

Willpower: Common will planning mistakes and how to avoid them

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A will is at the heart of every good estate plan. This key document records your intentions for the management and transfer of estate assets. If you don't have a will, you will not have a say in the following matters:

- Who will manage your estate
- Who will inherit your estate assets
- Who will be responsible for your liabilities (debts)
- When will estate assets be distributed
- What steps could be taken to minimize estate taxes

Even the most basic of wills should name an estate representative (sometimes called an executor or estate trustee; in Quebec, called a liquidator). It should name the specific parties who will receive your estate (the "beneficiaries"). There are also other provisions that are commonly seen in wills, such as direction for dealing with estate debts and taxes, and a list of powers provided to an estate representative for estate administration.

In another report, "Your Estate Matters! Common Traps and How to Avoid Them", we look at basic estate planning mistakes, including the most fundamental mistake: having no will at all. In this report, we will explore some mistakes that are commonly made, even when a will has been executed as part of an estate plan.

Mistake #1: Underestimating what is involved with administering an estate

Being an estate representative is a complex task. Table A lists a dozen key estate administration duties, and this is just a partial list of the tasks that must be carried out by an estate representative. If everything goes well, the estate administration process typically takes between 12 to 18 months; however, complications such as dying without a will (“intestate”), tax errors and estate litigation can delay estate administration for months or even years.

You can facilitate a smooth administration process for your estate by keeping good records and making sure your estate representative knows where to find them. All too often, estate administration is delayed because a will or other crucial records cannot be located.

Table A: Some key estate administration duties

Making funeral arrangements

Locating and valuing estate assets and obtaining necessary appraisals

Determining all estate liabilities

Preparing and submitting probate documents (where applicable)

Providing written notice to beneficiaries

Notifying and/or closing accounts with banks, investment firms, creditors, insurance providers, government agencies, online retailers, social clubs, utilities, etc.

Terminating pensions and government benefits

Collecting insurance proceeds that form part of the estate

Managing estate assets, including making investments, selling assets if required, and safeguarding and insuring valuables

Paying estate expenses and liabilities

Accounting for the estate’s financial activities

Filing individual and estate tax returns and obtaining final clearance certificate(s)

Mistake #2: Choosing the wrong estate representative

Your estate representative is responsible for all estate administration duties. Given the complexity involved, choosing the right estate representative is crucial. An estate representative should have the time, skills and knowledge to effectively undertake the numerous duties. The estate representative will likely need to deal with many parties, including lawyers, accountants, financial institutions, insurance companies, government agencies and beneficiaries, some of whom may be in other cities, provinces, or countries.

If you choose a friend or family member to serve as estate representative, will these potentially inexperienced friends and family members be up to the task? Will they even be alive at the time of your death? This is especially relevant if you’ve chosen a close friend or relative who is more or less the same age as you. That’s why it’s important to consider naming an alternate or secondary estate representative.

In some cases, a corporate estate representative, such as CIBC Trust Corporation (CIBC Trust), can be an excellent option to handle the task without burdening your family and friends. CIBC Trust, with its wealth of experience in estate matters, can be appointed either as the sole estate representative or as a co-estate representative along with another friend or family member. Corporate estate representatives are skilled in estate administration and can help the process run smoothly, which can relieve the burden for grieving family members.

As a corporate estate representative, CIBC Trust can also help to maximize the value of your estate. For example, taxes can often erode a significant portion of an estate. Many people do not seek any professional help to discuss how to minimize the impact of taxes on their estate. As a result, many estates may have large tax bills that may have been reduced with proper estate planning. As an experienced estate representative, CIBC Trust regularly implements post-mortem strategies to reduce these taxes and has helped numerous estates save thousands of dollars. If you find that you personally have been named as an estate representative, you may be dismayed to find that you can be personally liable for financial errors in estate administration.

CIBC Trust also offers Agent for Estate Representative services, to assist you, if you are acting as an estate representative, in fulfilling your duties so you can reduce your chances of making costly mistakes. When you appoint CIBC Trust to act as your Agent, we use our extensive tax, investment, estate law, and administrative knowledge to perform the duties of administering the estate, while you, as estate representative, remain in complete control of key decisions. CIBC Trust provides you with peace of mind by handling your administrative duties as estate representative with expertise, care and sensitivity.

Mistake #3: Preparing a will... and then forgetting about it

Once your will is prepared, you're not done. It's recommended that you review your will regularly, at least every five years.

You may need to re-do or amend your will in the event of a change in your marital status, the birth of a child, changes in your assets and liabilities, or relocation to another province or country. You should also consider amendments if circumstances change for your beneficiaries (for example, marriage or birth of a child) or your estate representative (for example, death or relocation). You can make changes to your will by either adding an amending document called a codicil or by preparing a new will altogether.

Your estate plan can also be frustrated if you don't coordinate the elements properly. For example, if you have made beneficiary designations directly on registered plans and insurance policies¹, make sure they do not conflict with your will so that assets can be transferred as intended. It's important to review designations regularly, particularly when you open new accounts or make any changes to them.

If you are one of the many Canadians who don't have a will or have not updated an existing will in the past 5 years, now is a good time to see a legal professional to create or update one. At this point, you should consider whether you have made the best possible choice for the estate representative who will administer your estate. And if you're named as estate representative of another person's estate, we suggest you encourage them to keep a documented estate plan that is up to-date. Too many people are caught off guard without proper arrangements in place. Make sure you and your loved ones aren't among them.

At CIBC Trust, we offer many services and solutions to assist you with your estate planning and administration, including:

- Administering your estate as an estate representative, co-estate representative or contingent estate representative;
- Trust administration through appointment of CIBC Trust as a corporate trustee; and
- Assisting existing estate representatives and trustees with their administrative, legal and tax obligations when CIBC Trust is appointed as agent for an estate representative or trustee.

¹ Designations on registered plans cannot be made by Quebec residents

Contact CIBC Trust to obtain additional information on our services.

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