letters probate</b>	Court orders that prove the authority of the person or persons named as executor to deal with the property of the deceased person.
<b>real property</b>	A classification of property in common law that refers to land; also termed realty, real estate and immovable property.
<b>rider</b>	Addendum, an additional provision attached to a contract, such as an insurance policy.
<b>testamentary trust</b>	A trust created within a will which does not take effect until the death of the testator.
<b>Will</b>	A legal declaration by which a person, the testator, names one or more persons to manage his estate and provides for the transfer of his property at death; a document or legal instrument in which a person specifies the method to be applied in the management and distribution of his estate after his death.



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