

## Spring 2009

Most individuals have the basics of an estate plan – a will, powers of attorney for health and financial matters and a life insurance policy. In this edition of the Canadian Financial Planner, we shall review ten common estate planning mistakes made by individuals who believe they have prepared an estate plan to handle their affairs upon death.

### **#1 Lack of a Formal Plan to Care for Dependent Children**

Many working families have considered the implications if one parent dies, but lack a comprehensive plan should both parents die while the children are still living at home. It is common practice to name a guardian to care for dependent children. Unfortunately, many families do not leave detailed instructions if the individual selected as guardian is unable, or unwilling to accept the role upon the untimely death of both parents. When selecting a guardian, one must find an individual that is not only capable of handling the task of raising your children, but is prepared to accept this enormous responsibility. In most cases, if the individual selected as guardian has children they will probably suggest a mutual arrangement whereby you will raise their children if some unforeseen accident strikes their family. It is difficult to ask someone to look after your children, but suggest that you are not prepared to look after their kids in similar circumstances. It is very important to have the full support of both parents. For example, your sister may be happy to volunteer, but her husband may not be prepared to have your children move into his home. Unfortunately, if they agreed to act as a guardian when the request was theoretical, they can legally refuse the role upon your death. When an individual states that they will raise your children, they realize the odds are extremely small that they will ever have to fulfil the commitment.

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From a legal perspective, naming a guardian does not guarantee that the selected individual will assume that responsibility. Assuming a guardian has been named in the will, the process of determining legal guardianship is as follows:

- the individual named in the will normally receives temporary custody
- the temporary guardian must apply to the court to receive legal guardian status
- if there is a disagreement by family members, guardianship can be challenged in the courts
- if there is a challenge, older children may be given the opportunity to provide input into the court's final decision

If the parents do not want specific individuals to become guardian of their children, it is best to provide their written comments in their will, so the courts can be aware of the parent's wishes and the reasons that such a position has been taken.

## **#2 Lack of Guidelines for Releasing Funds to the Guardian**

Once a family has selected an appropriate guardian, the next issue is to determine the amount and timing of the money that will be distributed to care for the children. The individuals selected to raise your children should receive a written summary of the financial support they can expect from the estate. A will normally does an adequate job of outlining the assets to be distributed, but are inadequate concerning the details of distributing funds for the care of minor children when both spouses are deceased. It must be appreciated that children may inherit a significant amount of money upon the death of both parents. They will not only receive any life insurance proceeds, but the value of the home, its contents and the family's investments.

**Note – The remainder of this article is only available to subscribers of the Canadian Tax Planners Newsletter. If you elect to subscribe and wish to receive a copy of this newsletter, advise us accordingly and the complete article will be forwarded by return mail**

