

The Difference Between a Will and an Estate Plan



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Murray and Sara own a house, which is registered in both their names as joint tenants, and a condo in Florida, which is held in the name of Murray's company. One of their children works in the company; the other lives overseas. When Murray consults his financial advisor about retirement, the advisor talks about the need for an estate plan. Murray is surprised: he thought all he needed was a Will.

While every adult should have a Will, not all assets a person owns, or has an interest in, will pass through that person's Will. For example, real estate that is held jointly as joint tenants will usually pass to the surviving co-owner by right of survivorship, not the Will. In this example, if Murray were to die, the house would automatically pass to Sara because of the manner in which they hold title to that property. Similarly, registered plans will pass to a named beneficiary, if the beneficiary survives the owner of the plan. How assets are held will affect how they pass and that in turn will affect a variety of planning considerations.

A key goal of estate planning is the transfer of wealth in an efficient manner. This usually involves a discussion about various tax minimization strategies. For example, assets that do not pass through the Will are usually not subject to probate tax. On the other hand, it may be advisable to pay some probate tax if the income tax considerations outweigh the probate tax considerations. An estate planner will ask: Is it more tax-efficient to have the asset pass outside the Will to save probate tax or is it more efficient to have the asset form part of an estate that can fund obligations of the estate or a trust for a beneficiary?

Family law must also be considered in an estate plan. For example, the Succession Law Reform Act of Ontario obliges everyone to make adequate provision for "dependants", who can be aging parents, current or former spouses, children, family members with disabilities, etc. Failure to make adequate provision for dependants may result in an expensive claim against the estate that will delay its administration and adversely affect the beneficiaries' interests.

Many factors will affect Murray and Sara's plan, including: tax implications, where the assets are located, where the beneficiaries reside, their marital status and the status of their beneficiaries, the age, health and wealth of their beneficiaries, and status of creditors. These personal considerations are unique to each family. There is no 'one size fits all' solution. For example, Murray and Sara have real estate in another country and an adult child resident overseas; their plan will differ from the plan for a family where all assets and beneficiaries are in Canada.

The key point is that a properly drafted Will is only one part of an estate plan. Failure to take important planning considerations into account may affect your objectives and result in an inefficient plan. At Lawrences, we have extensive experience in estate planning for a wide variety of different circumstances; call us to find out how we can help *you*.



Michael Prsa chairs Lawrences' Wills, Estates, and Trusts Group. A member of the Society of Trusts and Estate Practitioners, Mike focuses his practice on estate planning, estate administration and estate litigation. He can be reached at (905) 452-6880 or mjprsa@lawrences.com.

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