LAFRENIÈRE SANNA
ESTATE LAW
A BOUTIQUE FIRM

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After Signing – Storing, Notifying & Other Tips

Although you likely feel tremendous peace of mind now that your documents are signed, there are still a few important steps that you should take. This brochure provides information about:

- Storage of your original documents and notifying others as to where they are.
- Lists of important information to maintain
- When to review and update your documents.
- Multiple wills.
- Steps to take regarding notifying institutions of changes to your beneficiary designations.
- Pros and cons of owning assets jointly.
- Real estate inside and outside Ontario.
- Changes in your marital status and how it affects your documents.

Storing and Notifying

Immediately after signing your will, powers of attorney, and related documents:

- Decide where you will store your original signed documents. One option for storing your original will is the local Court office. It currently costs $20 to have your will held indefinitely. You must include the affidavit of execution signed by one of the witnesses to your will (which we prepare) and two pieces of ID (one with a photo). You will be given an envelope on which you write your name and birthdate and the name and contact information of the executors (estate trustees) named in your will. Another option is a safety deposit box. However, check that your documents will be readily available when needed. Before storing your originals in a safety deposit box, ask your bank:
  - how will your executor retrieve your will in the event of your death; and,
  - how your attorney will retrieve your power of attorney document if you are mentally incapable.
- Tell your executor and your attorney (substitute decision-maker) that they have been named and let them know where your original will, power of attorney documents, and related documents are stored.
- Provide your doctor with the name and phone number of your attorney for personal care. If you are living in a seniors residence or long-term care facility, provide the care staff with a copy of your power of attorney for personal care.
- Make the following lists and update them regularly (at least annually) and whenever changes occur. Store these lists where your executor or attorney can find them:
  - your assets and their location;
  - the names and contact information of the beneficiaries named in your will;
  - the names and contact information of your accountant, financial planner, lawyer, insurance broker, and any other person or organization that your executor or attorney may need to contact; and,
  - user names and passwords for any online accounts.
- Keep important documents such as these with the contact information above:

- title documents for your home and any other real estate that you may own;
- proof of ownership for vehicles, cemetery plots, brokerage accounts, savings bonds, and stock certificates;
- shareholder, partnership, and corporate operating agreements;
- prior years' tax returns and Notices of Assessment;
- proof of any loans or debts owed;
- personal papers such as birth and marriage certificates, adoption papers, marriage contracts, separation or divorce papers, family trusts, etc.; and,
- death certificates of closely-related persons (parents, spouse, child) who have predeceased you.

Regular Reviews

Your will, powers of attorney, and estate plan should be reviewed regularly (at least every three to five years) to ensure that changes in your financial circumstances, tax and other laws, or your wishes are taken into account. If there is a significant change in your personal and/or financial circumstances or if you acquire property outside of Canada, a more frequent review is essential. Due to possible changes in income tax laws, we recommend that small business owners have their documents reviewed by a professional annually.

Changes in estate and tax law may affect your estate plan. If you become aware of new legislation or hear or read about court cases or rulings that you believe may affect your estate plan, please contact us. Please be aware that we do not automatically advise clients of changes in the law that may have an impact on their estate plans. However, we post blogs from time to time on our website at www.personalawgroup.ca/blog. Our blogs are not intended to be legal advice nor are they intended to be a comprehensive means of keeping up-to-date on changes to the law. As we will be writing about major changes that may affect our clients, you may wish to subscribe so that you are notified when a new blog is posted.

In the event of a significant change, documents should be reviewed and revised promptly. Some significant events include:

- the death of one or more individuals named in your documents, whether an executor, an attorney or a beneficiary;
- concerns about an executor or attorney due to advanced age, ill-health, or any other reason that suggests the individual should not act or may not be able to act when needed;
- concerns about the change in marital status of a beneficiary;
- you sell or give away an item or dispose of real property that is mentioned in your will;
- you marry, enter into a common law relationship, separate, or divorce;
- you have or adopt children; and,
- your net worth or the size of your estate increases or decreases significantly.

Cancelling or Changing Your Documents

If you want to cancel (revoke) or change your will or power of attorney in any way, it is essential that you contact a lawyer to ensure that the required legal formalities are observed; otherwise, your wishes may not take effect. For example, many people mistakenly believe that handwritten changes on a copy of their will are sufficient to make a change. However, such changes are rarely effective and can cause confusion resulting in a costly court review to determine the person's true intentions.

Multiple Wills

If you have signed more than one will, one of the wills (the secondary or non-probate will) is intended to govern assets which should not, according to current law and experience, require that the will be probated. The other will (the primary or probate will) is intended to govern all other assets. The intention is that upon your death, only the primary will is submitted for probate, with the result that estate administration taxes (probate fees) will be calculated only on the basis of the assets governed by the primary will.

However, even though the objective is to minimize estate administration tax, we cannot give any assurance that this objective will be met, for a number of reasons:

- future changes to applicable laws or to current administrative practices of third possession of, or in control of title to, assets you own at death may necessitate probate of the secondary will; and,

- if the validity of the secondary will were ever challenged by a party having standing to do so, it would necessitate submitting that will to the court for "proof in solemn form". In that event, the estate administration tax sought to be avoided would have to be paid.

The executors appointed under your secondary will have the authority to decide whether that will should be submitted to probate. While they may have good reasons for taking such action (apart from being required by third parties to do so), we would urge you to advise them of your reasons for having made multiple wills, to ensure that they do not, merely out of ignorance of your intentions, submit the secondary will for probate.

Beneficiary Designations

To give effect to your estate plan, your will may include one or more beneficiary designations with respect to your RRSPs, RRIFs, TFSAs, and/or life insurance. We confirm that we have advised you of the following and that you are responsible for notifying institutions where appropriate:

- If your will names a beneficiary of an existing life insurance policy, you should forward a copy of your signed will to the insurance company so that their records are up to date. This is important to ensure that they have a record of the name of your beneficiary as well as any contingent (alternate) beneficiary. You accept full responsibility for completing this important step as your estate plan relies on such changes being effective. If your representative has questions or concerns, please ask them to call our office. **If you wish us to complete this important step, please advise us immediately.**
- If your will names a beneficiary of an existing RRSP, RRIF, or TFSA, any RRSP, RRIF, or TFSA
- that you may acquire in the future is not affected. You must ensure you name the appropriate beneficiary at the time that you acquire the additional RRSP, RRIF, or TFSA. You have advised us that you have contacted, or will contact, the financial institution holding your RRSP, RRIF, or TFSA to ensure that they have a record of the name of your beneficiary and/or any contingent (alternate) beneficiary. You accept full responsibility for completing this important step as your estate plan relies on such changes being made immediately. If your representative has questions or concerns, please ask them to call our office.
- After your death an RRSP or RRIF payable directly to a named beneficiary other than your estate will be paid out in full with no reserve held back for any income taxes owing as a result of your death. If taxes are owing, your estate will be responsible for payment of the taxes and the value of your estate will be reduced accordingly. This can result in there being much less than you intended, possibly even nothing, for the beneficiaries named in your will.
- If at a later date you make a new will, or if your will is revoked for any other reason (you tear it up, you marry, etc.), a beneficiary designation in your will may be revoked as well. However, this is not always the case. You should regularly review all beneficiary designations with your insurance company, financial institution, or benefits provider to ensure that the beneficiaries named are consistent with your estate plan.

Insurance Trust Declaration

If your documents include an Insurance Trust Declaration so that insurance proceeds are held in trust for your spouse, children, or others, it is imperative that you revise your Insurance Trust Declaration if a named insurance trustee dies or becomes incapable of acting. You should forward a photocopy of your signed Insurance Trust Declaration (with a photocopy of your signed will attached) to your insurance company so that their records are up to date. If you wish us to complete this important step, please advise us immediately.

Real Estate in Ontario

If at the date of your death you are the sole owner of any real estate in Ontario, it will become part of your estate and will be disposed of as per your will. Similarly, if you are an owner as a tenant-in-common of a share or percentage of any real estate in Ontario, your share or percentage will be disposed of as per your will. On the other hand, if you own real property in Ontario as a joint tenant rather than as a tenant-in- common and if the other joint tenant is alive at your death, the other joint tenant will become the owner of the real property and your will is of no effect regarding your interest in the jointly-held real estate.

Real Estate Outside Ontario

If you own real estate located outside Ontario, such as a cottage in Quebec, and if you are a resident of Ontario at the date of your death, that real estate is not subject to Ontario probate fees. In general, the laws of the jurisdiction where real estate is located governs how the real estate is transferred on death. We advise you to check with a lawyer in the jurisdiction where the real estate is located to find out how it will be dealt with at your death. It may also be a good idea to have a will prepared in the jurisdiction where the real estate is located. If you do, ensure that your non-Ontario will deals only with the real estate in that jurisdiction and that it does not revoke a prior will which you still want to be valid.

Henson and Other Trusts

If your will(s) includes one or more trusts, there must be assets owned solely by you at your death or insurance proceeds payable in such a way as to end up in the trust(s). Otherwise, there may be nothing to put into the trust.

Jointly Held Assets

Recent court decisions have confirmed that if assets are held jointly with another person who is not your spouse, you should put in writing your intentions for those jointly-held assets. You need to state what is to happen to each jointly-held asset upon your death. Is the surviving joint owner to have outright ownership of the asset or is the asset to be considered part of your estate? If requested, we can prepare a Statutory Declaration to clearly set out your intentions regarding joint assets.

Equalization under the *Family Law Act*

If you are married and if your will leaves your spouse less than your whole estate, there is a possibility that your estate may not be distributed as you would like if your spouse decides to make a property equalization claim under the *Family Law Act* and not take what your will gives. If your spouse is not mentally competent at that time, someone having legal authority to do so may make the claim on your spouse's behalf. If you are concerned, consider having a limited purpose marriage contract drafted and signed which could help avoid this risk. We can refer you to a family law lawyer for further consultation.

Caution for Couples

If one or both of you were previously married and if you leave your entire estate to your spouse, there is a risk that the children of your former relationship may not inherit as you would like. We confirm having discussed this with you and you acknowledge and accept the risk involved.

If You are Separated or Divorced

We have advised you to immediately update all your beneficiary designations to remove your former spouse's name. You confirm that you will make the necessary changes to life insurance (both private and group coverages), pension plans, death benefits, RRSPs, RRIFs, TFSAs and similar plans. You accept full responsibility for completing this important step as your estate plan relies on such changes having been made. If you fail to do so, the distributions of your estate may not be as you have planned.

We have also advised you to consult with a family law lawyer who can assist you with the legal issues that arise upon separation or divorce, such as claims for support and equalization of net family property. Note that the equalization of net family property applies only to married couples and does not, at present, apply to common law couples. Please ensure you immediately review the ownership of all assets which are, or may be, jointly-held with your former spouse such as real estate, bank accounts, investment accounts, etc. If you do not make changes, at your death all property jointly-held with your spouse will most likely belong to the surviving spouse. In that case, the provisions in your will have no effect on that property.

If you want your share of any jointly-held Ontario real estate to be part of your estate and not go to your former spouse on your death, please discuss this with us.

Important Information on Powers of Attorney

Please note that once the power of attorney for property document is delivered to your attorney(s), unless there is a condition requiring proof of your mental incapacity, the attorney(s) may take any action with respect to your property which you yourself can take, irrespective of your state of mental health at that time.

You should be particularly careful when asked by a bank or other financial institution to sign a standard form power of attorney for the limited purpose of carrying out financial transactions with that institution. Although some banks may not want to recognize a legally-signed power of attorney document that is not on the bank's standard form, there is no reason that a validly prepared and signed power of attorney for property should not be accepted by the bank.

You may revoke a power of attorney at any time as long as you are mentally capable to do so. However, please note that there are formal requirements for revoking a power of attorney.

Assistance

Please contact us if you require assistance with any of the following and we would be pleased to provide a quote of our fees:

- registering a severance of joint tenancy on title;
- preparing a Statutory Declaration to clearly set out your intentions regarding jointly-held assets;
- advising your insurance company of changes to your beneficiary designation; and,
- providing a copy of your signed insurance trust declaration to your insurance company.

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