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# Overheard at Crowe Soberman | 8 Costly Estate Planning Mistakes

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# overheard

— AT CROWE SOBERMAN —

According to a **recent poll**, half of Canadian adults say they don't have a last will and testament. Respondents believed they were "too young" to

worry about it (25 per cent), and almost as many said they didn't have enough assets to make a will worthwhile (23 per cent).

Regardless of the amount of assets you may have accumulated, it's undeniable that you've worked hard for them. When it's your time, wouldn't you rather leave a legacy? We sat down with Audit & Advisory Partner and SuRE (Succession, Retirement and Estate Planning) Group member, Jordan Caplan, to discuss the most common estate planning mistakes and how to avoid them.

## **Mistake #1: Not Having a Will or Estate Plan**

There are many things we don't know about the future but there's one thing we know for sure – we are all going to die. Some people avoid writing their will and estate plan because they can't or won't make decisions. Some people are natural procrastinators and think, "I'll put it off and get around to it whenever I have a chance." Others believe that they don't have enough assets to make it worthwhile. But even if you only have a few assets, if

you die without a will (intestate), your estate is controlled by a trustee (in Ontario). Any of your beneficiaries may have to go through hoops to claim your assets, which in turn may not end up being distributed as you wished.

## **Mistake #2: Opting for a Do-It-Yourself Method**

By not working with a professional to draft your will and estate plan, you could be missing out on planning prospects that you otherwise wouldn't have



known about. Perhaps there are opportunities that you haven't even considered, or you may be putting the wrong estate plan in place altogether. For example, you may name your child to be your executor but what if they are a US resident? Now you've created cross-border taxation issues with respect to your estate. Working together with a professional can help you navigate the complexities with clarity and expertise.

### **Mistake #3: Choosing the Wrong Executor**

Your executor is responsible for carrying out your wishes, distributing your assets and making sure your taxes are filed on time and correctly. Appointing the wrong executor could lead to confusion and costly mistakes. Always ensure that the person you've selected actually agrees to be your executor. There have been many instances where we find out that someone unrelated has been named the executor of an estate and they don't know about it. The unsuspecting person may not be interested in the responsibility or they might not have the time to commit. It's also crucial to have a secondary or contingent executor. If your

spouse is your executor and they predecease you without a contingent executor or updated will, it will lead to issues.

### **Mistake #4: Not Considering Income Tax**

This is a critical error. Without considering income tax, your estate could be subject to more taxes than you would otherwise have to pay. On top of your designated beneficiaries, professionals jokingly refer to Canada Revenue Agency (**CRA**) as your unnamed beneficiary because they are definitely going to get their share. By working with the proper experts, you can minimize what the CRA receives to the largest extent possible. A prime example of forgetting to consider income tax would be when an individual passes on their family cottage. If you want to leave the cottage to your children, you are going to have a deemed disposition at fair market value on death. However, if the property goes to your spouse, it gets passed along tax-free and defers the tax. Strategic estate planning can not only give you peace of mind, it can reassure your family as well.

### **Mistake #5: Forgetting to Leave an Inventory**

Without an up to date inventory, your executor has to hunt to find out what and where your assets are. If your records aren't up to date, there could be lost assets out there. From multiple bank accounts and brokerage accounts, to personal unpaid loans. If you haven't left a note for it in your will and estate plan, nobody will know that John Doe owes you \$100,000 – and now you've just given him a very generous gift.

### **Mistake #6: Not Thinking About Your Beneficiaries**

You may have someone in your will who you no longer wish to leave an inheritance. Imagine being in a second marriage without updating your will. Your assets could be going to your ex-spouse. (Probably not what you wanted to do.) Or perhaps you have a child that you want to leave assets to but they are in financial distress. Consider using a trust instead of an outright distribution. If you have a beneficiary who requires extra care or is disabled, there are qualified disability trusts with certain tax advantages.

With cross-border beneficiaries (in the US or elsewhere across the globe), you could be creating a double or adverse tax situation if your will doesn't include the proper language when outlining assets left to those beneficiaries.

### **Mistake #7: Neglecting to Update Your Will and Estate Plan after Major Life Events**

Certainly after a major life event, you need to update your documents. Whether it's a marriage, divorce, birth, death or far-away move. You should be reviewing your will and estate plan every five years or so. While you might not have major changes to your documents, you may want to slightly tweak them. If you get married, the general assumption is that you will leave your assets to your spouse (second marriages are often different – or third or fourth these days). It's important to let people know what your wishes are to

avoid legal issues down the road. If nothing has changed and your life is the status quo, you may not need to involve a professional. However, it never hurts to talk with your accountant or lawyer and see if you can make any advantageous amendments as tax laws may have changed.

### **Mistake #8: Not Updating Your Power of Attorney**

If you don't update your Power of Attorney, you're going to have people making decisions for you that you may not want. I have seen instances where a deceased individual hadn't updated their will in over 20 years but their executor was a former friend. The friend ultimately resented being appointed the executor and we struggled to work with them to handle the estate. You should be thinking, "If I can't act for myself, who do I want to act for me?" If 10 years ago you wanted to name an individual as your Power of Attorney, but that individual

is no longer in your life (or is deceased), you're creating a massive problem for yourself and those you leave behind.

Life is always changing. Your will and estate plans are live documents. They're not static; they're dynamic and should always be changing with you. Your finances are changing. If you don't take the time to establish and update your will and estate plan, all of your wishes may not be carried out as you desire and your life's hard work could be squandered and go to waste.

*This article has been prepared for the general information of our clients. Specific professional advice should be obtained prior to the implementation of any suggestion contained in this article. Please note that this publication should not be considered a substitute for personalized tax advice related to your particular situation.*

## Connect with the Author

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