Most of us spend less time thinking what we might be able to accomplish with our lifetime accumulated assets than planning for a vacation. In fact, most even invest fewer dollars in the process!

Anonymous

You are never too young to have a will
A true story of how an Engineer engineered his will

Nena Jocic-Andrejevic
Gift Planning Counsel, U of A Faculty of Engineering

Dear alumni, friends and readers:
This article is written from my heart as it depicts what just recently happened to me and my family. I hope sharing my experience can prevent others from venturing down the same road.

In June of 2010, my brother, a 1987 U of A Electrical Engineering graduate, died in Montreal at age of 45 after a two-year battle with lymphoma. He had no children and was not married.

In 2006 he had officially registered a will with a notary public in Quebec. Four years later his circumstances changed so much that he needed an updated will to include numerous business interests. He was a partner in three companies, owned a rental property, and had a registered U.S. patent.

Knowing his personal circumstances and the severity of his illness, in November of 2009 I urged my brother to revise his will. The next time I saw him was on June 2, 2010, in the hospital facing his imminent death. At that time he let me know that he had updated his will and asked me to contact his notary public so that he could sign his revised will.

We learned from the notary that she received his copy at the end of April but had not yet reviewed it as she was on vacation all of May. Given the complexity of his estate, she would not notarize it without taking further time for review—time which we felt we did not have. My brother insisted that his 2006 will was null and void, and therefore asked us to obtain the revised written version from the notary so that he...
could sign it. We scrambled to locate a Commissioner of Oaths to witness the signing, luckily finding someone in the hospital’s Foundation Office who happened to have this designation. The Commissioner of Oaths and my husband witnessed my brother’s signature, making the will official. However, this only proved to be the beginning of a long struggle.

Now, nine months after my brother’s death, we are facing thousands of dollars in lawyer’s fees and expenses that could have been avoided. Upon my brother’s death on June 7th, I stayed behind in Montreal to find a lawyer who could register the new will in Quebec. I tracked down my brother’s friends who guided me to a trusted attorney at a well-established law firm. Questions were raised the moment I met with the lawyers. Which will was going to be valid under Quebec law—the old or the new? Would they be able to register the new will the way it was written? It posed a legal nightmare. There was no choice; the 2010 will had to be presented to the court as it was most recent of the two. It was eventually approved but at a cost!

The following are the key issues causing unnecessary costs:

1. The lawyers had to make an application to the court to validate the 2010 will.
2. Once the new will was validated it had to go through probate. Under Quebec law, had the will been registered at the time of my brother’s death, probate would have been unnecessary.
3. Property could not be sold and bills paid until the will passed probate.
4. The estate has six beneficiaries, consisting of four individuals and two charities. Three of the individual beneficiaries live in Edmonton and one in Ottawa; one charity is in Montreal and the other is the U of A Faculty of Engineering. Ordinarily, the Executor’s role is to sell estate assets. In my brother’s will the omission of a single word (a legal term) required all six beneficiaries to authorize the Executor (in writing) to sell the assets and agree to the price! The paperwork continues to be endless.
5. My brother held shares in three incorporated companies, none of which had minute books. He owned no insurance policies to cover any possible losses which these companies may have incurred. Luckily this will not affect any of the beneficiaries; however, it does put a huge onus on the Executor who is being asked to sell all the assets in the estate, including a patent. This means the estate will not wrap up for a very long time and the legal costs will keep mounting.

6. He left no instructions as to Executor compensation. Considering the complexity of the estate, the amount of work required, and the hours of work already invested, all of the beneficiaries must agree on the level of compensation. Engaging a lawyer is not an option as it would cost much more, leaving less inheritance for the beneficiaries.

Issues that further complicated matters:

1. Signing Authority—none. Although there was enough money in the bank accounts, funeral expenses were paid by the family and the Executor until the will passed probate. This also caused problems for corporate accounts.
2. Insurance Policies—none. Insurance policies are the best way to secure quick cash for various inevitable expenses such as funeral costs. Such insurance policies cost as little as $5 per month, are easily obtained and are issued regardless of one’s health.
3. Record of Assets—we found endless lists of the equipment he owned but nothing about the bank accounts he had; an additional account was discovered recently and by accident!
4. Beneficiaries—Only one of our parents was named as a major beneficiary with the other left out in favour of our youngest sibling. As there is capital gains tax on a property and because my brother was single without children, had both parents been named as beneficiaries and with the gift to the two charities—the tax currently due on the estate would have been eliminated.

These and other ambiguities in the will have created hardships for all parties concerned. Had the will been prepared by a lawyer, much of this could have been avoided. Although testamentary laws vary across provinces and countries, it’s my hope this story shows the difficulties successors face when there isn’t a properly written (and registered) will.

I loved my brother dearly, and I miss him greatly. As we work through the estate, he is with us on a daily basis. But the length of time it will take to complete the execution of his will has meant that it will take many months yet before we can have a sense of closure and be able to properly grieve his loss.
What’s in your estate?

Part 1

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Writing or updating a will is always a very interesting and sometimes challenging endeavour. The idea is to make the will as effective as possible, capturing the most complex aspects of your estate, reflecting your life’s philosophy, while minimizing taxes and legal costs at execution.

Over the past 17 years while choosing to work in the area of gift planning, I have learned that people often name more than one charity in their will and just as often have not consulted with those charities in the planning process.

Before you start considering charities in your will, there are a number of points you need to consider to establish a successful charitable estate plan. Leaving legacy gifts can create significant benefit for organizations receiving them, a significant tax benefit to your estate, and the satisfaction that you have supported the community.

What’s in your estate?

1. First you need to consider how the legacy gift(s) will impact you and your family. This is an extremely important question. Other questions are: will it impact you directly and how? How will it impact your spouse/partner, children and other heirs? Does your family understand your philosophy, values and why you are considering a legacy gift?

2. Do you have enough? More specifically do your accumulated assets allow you to make legacy gifts? One quickly realizes the importance of this question and its complexity especially when we realize that some portion of our estate will be taxed.

3. Do you have an estate plan? Estate lawyers, accountants and financial planners are much more aware of legacy giving today than they were even 10 years ago. Today charities have their own professionals whose job is to work with you to offer assistance. For example the latter have made a significant impact on the government to create tax exemptions when giving to charity, such as capital gain exemptions when donating publicly traded stocks. In the upcoming federal budget it is anticipated, the government could announce the extension of this tax benefit when donating shares in privately owned companies and possibly when donating real estate. Stay tuned!

4. Is there a tax benefit to leaving a legacy gift? Does this matter? Throughout our lives we create what is referred to as Social Capital which is embodied in that portion of the estate out of which we pay tax. When we understand the concept of Social Capital, we begin to realize for the first time that we don’t have to be a Warren Buffet to have the capacity to redirect our personal wealth to causes that support our personal values without disinheriting our heirs, or without jeopardizing our future financial independence.

5. Who should realize the benefit of my assets? There are usually four possible beneficiaries; the first and constant is You (and your spouse/partner), and from the following three we need to choose only two—i) Your heirs—Family Legacy, Non-Taxable

Taxable

???

???
8. Is the charity worth the investment? Supporting a charity is a very personal decision based on connections we experience throughout our lifetimes. Before you name a charity in your will, do some research about the organization and connect with its development (fundraising) staff to learn about the organization’s needs. Ask about its viability as well; request annual reports and financial statements. To learn more, you can access a registered charity’s T3010 return by going to “Charities Listings” on the Canada Revenue Agency website at [www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.htm](http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.htm) by entering the charity’s legal name. I would also recommend asking the following question: “Is this organization going to be here 100 years from now? Can my gift last in perpetuity?”

9. Are you ready to embark on creating your legacy plan? Your will is the blueprint to understanding your financial and life philosophy. It tells your heirs how your funds should be distributed and why. Consider this: most of us spend more time planning our vacations than thinking what we might be able to accomplish with our lifetime accumulated assets. In fact, most of us invest fewer dollars in the process!

In the next issues of the *Legacy News*, I will introduce you to ways you can arrive at a blueprint to satisfy your heirs and create a social legacy. The examples will show various ways you can donate from your estate that will result in significant tax benefits to you and your heirs. While this will be in the fall, you may start by asking “What’s in my estate?” Start by preparing a list of what you consider is taxable and what is not. The seeds of social capital will soon be exposed.

iii) Government—Social Capital directed to tax, or iv) Charity (s) and Government—self-directed Social Capital and/or tax. Which two do you choose?

6. How can you distribute your estate to create both a family and a social legacy? By virtue of planning you can a) keep as much of what you *want* to maintain your financial independence, b) pass on to heirs *an amount* you deem to be appropriate by recognizing individual needs, and c) control the distribution of all *that is left*—creating a social legacy.

7. What impact would you like to make in the community? Causes such as education, health, religion, the environment, social services, and politics are the most common areas in which people like to make an impact. What is your life philosophy and what organizations align with this philosophy and/or your personal values?

**LEGACYN_ews**

The advice rendered in this Newsletter is general in nature. Each person should consult with qualified professionals to see what solutions might fit their specific circumstances.

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