

WILLS, POWERS OF ATTORNEY AND ESTATE PLANNING

1. WILLS

a) What is a Will?

- A Will is a written document that expresses your last wishes.
- It names one or more executors.
- It establishes how you want your money and possessions distributed.

b) What is an Executor/Trustee?

An executor is the person that you appoint to carry out the instructions in your Will. An executor can be a close friend or relative, (your accountant, lawyer or a trust company, in case of a large estate)

c) What happens if you die without a Will?

When you die without a Will, the courts and the Law will choose the person who will administer your estate. This person will distribute your assets according to a legal formula.

d) What are the benefits of having a Will?

- You decide what happens to your property, who gets what and how much - not some legal formula
- You choose the person or persons who will look after and raise your children
- You enjoy peace of mind knowing that your affairs are in order and that your family will be protected
- You can establish a trust fund for your children in order to provide for their care and education
- You spare your family unnecessary delays, expenses and court costs
- Your estate should pay fewer taxes with proper planning

e) Why should I consider setting up a Trust?

Children under the age of 18 are not allowed to inherit money or property outright. Rather, it must be held in a trust for them until they reach the age of majority.

By preparing a Will you can decide what this money should be used for, who should manage it and at what age the balance should be paid out to your children. If you die without a Will the Public Trustee will step in to set up and manage the trust on behalf of your children.

f) What if I already have a Will?

Your will should be reviewed on a regular basis. If your financial and/or family situation changes you may need a new one. These changes include:

- Marriage
- Separation or Divorce
- Having children
- Moving
- Living common-law
- Job loss
- Changes to the law

2. POWERS OF ATTORNEY FOR MENTAL INCAPACITY

a) What is a Power of Attorney for Property?

A Power of Attorney for Property is a document that allows you to appoint one or more people to handle your financial affairs, when you are unable to manage them, because of mental incapacity. If you do not have one and disaster strikes, your assets may be frozen until the court appoints someone to act on your behalf. The Public Guardian and Trustee will intervene in the meantime.

b) Does the attorney have to be a lawyer?

The word "attorney" is a legal term and does not mean that you must appoint a lawyer. Your attorney can be anybody that you choose – your spouse, a close family member or friend.

c) What can the attorney do?

The attorney has the same authority to deal with your property and finances as you. However, you can limit your attorney's powers if you choose.

d) What is a Power of Attorney for Personal Care?

A Power of Attorney for Personal Care is a document that allows you to name someone to make personal and health care decisions on your behalf, in the event that you do not have the mental capacity to make these decisions. In addition, you can include instructions about the type of the medical treatment you want, or do not want, (often referred to as a living Will). If you are unable to speak, these instructions will speak for you.

3. ESTATE PLANNING

As you will accumulate assets, you will have to plan on how to deal with these in order to pay the minimum capital taxes on death. Here are a few tips:

- transfer assets to your children when you are alive, but keeping control (Trusts, etc.)
- insurance beneficiary designation
- estate freezing by using corporations in which you retain control
- Shareholder Agreement

FELIX ROCCA, B.A.,LL.B.

Barrister & Solicitor

7050 Weston Rd. Suite 302

(at Steeles Ave. W. & Weston Road)

Vaughan, Ontario, L4L 8G7

Tel No. (905) 851-7747

Fax No. (905) 851-7834

e-mail address: felixrocca@rogers.com

D:/Miscelan./wills.pamphlet.eng