The Importance of Assistance

Plan Ahead

Even though we live in the same country, the regulations that apply in the event of mental or physical incapacity, or when settling an estate, can vary from province to province. This is why it is so important to know the regulations of the province where you live, to make sure your loved ones are aware of your personal and health care wishes should you no longer be able to make your own decisions, and to clearly establish how your assets will be distributed after your death.

Prudent planning not only ensures that your choices are respected, it also saves your beneficiaries a lot of stress when it comes to expenses, delays and possible conflicts concerning your incapacity or death.

Plan ahead, don't leave room for chance.

If You Die Without a Will

If you die without a will in Saskatchewan, you are considered to be "intestate," which means that your estate will be distributed to your "next of kin" according to the laws of Saskatchewan. Depending on your situation, your assets will be divided as shown in Tables 1 and 2 below. In addition, if you have real property in a province other than Saskatchewan, the distribution rules of that province will apply to that real property.

If the intestate dies leaving no spouse, children or descendants, parents, siblings, nieces or nephews, then the estate must be distributed equally among the next of kin of equal degree of consanguinity to the intestate, but only as to blood or half-blood relatives.

An example of consanguinity is if George dies intestate, without a spouse, children, parents or grandparents, but is survived by an uncle on his father's side and a first cousin on his mother's side, the uncle is considered third degree and the cousin is considered fourth degree. The uncle has priority and would inherit George's entire estate, according to consanguinity.

> An unplanned estate could result in more expenses, delays and conflict for your beneficiaries.

Table 1 – Dying without a will leaving a spouse and children	
Spouse or common-law partner[1] only	All to spouse or common-law partner.
Child or children only	All to only child (or divided among children in equal portions). If a child is deceased, then the deceased child's portion is divided equally among the deceased child's descendants.
Spouse or common-law partner and child or children from the relationship between the spouse (common-law partner) and the deceased	All to spouse or common-law partner.
Spouse or common-law partner and one child not from the relationship between spouse (common-law partner) and the deceased	The first portion corresponding to the greater of $200,000[2] and half of the net value of the estate devolves to the spouse or common-law partner; the remainder is divided between the spouse or common-law partner and child. If the child is deceased, then the deceased child's portion is divided equally among the deceased child's descendants.
Spouse or common-law partner and children not from the relationship between spouse (common-law partner) and the deceased	The first portion corresponding to the greater of $200,000[2] and half of the net value of the estate devolves to the spouse or common-law partner; one-third of the remainder to spouse or common-law partner and two-thirds divided equally among the children. If a child is deceased, then the deceased child's portion is divided equally among the deceased child's descendants.
No spouse or common-law partner or children	See Table 2.

1 Common-law partner is defined as a person who continuously cohabitated with the deceased as spouse for a period of at least two years and (i) at the time of the deceased's death was still cohabiting with the deceased or (ii) had ceased to cohabit with the deceased within 24 months before the deceased's death.

2 If the net value of the estate does not exceed $200,000, the entire estate devolves to the spouse or common-law partner.

Table 2 – Dying without a will leaving no spouse or children	
Father and mother	100% divided equally between father and mother or wholly to the survivor of them.
Father and mother are deceased, survived by the deceased's siblings	100% divided equally among the siblings (or if a sibling is deceased, then the deceased sibling's share is divided equally among his or her children).
Father, mother and siblings are deceased, survived by nieces and nephews	100% divided among nephews and nieces in equal shares.
Father, mother, siblings and nieces and nephews are deceased	100% divided equally among the next of kin of equal degree of consanguinity, but only as to blood or half-blood relatives.

Incapacity Management

In Saskatchewan, incapacity planning includes the preparation of an Enduring Power of Attorney for financial matters and a Health Care Directive for health care and medical treatment matters.

An Enduring Power of Attorney entitles the attorney to make financial and legal decisions on your behalf when you are no longer capable of making decisions. Your attorney can do anything with your property that you could do when capable, with certain restrictions, such as making or altering a will on behalf of the donor. Further restrictions on the authority of your attorney may be set out in the Power of Attorney document. The Enduring Power of Attorney only applies while you are alive and ceases to be effective upon your death. It is important that the attorney is someone whom you trust, and who has the skills to manage your property. In addition, for older adults, it is essential to appoint a younger person, possibly as an alternate attorney, to act if the first person selected cannot fulfill their duties. In some cases, it may be appropriate to appoint a professional trust company, such as National Bank Trust, as your attorney for property.

A Health Care Directive allows you to give instructions for the health care and medical treatment you wish to receive or not receive if you become unable to make health care decisions. In a Health Care Directive, you may appoint a proxy to make specific health care decisions on your behalf when you are no longer capable of making decisions or communicating your wishes. Where a Health Care Directive does not give directions for specific circumstances, your proxy must make decisions for you according to what they consider is in your best interest.

Your incapacity plan and estate plan should be prepared in coordination with your spouse. You should seek legal advice to ensure that both plans work together and your overall wishes are implemented.

Probate Facts

Probate is the process by which the Court of Queen's Bench in Saskatchewan, upon application by the executor, verifies that a document is your valid last will. The Court will issue a "Grant of Letters Probate," confirming the executor's appointment and giving assurance that assets are transferred to the proper beneficiaries. In this way, probate provides some liability protection to the executor.

In Saskatchewan, the probate fees payable when filing an application for Grant of Letters Probate are $7 on each $1,000 or portion thereof of assets passing through the estate. In addition, if the executor hires a lawyer to represent the estate with the probate process, the Court rules will prescribe the maximum fee that the lawyer can charge for "core" legal services.

These fees can be minimized in a variety of ways, including:

- Gifting during your lifetime;
- Designating beneficiaries on registered plans such as RRSPs, RRIFs, TFSAs, life insurance policy proceeds, pension plans and segregated funds;
- Transferring real property into joint tenancy;
- Adding joint owners to bank and investment accounts; and
- Transferring property into a trust during your lifetime.

Please note that the above techniques do not replace the need to have a will in place. They are merely additional tools for transferring assets.

There are significant advantages and disadvantages with each of the above planning techniques. If you focus too much on avoiding probate fees, your plan may have unintended consequences. For example, you may create trusts in your will and also designate beneficiaries for your major assets such as your RRIF and insurance policies. The end result may be that your estate avoids probate on these assets but there may be insufficient assets with which to establish the trusts because the assets are no longer part of your estate that is subject to the terms of your will. In many of these cases, the probate fees saved will be less than the potential benefits of trust planning and proper will drafting. In addition, transferring property into joint ownership can lead to reduced control over the assets during your lifetime and potential disputes among your heirs after your death.

We strongly recommend that you have a discussion with your legal advisor before implementing any of these options to ensure they fit with your overall estate plan.

Should you have any questions,
do not hesitate to contact us.

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