

# **7 Essentials of Estate Planning**

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# All in the Details

There is no doubt that estate planning becomes more complex with age and wealth, requiring one to regularly review and revise a plan's finer points. Here we present 7 essentials of estate planning that can be used to test if your estate plan requires attention.

Sorting through many directives of a loved one's estate "post-mortem" can be challenging to say the least. Emotional duress is high while important decisions and issues must be resolved. If your will has not accounted for the birth of a child, the purchase of a vacation home, or other major life events, the distribution of your estate will be complicated and likely impeded.

Though there is no deadline for when an estate must be settled, it typically takes between 6 and 12 months. A thoroughly constructed estate plan can make these stressful months easier on your loved ones. The drafting of your estate plan often includes the assistance of a lawyer, who compiles three documents which form the beginnings of your estate plan. As part of our wealth management commitment to you, Qube is happy to review and comment on all three. While lawyers tend to specialize in the validity of your estate documents, Qube tends to focus on the tax, distributive, and functional implications.

**1. A power of attorney-** how your **non-medical** affairs are handled should you become **incapacitated**

**2. An advanced medical directive-** how your **medical care** is handled should you become **incapacitated**

**3. A will-** how your **estate** is handled **after your passing** (and the focus of this article)

## General Tips

Before we get to the 7 essentials, there are some basics that must be in place. Your will should be a living document. As your life changes, so should your will. Did you...

- Get married,
- Get divorced,
- Have grandchildren,
- Start a new business,
- Purchase a rental property,
- Or move to a different province?

The above list is not exhaustive, but milestones such as these need to be reflected in the details of your will.



It is never too late to update your will, with some opting to write a simple addendum, typically called a **codicil**. To ensure your codicil is valid in Alberta, it must be signed and dated by yourself plus two witnesses and can cover various minor adjustments to your existing will.

An often-overlooked part of estate planning is informing your executors about the location of your estate documents. If you have a will, does your lawyer keep a copy? Did you put another copy in your safe? Or hidden away in a long-forgotten filing cabinet?

We highly suggest making multiple copies of your will, not only for insurance in case one gets lost, but to make certain that those for whom the will is intended have access to it. Provide a copy to your executor or give them the safe combination to ensure timely administration. Taking these measures prevents the records from being lost, and your executors will not incorrectly assume that you have passed **intestate** (without a will).



A personal directive—another important estate document—can be registered in Alberta so that medical providers know you have one and whom to contact for instructions. Our staff can provide you with more information on registering your personal directive. You can also read more about personal directives [here](#).

As a general rule, we recommend not making things too complicated. For the most part, trusts or contingent wealth transfers erode an estate; further on, we will explain more tax-efficient ways to transfer wealth to your beneficiaries. The most complex wills also seem to be the ones that become outdated the quickest. One legislative change may be all it takes for your complex planning to become moot.

Since Canada favours domestic partnerships, most clients typically put together a mirror will that leaves everything to each other. Your house, investments, and even private business shares can become your partner's on a tax-deferred basis. When both you and your partner have passed, the mirror will is followed by an estate distribution to beneficiaries, and, at this point, taxes will be due. After taxes, the beneficiaries of the estate receive the assets.

Some of our tax modelling indicates that a mirror will is not optimal and consideration of capturing some tax on the first passing should be done. Qube will tackle this by doing an Estate Tax projection when reviewing your estate plan.

And now for the 7 essentials:

### **Essential #1: Executors**

Picking an executor sets in motion how your estate is administered. Generally, we see that couples choose each other as executors, with their children appointed as co-executors. For most estates, this works fine.

Sometimes clients ask about hiring third-party professional executors. In addition to paying extremely high fees, many receive dubious benefits from going this route.

The deceased's lawyer, accountant, and portfolio manager are already involved in the administration, completing most of the work and assisting the executor. So, generally speaking, adding another advisor to the team is not greatly helpful and potentially problematic.

When determining an executor, you should consider their ability to administer the estate. Logistically, your daughter living in Paris is likely not a good executor due to her remote location; your grandchild in Sherwood Park is probably a better choice. Further, if all of your top choices for executor are non-Canadian residents, your estate taxes can become unduly complicated. Comparatively, a Canadian executor may have a more streamlined experience with these taxes.

Consider what qualities might describe a suitable executor: highly organized with a diplomatic demeanor and clear communication skills. Above all, you want to choose an executor who will be trustworthy when fulfilling the role. Yet another consideration is time. Will your executor have the room in their schedule to prioritize your estate's administration?

In your will, we recommend:

- Naming a primary and contingent executor(s),
- Ensuring your executor has broad powers to administer the estate,
- If the executor does not live in Alberta, including a clause waiving the requirement of an estate bond,
- Considering entitlement to compensation for complicated estates. In Alberta, executor fees are generally charged on the estate's gross value in a tiered structure. Three to 5% on the first \$250,000, 2-4% on the next \$250,000, and 0.5-3% for the remaining balance. For a \$3M estate, executor compensation can be between \$25,000 and \$97,500.

## Essential #2: Beneficiaries

Who receives your assets after you pass? It is an important, possibly philosophical question—but also one with significant tax considerations. As discussed, Canada allows for your partner to receive your assets tax-free. So, typically, the primary beneficiaries are spouses, and then contingent beneficiaries are children or other relatives. An experienced wealth manager will recognize the opportunities for tax-efficient distributions to contingent beneficiaries.

Most clients have an RRSP, RRIF, or TFSA containing savings. With these accounts, you can designate beneficiaries. For RRSPs, we recommend designating a spouse or partner as the beneficiary and the estate as the contingent beneficiary. When the account owner passes, the RRSP transfers tax-free to their spouse, bypassing the estate.

RRSPs and TFSAs are both registered accounts with different advantages and disadvantages. [Read](#) more about them.

As a result, it should not be subject to **probate**. If the account owner dies without a surviving spouse, the funds are distributed to a contingent beneficiary.

**Probate** is what the courts charge for confirming you have passed away and your estate is allowed to be administered. Many estate planning books focus on minimizing probate. The amount depends on your province of residence. For Albertans, the highest probate fee is \$525 (as of 2022).

When the contingent beneficiary is not the estate (say, a child of the deceased), the funds go directly to the beneficiary, but the money in the RRSP is considered income and taxable to the estate. Your spouse can be named as the beneficiary of your RRSP or RRIF—called the successor annuitant—giving them ownership of the account without having to pay taxes or probate.

For example, if the RRSP totals \$200,000, the child would receive \$200,000 and, at a 30% tax rate, the estate would be liable for \$60,000 in taxes—which would need to be paid for by other estate assets. However, if the contingent beneficiary is the estate, \$200,000 flows to the estate, which pays the \$60,000 tax. Then, the child receives the remaining \$140,000. In the end, the amount is the same, but without the risk of the estate having to pay tax liabilities from a different asset.

TFSA's are slightly different. When opening the account, you can designate either a beneficiary (anyone) or successor holder (spouse/partner only). By designating a beneficiary, they receive the money in the TFSA, and the account closes. The amount at the time of death is tax-free. If the amount increases since their loved one's passing, the beneficiary receives the funds, but the difference in value will be considered taxable.

With a successor holder (that is, your spouse or partner), the account transfers with the savings and remaining contribution room. The TFSA can bypass probate in an estate with either a beneficiary or successor holder.

### **What about beneficiaries under 18?**

This is a question we often receive. A common approach is to use a trust. The basic concept of trusts is well-known; you move assets to a trust, and the beneficiary has limited access to the funds until they meet pre-determined criteria. A common limitation is that the funds can only be accessed for education until the beneficiary turns 25. Trusts are less common in Canada, with many finding the maintenance requirements of the trust too inconvenient.

If, within your estate plan, you want to encourage education for your grandchild, we would suggest distributing funds to a Registered Education Savings Plan (RESP). Keep in mind, however, the \$50,000 total contribution limit. In fact, you can read a detailed explanation of RESP contributions [here](#).

If you want the beneficiary to reach the age of majority before they gain access to the funds, put those funds into an informal in-trust-for (ITF) account. ITF accounts are taxed differently than formal trusts, which pay the highest marginal tax rates on income and capital gains.

Through an ITF account, capital gains are taxed in the beneficiary's hands at their marginal rate. Then, any dividend or interest income will be taxed in the hands of the trustee or contributor at their marginal tax rate. It is a tax rule unique to inheritance. Since a minor has little to no income, using an ITF rather than a formal trust for inheritance can be incredibly tax-efficient!



### Essential #3: Properties



In retirement, you might have become a snowbird: flying south to spend the winter in the United States and returning to Canada in the warmer months. If so, have you considered how owning an American property affects your estate?

Those who have purchased their warm-weather getaway run the risk of their estate becoming subject to foreign death taxes. The US has an aggressive tax regime, but you can avoid this by having an international or American will—one that covers only your property and assets in the US—in addition to your Canadian will. Obviously, specialized advice and planning will be required in this case.

Another tax-efficient opportunity for those with multiple properties is the capital gains exemption. If you have both a vacation home and a personal residence, your executor will need to carefully consider to which one they will apply the principal residence exemption. Sometimes, your second property will have accrued more value than your first home.

Imagine the following: In 2005, you bought a house in Edmonton for \$250,000 and, in 2007, a cottage at Pigeon Lake for \$125,000. You could have more capital gains from the Pigeon Lake cottage than from your home. If the cottage along with the 2005-2007 appreciation on your house is greater than the house gains alone between 2005 and your death, it might make more sense for your estate to apply the principal residence exemption to the cottage. At this point, the gains on your house after 2007 would be considered taxable. The designation of primary residence must be documented in your annual tax return. Therefore, this requires the advance planning which a skilled professional can provide.

When considering your properties in the estate planning process, a pre-signed change of title can help expedite administration (assuming you plan to hold these assets until your passing). At death, the change of title is processed, and your beneficiaries assume ownership of the properties. However, if you name a beneficiary of the properties in your will and transfer ownership without the pre-signed change of title, the properties will be included in the total value of your estate. This has been of special interest in recent years to many US property owners.

In Alberta, the value of your estate is of less relevance for probate, but the estate value can influence legal fees. Some will charge a flat fee, and others charge a percentage of the estate. Check with your lawyer to learn how they charge for estates.



### Essential #4: Funeral Planning

Many wills give the executor discretion and authority to plan a funeral. We recommend specifying how you want your remains handled: buried, cremated, or otherwise. Clients who have a non-registered investment account should review the benefits of planning and pre-paying for their funeral arrangements. You can lock in the current price of a service and burial, instead of leaving those difficult and costly arrangements to your loved ones.



Most funeral home pre-payments use an Eligible Funeral Arrangement (EFA). An EFA is governed by the Income Tax Act in section 148.1 and has specific funding and withdrawal rules. Through an EFA, contributions up to \$35,000 are invested and can grow tax-free. The funds are also withdrawn tax-free when needed for the funeral, cemetery, and/or cremation expenses.

If the funds within your EFA exceed the cost of your funeral and related expenses, the surplus can be transferred to another EFA. Alternatively, the funds are distributed to your estate and taxed in the hands of your beneficiary.

## Essential #5: Life Insurance

Perhaps your wishes include estate equalization in monetary value, but not all your assets are liquid. Imagine your youngest child loves the townhome in Canmore, and your firstborn moved to Ontario and rarely returns to Alberta. You want to give the youngest the townhome, which is worth \$800,000, but the rest of your estate is only worth \$500,000. Here, some people will use life insurance to create the needed \$300,000 to make the two values equal.

We often see a clause in the will naming beneficiaries of a life insurance policy. What clients may not be aware of is that **the named beneficiary of a life insurance policy overrides a will**. If a client still has their former spouse named in their policy but their children designated in their will, their former spouse will receive the policy's death benefit.

In addition to updating your will with changing life events, one also needs to update their life insurance beneficiaries. These simple updates can avoid complicated legal battles.

Another common occurrence with life insurance is the designation of the estate as an alternative beneficiary. Typically, life insurance proceeds are paid out tax-free. When they are given to the estate, rather than a contingent beneficiary, the payout is still tax-free, but it may be eroded by estate administration taxes and settlement costs. As such, we recommend naming contingent beneficiaries in your life insurance.

Because most wills are templated, we sometimes see life insurance mentioned even when a client does not have any policies. When making your will, do not mention a life insurance policy if you do not have one; save your executors the time of searching for a policy that does not exist. If you get life insurance after you make your will, simply add a codicil, or keep a copy of your life insurance with your estate documents.



## Essential #6: Disaster Clause

As much as we would like to, we cannot predict the future, and tragedies happen. We recommend every client include a disaster clause in their will. This clause addresses what should happen if you, your beneficiaries, and their heirs all pass away suddenly. Who then is left to receive the assets of your estate? In Alberta, our estates are governed by the Wills and Succession Act which says that if all your named beneficiaries pre-decease you, your estate goes to:

- Your parents, then;
- Your grandparents, then;
- Descendants of your parents, then;
- If no lineage, the crown.

One option is to name a person you are close to who normally would not receive an inheritance, like a kind neighbour or a close friend. Another option—and the last of our essentials—is to name a charitable organization.



## Essential #7: Charitable Giving

We often espouse the advantages of [tax-efficient charitable giving](#). When it comes to estate planning, all the benefits we promote are amplified. At death, 100% of taxable income can be offset by charitable giving. In your estate plan, we recommend you set aside a percentage of your assets for an organization close to your heart.

Some promote philanthropy by leaving funds in a donor-advised fund (DAF). In these cases, beneficiaries become trustees and vet the charities to receive the funds. We have been managing DAF accounts for nearly 10 years and encourage this creative planning for those wishing to leave \$100,000 or more to charities.

## In Conclusion...

Details matter when drafting your will, and there are many considerations to make. If you implement changes based on what you have read here, you will be on your way to an efficient estate. However, this information is not a stand-in for comprehensive and professional estate planning. Each individual has nuances unique to their circumstances. Perhaps you have properties overseas, multiple life insurance policies, or a particular family member you want to be named in your will.



Details also matter when it comes time to execute the will. Having a list of your online accounts with passwords, insurance policies and bank accounts attached to the will can save countless hours for your executors. Also, a letter of wishes outlining your various assets and to whom you would like them to go can be useful (non-binding on the executors). Finally, a checklist of where to start can be really generous for your executors. Whom do you think they should call first and what are going to be the priorities in those first few days?

Estate planning is one of the many services provided by the portfolio managers at Qube. Connect with us by [email](#) or call [\(780\) 463-2688](tel:7804632688) for an analysis that takes into account your personal situation. Our team will review your estate plan and happily connect you to a lawyer who can update your will. Wealth planning matters to us both for our clients and their beneficiaries.



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