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Charitable giving, capacity and POAs

Nicola · Tuesday, September 13th, 2011

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As the average lifespan of Canadians increases, so does the probability of acquiring a critical illness requiring long-term care or becoming mentally incapacitated during our lifetime. What if you or your clients aren't capable of making crucial decisions concerning your health, finances or the care of young children? A recent study by BMO suggests that fewer than six in ten polled have a Power of Attorney for personal care in place and 54% don't think they need one yet. But as Jonathan Chevereau noted in his recent article 'Who takes care of your money when you can't?'; "Yet" is the operative word and time may be shorter than you think.

Wills and power of attorney are the cornerstones of estate planning

To prepare for such a possibility, you need to have a properly executed Power of Attorney (POA) or Mandate in Quebec, both for personal care and for property. You will also need to have an up-to-date Will. While there are several ways to ensure your estate goals are accomplished, these two are considered cornerstones of estate planning. Everyone should have both.

A Will is a legal declaration of a person's wishes as to the disposition of his or her property or estate after their death. It is the most important document you have to ensure that your wishes are carried out after you are gone. Many people delay writing their Will under the assumption that being young, or in good health or without dependants, justify waiting. However, if your assumption is wrong, your beneficiaries will get what the province mandates. In addition, the absence of a prepared Will

invariably causes delays and extra expense for surviving loved ones.

A will is important for planned gifts because by far, the most common way to plan a gift is a simple bequest through a will. The deceased will receive a tax receipt and can claim up to 100% of net income for charitable donations in the year of death and in the year prior. This is appealing for donors who wish to minimize their taxes at death and increasingly, advisors are recommending charitable donations as part of the overall estate plan for clients.

A POA for property is a legal document that gives someone the authority to manage and govern your property and financial affairs while you are still living if you become incapable of doing so. There are different roles a power of attorney can take on, over a limited period of time (i.e. during your absence on vacation) or in more enduring situations and with broader control (i.e. managing all of your financial affairs if you are somehow incapacitated). POA's are an important tool in planned giving. The POA's key function is to allow the attorney to keep a planned gift strategy viable. For instance, if the attorney is not permitted to make charitable donations, a comprehensive tax strategy using charitable gifts to reduce estate taxes may collapse.

Naming beneficiaries

Careful consideration should be given to the value of your estate and those people and charitable organizations you wish to benefit from it. Questions that should be considered are who should receive what, and under what circumstances. In order to avoid disputes, it is important that life policy and registered plan policy beneficiaries are clearly outlined, both in your will and in supporting beneficiary designation documents with your plan providers.

When considering using a beneficiary designation in charitable giving, care must be exercised to ensure that a tax receipt can be issued for the actual transfer of the property. Upon death, a tax receipt can be issued for property received by virtue of a charity being named the beneficiary of a life insurance policy (including life insurance segregated funds and life insurance annuities), and as a beneficiary of a RRSP or RRIF. However, in other situations such as a charity being named the capital or income beneficiary of a trust, the payment to a beneficiary may be legal obligation of the trust and not a voluntary act. Therefore, such a transfer is not eligible for a tax receipt (yet the property was actually transferred to the charity).

Choosing an executor

Your executor is responsible for administering your estate according to the wishes in your Will. Not only should you choose a primary executor, but also an alternate (a contingent) if you are concerned whether or not an individual you appoint would be up to the task. You can also consider naming a corporate executor, such as a trust company, to undertake this role for you.

The duties of an executor are many and complex, and the emotional strain can be high, so choose this person carefully. Letting them clearly know your wishes will give you peace of mind, and will allow them to act decisively during a potentially unsettling time.

Whatever stage of life you are at, Wills and powers of attorney are two cornerstones of prudent estate and charitable gift planning. They can help ensure that your worldly assets are properly cared for, and that the most important people and causes in your life are properly considered at an important time.

This article has been adapted by Benefaction with permission from the author, James Dunne, Wealth Advisor at ScotiaMcLeod in Toronto.

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