EXPERT ADVICE

Taking Control of Your Estate

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During the past 60-plus years, the boom generation has come further, worked harder and acquired more wealth than any previous generation. They are now fully into 'the transition' and will be spending it all, or passing it onto future generations.

For those of you who aren't spending it all, you have an important decision to make:

- Let the government control how your estate is distributed; or
- Manage that distribution yourself

The following are some of the issues that come up frequently in our Wills & Estates Practice.

Did you know if you die without a valid will, your estate will be distributed according to provincial legislation?

In Newfoundland and Labrador, when a person dies without a will — i.e. intestate — the court will appoint someone to administer the estate and distribute the assets according to estate and family laws. So, the person appointed may not be the one you would have chosen to handle your affairs. Furthermore, the person appointed may distribute your assets in a manner which may not reflect your wishes.

Did you know common law spouses do not have the same automatic right to share in the estate as married spouses?

According to the *Intestate Succession Act*, the definition of 'spouse' does not include common law spouses. So, while there are specific provisions in our legislation which govern the distribution of assets for married spouses who die without a will, there are no such provisions recognizing common law spouses who die without a will, regardless of the length of the relationship.

Did you know a marriage will revoke your will unless it was specifically made in contemplation of marriage?

Unless you identify in your will that it is being made in contemplation of marriage, a subsequent marriage would void your will. However, it is noteworthy that a subsequent divorce will not void a will. So, the mere fact that your current partner is separated or divorced does not invalidate his or her previous will.

Did you know you may appoint a guardian in your will to care for your children?

Our legislation allows for individuals to appoint a guardian(s) for their children in their will. This guardianship clause only takes effect if the other parent entitled to custody is already deceased or otherwise unable to care for the children.

Did you know you may be putting your assets at risk by using a 'do-it-yourself' will kit?

IIn recent years, 'do-it-yourself' will kits have become very common. They are attractive because of their low cost and the simplicity of filling in the blanks. However, there are many potential problems which may arise after your death. The money saved by using a will kit may be insignificant if your estate incurs thousands of dollars in legal fees to settle disputes or clarify your wishes.

There are many ways in which will kits may be invalid without your knowledge. For example, if you complete a will kit without arranging for formal execution, then your last will & testament will be invalid.

Will kits do not give personalized estate planning advice. Only legal professionals are able to ensure a personalized approach that is unique to each individual. ■

ABOVE BACK ROW L-R Darren Purchase, Kellie Cullihall, Stephen Orr, Michael Cabot
FRONT ROW Leah Mazerolle, Sharon McKim-Ryan, Katrina Hanlon, Barbara Oley