

BEUTEL GOODMAN SPEAKER SERIES

Joining us for our second Beutel Goodman Speaker Series event was Barry Corbin, of Corbin Estates Law Professional Corporation, a Toronto-based law firm specializing in tax and estate planning for small business owners and high-net-worth individuals.

Offered below are insights on some aspects of estate planning that Barry provided to our guests. Each of these items should be carefully considered by anyone contemplating leaving a legacy or revising an existing will – ideally before consultations with a lawyer begin. Please note that these points should not be considered as legal advice.

Planning for Tomorrow, Today



1.

A comprehensive, up-to-date will is of utmost importance.

Having a will in place ensures not only peace of mind, but also that wishes are respected in terms of how an estate will be distributed, and who administers it. Working with a qualified professional to create an estate plan also maximizes opportunities to defer income tax. Dying without a will could require a personal representative to seek an administration bond at an added cost to the estate. It may also mean that not all intended beneficiaries receive an inheritance. For parents of children under the age of 18, a will is essential to ensure that appropriate persons are appointed to manage the children's inheritance.

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2. **Appointing someone to serve as an executor isn't an honour or a privilege.**

Rather, it's asking someone to take on the burden and potential liability of ensuring that wishes are respected and instructions are followed as closely as possible. Potential executors should always be consulted ahead of naming them as such in a will. Some potential questions to ask may include the following:

- Is this person physically and emotionally up to the challenge?
- Are there any potential conflicts of interest in serving as an executor?
- Is relatively easy access available to any or all assets, or will extensive travel be necessary to serve as an executor?
- How will the executor deal with potential conflicts with family or other beneficiaries?
- Will he or she recognize those occasions when it would be important to obtain professional assistance?

If an estate requires administration over a prolonged period of time, it may be advisable to appoint alternate executors or a trust company.

3. **A marriage revokes a pre-existing will.**

A new will should be prepared to include, where applicable, a new spouse, new children, or possibly even an ex-spouse.

4. **Gifts and inheritances received during a marriage are not necessarily shareable upon separation or death of the recipient.**

As long as they were kept separate and not commingled with a couple's joint assets or used to purchase a property that qualifies as the couple's matrimonial home, they will not be included in the calculation of the value of net family property for the purpose of an equalization claim.

5. **Being separated from a spouse has no impact on an existing will.**

It's advisable to work with a legal professional to get a new will done immediately upon separating. However, a spouse may still have a claim against the testator's estate under relevant marital property laws, depending upon the circumstances.

6. **Prepare for the unexpected to avoid surprises.**

While it's impossible to plan for every conceivable contingency, changing family dynamics may require adjustments to be made to a will over time. What if a family member separates from his or her spouse? Could the separated spouse claim a portion of the estate if the family member dies before the testator? What if a family member has biological children without getting married? Will these children be considered as beneficiaries? Even though these scenarios may sound unlikely, it's important that every estate plan is kept as up-to-date as possible to reflect evolving circumstances.

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7.

There are ways to avoid paying probate fees on an estate, but the remedy may be worse than the disease.

Probate is the certification process by which an executor proves that he or she is the person authorized to represent a testator's estate to government agencies, financial institutions and others. The cost of this process is covered by probate fees, also known as estate administration taxes (EAT) in Ontario, and generally amount to approximately 1.5% of the value of the deceased person's estate. Joint ownership can reduce EAT, since the deceased's assets would belong automatically to the surviving joint owner(s). However, this approach is not without risk. For example:

- Transferring half an asset to an adult child could result in the child's spouse claiming a portion of the asset if they later separate;
- If a child has financial problems, his or her ownership of the asset could be subject to claims by creditors;
- If the value of the asset has increased since its acquisition, taxes may be owing on any capital gains when the asset is transferred to an adult child;
- If a principal residence is being transferred to joint ownership, it may lose part of its principal residence tax exemption; and
- Transferring to joint ownership means relinquishing exclusive control of the asset, with the result that decisions must be made jointly with the other owner(s).

Estate planning isn't always a cut-and-dried process. It often means asking difficult questions and making tough decisions. Working with financial and legal professionals to develop an effective estate plan is an important part of providing for future generations and ensuring peace of mind.



Barry Corbin, Corbin Estates Law Professional Corporation

Barry Corbin has been providing sound advice on wills, estates and trusts for over 37 years and has offered advice on these issues to a number of government committees. He's also a sought-after mediator within the legal community. His straightforward advice on wills and estate planning calls for parents, grandparents and children to have honest and forthright conversations about the family's finances and how an estate will be divided.

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