

Session #4 - Wills, Power of Attorney, Health Directives [ideas for the study next Spring]

Wills

The only way to influence the management of property and finances after death is through a will. Any Power of Attorney arrangements cease upon death. In a will you can make sure your property is divided the way you intend after your death, although there are provisions for spousal assets to be shared before a will's directions take effect. [Spouses are generally entitled to ½ of family property.] A will allows your executor to do things, so choose an executor who is trustworthy and competent. It is useful to give your executor a copy of the will, information where you have financial accounts, life insurance information, and any other important documents. People with children under the age of 18 should specify legal custody for the children, because the courts will award custody to a surviving parent even if separated, divorced, or never married. Joint property is not part of a will as long as it has right of survivorship.

Beneficiaries can include people outside your family, charitable organizations, and other institutions. You can specify amounts or percentages of your estate. This does not apply to finances outside of the estate.

Always seek legal advice! There are tax implications with a will. Review your will every 5 years and at any significant life event.

Court costs are set out in the Fees Regulations. They are \$7 per \$1,000 of the value of the estate. If the estate is worth \$1,000 or less, the fee is \$7. For example, if an estate has a value of \$12,000, the Court costs are \$84 (12 x \$7). Court costs apply only to the value of the assets owned solely by the testator and are part of the estate. These costs are paid to the Court when applying for Letters Probate or Letters of Administration. Costs do not apply to the value of any assets that are jointly owned or that are not part of the estate.

For example, legal costs where the value of the estate is \$120,000 are...

- on the first \$10,000 \$ 300
- on the next \$90,000 (2%) 1,800
- on the next \$20,000 (1.5%) 300 TOTAL \$ 2,400

Whether you are acting as an Executor or an Administrator, the beginning steps in administering an estate are the same...

- locate the Will, if there is one
- locate the assets of the deceased and determine their value
- obtain death certificate and notify various agencies of the death - some agencies will require a copy of the death certificate
- prepare a list of beneficiaries and their addresses
- file claims for life insurance, pension plans, death benefits
- obtain the appropriate Court Order - Letters Probate or Letters of Administration, if required
- notify the Public Trustee and Guardian if there are any children under the age of 18, or dependent adults, who may have an interest in the estate
- advertise for creditors in the required form and manner
- call in the estate - gather the assets, arrange for sale of assets not specifically left to a named beneficiary, place all monies from all sources into an estate bank account
- transfer Title of all real property to the estate
- complete Income Tax Returns and obtain the necessary Income Tax Clearance Certificate required to complete the distribution of the estate

- obtain appropriate releases from beneficiaries required to complete the distribution of the estate
- account to the beneficiaries or arrange for passing of accounts if there are any disputes amongst the beneficiaries - passing of accounts means asking the Court to approve the manner in which you intend to distribute the estate
- distribute the estate according to the Will or The Intestate Succession Act

Power of Attorney

Can someone else manage your affairs if you are out of the country, do not wish to manage them yourself anymore, or you become temporarily or permanently incapacitated? Yes, through a Power of Attorney.

PoA is a legal document in which an individual appoints another [called the attorney] to manage your financial and property transactions under specific circumstances. This can cover a broad range of functions or a single transaction, such as a real estate deal. Unless specified this becomes invalid if you become incapable of making your own decisions. In that case you need to make sure you have a Enduring Power of Attorney. This type of direction can take place immediately, come into effect on a specific date, or come into effect on the occurrence of a specific event, such as becoming incapacitated. You can name the people who would make this determination.

In a PoA you are granting the attorney to do anything you would do except make a will. [for examples see sheet from website] There are special situations covering the matrimonial home. If you sign a document at a bank, it only covers assets at that institution.

You should choose someone who is trustworthy and competent. [see sheet from website] You can name more than one person and specify whether their authority is joint or severally. You can list an alternate if the attorney is not available. PoA are not like wills, where the role falls to the trustee's executors.

If you are a named person in a PoA you should know what records to keep. [see website sheet]

Health Care Directives [living will]

How would you like to be treated if you lose your capacity to make decisions about health care? You need a Health Care Directive. It's too late once you become incapacitated. HCD informs doctors and other health care providers about what kind of measures are acceptable to you. In a HCD you can make specific directions or name a proxy [another person] to make decisions for you. You can make a HCD without a lawyer as long as it is in writing, has your signature [witnessed by someone other than the proxy], and dated. It can be useful to give copies to your doctor, family members, and the proxy.

In a HCD you cannot give permission for suicide or euthanasia. You should talk with your family about future health care concerns and make your wishes know. If you become ill and incapable of making health care decisions, and have not prepared a directive, another person may still make decisions for you. That person will be your nearest family member. [see website sheet]

Websites:

Public Legal Education Association of Saskatchewan <http://www.plea.org/>

Government of Saskatchewan <http://www.justice.gov.sk.ca/Powers-of-Attorney>

Patients' Rights <http://www.plea.org/freepubs/pr/PatientsRights40.pdf>