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Chapter 1

What Is Estate Planning, Anyway?

Here's the good news about estate planning: *You* have an estate! You don't have to be a sports star or a computer maven or to have inherited old family money to have an estate or to need to do estate planning.

Now for the bad news about estate planning: It forces you to think about death — and not just in an abstract philosophical kind of way. It forces you to think about *your own* death. You may not enjoy the estate planning process very much, but in this chapter I explain why you should do it even though it's not a lot of fun. I'll ease you gently into estate planning. I briefly discuss the main things you need to know, and then in the following chapters I go into more detail.

Understanding What Your Estate Is

I keep talking about this estate of yours, but before you start wondering why the butler and chauffeur didn't show up for work this morning, I'd better give you a little more detail about what your estate is.

Your estate is made up of everything you own. But in legal terms, your debts — everything you owe — are also part of your estate, because what you own must be used to pay off your debts when you die. (I show you how to take stock of your estate in Chapter 2.)

TECHNICAL STUFF

The things you own are referred to in law and accounting as your *assets*, and the debts you owe as your *liabilities.*

You need to take some other things into account when you're estate planning, although they're not technically part of your estate:

- **Life insurance:** If you have a life insurance policy, when you die either your estate or an individual (or individuals) you name as beneficiary, whichever option you have chosen, will receive the insurance proceeds. (I tell you more about insurance in Chapter 4.)
- **Pension plans:** If you're a member of an employee pension plan, your spouse or a person you name as beneficiary may be entitled to receive a pension after your death or to receive a one-time payment.
- **Government benefits:** Your spouse and/or children may be entitled to receive either a pension or a one-time payment from the Canada Pension Plan, Old Age Security, Veterans Affairs Canada, or your provincial Workers' Compensation Board (known by various names depending on your province) after your death.

REMEMBER

Besides being what you own and owe, your estate is also a legal being that comes into existence on your death. It has some of the same legal rights that you had when you were alive, such as the right to enter into contracts and to sue and be sued. It also has some of the duties you had, the principal one being the duty to pay income tax.

Discovering What Estate Planning Is

Estate planning is essentially two things: planning to build up cash and other property in your estate, and planning what you want to happen to that property after you die.

Estate planning isn't rocket science, but it isn't a one-step process either. To start planning your estate you need to have a clear idea about the following matters:

- What do you own and what do you owe?
- What ways can you find of owning more and owing less so that you have more to leave behind?
- Whom do you want to (or have to) provide for after you're gone, and how much do they need?
- What are the best ways of providing for them?

You're going to have to take a hard, cold look at your financial situation *and* your family relationships and obligations.

Estate planning is not a one-time exercise, either. Whenever a significant event — like love, marriage, babies, divorce — occurs in your life you need to review your estate plan and make any changes that seem necessary.

Figuring Out Why You Need to Do Estate Planning

Here are the main reasons why you need to plan your estate. You want to make sure that when you die,

- You have done everything in your power to see that your family has enough money to manage without you — it takes planning to set aside and invest money for your family and to make sure that you have enough insurance (see Chapter 4).
- Your property goes to the people *you* want to have it — if you die without a valid will, the provincial government decides who gets your property based on rules set by provincial law, and it may well not go to the people you have in mind (see Chapter 12).

- A person *you* choose will look after your estate — without a valid will, there will be no executor (also called estate representative, estate trustee, or liquidator, depending on your province) named by you who will have the automatic right to look after your estate; instead, someone (usually a family member) will have to apply to the court to be appointed to look after it (see Chapter 12).
- You have a say in who will look after your children — if both you and the children's other parent die, a will is the best way to let your surviving family and the courts know whom you would like to care for the children (see Chapter 8).
- Your debts can be paid with the least damage to your estate — if you make no plan for payment of your debts, there may not be enough cash available to pay them (see Chapter 13). If you leave no will, the person appointed to look after your estate will have to sell some of your property to get the necessary cash, without any guidance from you about what to sell and what to keep in order to give to a particular family member or friend.
- The capital gains taxes your estate has to pay will be as low as possible — when you die your estate is taxed as if you had sold everything you owned just before you died, and without proper tax planning the bill can be high (see Chapter 3).
- The probate fees (sometimes called an estate administration tax) payable in all provinces other than Quebec and Manitoba will be as low as possible — in almost all provinces probate fees are calculated according to how much your estate is worth; with advance planning you can reduce the value of your estate for probate purposes, and so reduce these fees (see Chapter 3).
- The future of any business you own has been looked after — you need to plan ahead, whether you want your business to carry on (who should look after it?) or whether you want it to be sold (how to get the most money for it?). (See Chapter 9.)

Here's a final, even more morbid, reason to plan your estate. As part of the process you can let your family know what you'd like done with your body. (Oddly enough, your body is not part of your estate, unlike the other things that belonged to you when you were alive, it belongs to your executor or, if you have no executor, your closest relative.) You can make your wishes known about organ donation (yes or no) and funeral arrangements (plain oak or elaborate casket, burial or cremation, flowers or donations to a favourite charity), so that your family members don't have to go through the stress of making choices they think you'd approve of, or maybe even end up fighting about.

Getting a Handle on Estate Planning Tools

When you know what your estate consists of and what you want to give to whom, you can choose some estate planning tools to help you do what you want.

These are the most commonly used estate planning tools:

- **A will:** A will is a written, signed, and witnessed document that states how you want your property to be given away after you die, and appoints an *executor* to look after your property and debts after your death. I strongly advise that you have a lawyer prepare your will. (I tell you more about wills in Chapters 12 and 13.)
- **Gifts given during your lifetime:** A gift is a transfer of all of your rights over a piece of property. (After you make a gift, you no longer have the right to hold on to the thing given or to sell it or to take it back from the person you gave it to or to leave it to another person in your will.) Giving a valuable gift usually has tax consequences for the giver. "Tax consequences" is a fancy way of saying "tax payments." I tell you more about gifts in Chapter 5.

TECHNICAL STUFF

- Trusts: A trust is another way to give property away during your lifetime. But instead of giving the property directly to the person you want to have the use of it (the beneficiary), you choose another person (a trustee) to hold and look after it for the use of the beneficiary. Why, you may be asking, would anyone want to do a weird thing like this? The main reason is to prevent the beneficiary from having total control of the property (for example, if the beneficiary is a child, or has a mental disability, or is hopeless about business matters; or if you want one person to have use of the property in the short term but want a different person to become the owner of the property at a later date). Setting up a trust may have income tax benefits. If you decide to set a trust up, you'll need a professional — an estates and trusts lawyer or a tax lawyer, to advise you and to do the paperwork. (For more on trusts, see Chapter 6).
- **Joint ownership of property during your lifetime:** Joint ownership while you're alive allows you to control who gets the jointly owned property when you die. You can own property jointly with another person (or with other people). All sorts of property (real estate, bank accounts, mutual funds, or other investments) can be owned in this way. When you die, your share in the property will automatically pass to the surviving owner without being mentioned in your will in all provinces other than Quebec.
- **Life insurance:** Life insurance is a kind of bet that you make with an insurance company. You're betting that you'll die while the policy is in effect, and the life insurance company is betting that you won't. If the life insurance

company loses, it has to pay up on the bet — that's the proceeds of the policy. A life insurance policy will help you ensure that your family has enough money after you die to replace the income you will no longer be around to earn, or to help them pay off taxes or other debts without using up your estate. However, many insurance policies end when the insured reaches retirement age — in other words, just when your chance of winning starts to improve.

Knowing When You Should Make an Estate Plan

Most people put off estate planning because they don't want to face the certainty of dying. Some people are even afraid that doing some estate planning makes them more likely to die. According to an Ipsos survey conducted in 2022, 74 percent of Canadians 55 and older have a will, but only 34 percent of those between 35–54 have one, and only 30 percent of those under 35 have one. Overall, only 48 percent of Canadians have a will. I can assure you that there is no cause-and-effect relationship between estate planning and death. There is however a cause-and-effect relationship between a lack of estate planning and wasted time, trouble, and aggravation for the people you care about.

TIP

You should make an estate plan as soon as you have any significant property (and you care who's going to get it) or as soon as anyone is financially dependent on you, whichever happens sooner. You are legally able to make a will when you're quite young — as soon as you are 18 years old (even younger in some limited circumstances, as I explain in Chapter 13). Don't assume that estate planning is something to do when you're "old," because you don't have to be old to die.

Going through the estate planning process once is not the end of the matter. You will have to change your estate plan as changes occur

- **In your personal life.** You should review your estate plan if you marry. Have a look again if you have children and as they grow up, leave home, and start to earn their own living. Think about changing your will if your spouse or partner dies or if you divorce or even if you separate and meet someone new.
- **In your business life.** If you start a business either alone or with others, you should review your estate plan to make sure it deals with your business's debts and with whether your business will fold or carry on under new management when you die.

TECHNICAL STUFF

- **In your executor's life.** You may need to change your will if the person you have named as your executor is no longer willing or able to take on those duties, or if you decide that you need someone with more sophisticated business or investment skills.
- **In the value of your property.** If the value of the property you own goes way up or down in value, you may want to make changes to your estate plan to deal with the change in the taxes your estate will have to pay and with the debts your estate may have. You may also want to rethink how you've divided up your property in your will if you're trying to treat everyone equally.
- **In the law.** Between the time you plan your estate and the date you die there may well be changes to tax law, family law, and estate law that may require changes to your estate plan.

Looking After Your Needs

You're not dead yet. When you put together your estate plan don't get so carried away with looking after everybody when you're dead that you forget to look after yourself while you're still alive.

What if you build up your investments but never have any money for new clothes, a night out, or a vacation? Suppose you were to give your cottage to your children on the understanding that you had the use of it for a few weeks every year? How happy would you be if they squabbled with you about when it was your turn and when it was theirs? What if you made your unmarried significant other a joint owner with you of the house *you* bought . . . only to find one day that significant other had run off with your best friend?

You must make sure that your plans leave you with enough money and property (and enough control over your money and property) to last you until you die.

Planning in Case You Become Physically or Mentally Incapable

While you're confronting your own mortality, you have to also think about the possible decline before your ultimate fall.

A complete estate plan includes a plan for any time during your life that you can't manage your own financial affairs — not only if you get Alzheimer's disease but if a car accident leaves you in a coma, or if you have an operation that puts you out of commission for even just a short time, or, on a happier note, if you're spending two or three months in Florida during the winter and you want someone to be able to look after things while you're away.

TECHNICAL STUFF

The tool used for managing financial matters is a *power of attorney.* A power of attorney is a written, signed, and witnessed document that gives the person of your choice (called an *attorney* in most provinces) authority to handle your legal and financial affairs.

You also have to think about what you want done if your health declines to the point that you are no longer able to make decisions about your own health care. When that happens, someone else has to make decisions on your behalf — but who do you want that someone to be? And what decisions do you want that person to make?

The tool used to deal with health matters is a *living will,* (known by various names depending on your province), by which I mean a written document that sets out your wishes about your health care, and that appoints a person (family member or friend or anyone you wish) to make health care decisions if you become unable to make those decisions for yourself. If you don't have a living will, provincial law tells doctors and hospitals which of your nearest and dearest they should turn to for instructions. First on the list is a spouse, then adult children, and so on. If you run out of close relatives, the doctors and hospitals may have to ask a government official what to do with you.

Getting Professional Help

Should you get professional help? In a word, yes — except in the very simplest, most straightforward of cases — and your estate is probably not one of them! I want to make this very clear. Estate planning and will preparation are dangerous territory for the do-it-yourselfer. The law in these areas is very complicated.

WARNING

If you make a mistake in preparing or signing your own will and power of attorney, they may not do what you want them to do, or, even worse, they may be totally invalid. And let's not even think about what will happen if you make a mistake in planning to reduce the taxes on your estate.

But naturally you're worried about the cost of professional help. Will you have anything left in your estate after you pay for it? Obviously, cost will be related to the amount of work you want done. If you have a large estate and need to make complex arrangements to reduce taxes, sure it will be expensive, but generally a will is a real bargain as far as legal services go.

Lawyers aren't the only professionals who can help you in planning your estate. Although a lawyer (or, in Quebec and British Columbia, a notary) with experience in will preparation should always be used to draft the actual legal documents and can usually give you much of the estate planning advice that you need, other professionals, such as accountants and financial planners, can also help in the financial, investment, and tax-saving part of the planning process. You may also be able to get advice from people or institutions you may deal with while building or planning your estate, such as

- Insurance agents or brokers
- Trust companies or banks
- Stockbrokers and mutual fund agents or brokers

TIP

Even with professional help, the more you know the better. That's where this book will come in handy. I'll take you through the process of estate planning, financial planning, and preparing a will and other documents so that you can get the most out of your professional advisers.