

The Importance of Assistance

Plan Ahead

Even though we live in the same country, the regulations that apply in the event of mental or physical incapacity, or when settling an estate can vary from province to province. This is why it is so important to know the regulations of the province where you live, to make sure your loved ones are aware of your personal and health care wishes should you no longer be able to make your own decisions and to clearly establish how your assets will be distributed after your death.

Prudent planning not only ensures that your choices are respected, it also saves your beneficiaries a lot of stress when it comes to expenses, delays and possible conflicts concerning your incapacity or death.

Plan ahead, don't leave room for chance.

If You Die Without a Will

If you die without a valid will in New Brunswick, you are considered to be "intestate", and your estate will be distributed according to the laws of New Brunswick. Depending on your situation, your assets will be divided as shown in Tables 1 and 2 below. In addition, if you have real property in a province other than New Brunswick, the distribution rules of that province will apply to that real property.

❖ An unplanned estate could result in more expenses, delays and conflict for your beneficiaries.

Table 1 – Dying without a will leaving a spouse and children

Spouse* only	All to spouse.
Spouse, relatives, no children	All to spouse.
Child or children only	All to child (or to children in equal shares). If child is deceased, to that child's issue (i.e., grandchildren and great grandchildren of the intestate) split that child's share equally.
Spouse and one child	Spouse receives the "marital property" and half of the remainder of the estate. The child then gets the remainder, after the spouse.
Spouse and children	Spouse receives the "marital property", and one-third of the remainder of the estate. The children then divide the remaining two-thirds equally (if a child is deceased, his or her children take that share).
No spouse or children	See Table 2.

* A spouse in New Brunswick does not include a common-law partner.

Table 2 – Dying without a will leaving no spouse or children

No spouse or children	Parents in equal shares, if both are living, or all to the surviving parent. If no parent alive, then to brothers and sisters equally (if a brother and/or sister is deceased, his or her children take his or her share). If no brothers and sisters, to nieces and nephews, and if none, then to next of kin. If there is no next of kin, then it all goes to the Provincial Government.
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Preparing for Incapacity

In New Brunswick, incapacity planning includes an Enduring Power of Attorney respecting property matters and a Power of Attorney for personal care.

The Enduring Power of Attorney respecting property matters authorizes the attorney to make financial and legal decisions on your behalf. Your attorney can do anything with your property that you could do when capable, with certain restrictions, such as making or altering a will on behalf of the donor. Further restrictions on the authority of your attorney may be set out in the Enduring Power of Attorney document. The Enduring Power of Attorney only applies while you are alive and ceases to be effective upon your death. It is important that the attorney is someone whom you trust, and who has the skills to manage your property. In addition, for older donors, it is essential to appoint a younger person, possibly as an alternate, to act if the first person selected cannot fulfill his or her duties. In some cases, it may be appropriate to appoint a trust company, such as National Bank Trust as your attorney for property.

A Power of Attorney for personal care gives the authority to an attorney to make personal care decisions on your behalf when you are no longer capable of making decisions or communicating your wishes. The Power of Attorney for personal care also allows you to set out your instructions regarding your personal care in the event that you are unable to communicate or lack capacity. Usually, your attorney is someone who respects your philosophy of life and who you trust will honour your wishes. Discussing your wishes ahead of time with your attorney will help him or her understand the type of care you wish to receive and will make it easier for your attorney to make these decisions when the time comes.

...✦ Your incapacity plan and estate plan should be prepared in coordination with your spouse. You should seek legal advice to ensure that both plans work together and your overall wishes are implemented.

Probate Facts

Probate is the process where the executor files an application with The Probate Court of New Brunswick to verify that the document is your last will and that it is valid in accordance with the laws of New Brunswick. The Court will issue a "Grant of Probate" confirming the right of the executor to manage the estate, confirming the validity of the will and giving assurance that assets are transferred to the proper beneficiaries. In this way, probate provides some liability protection to the executor. In New Brunswick, the probate taxes are as follows:

Table 3 – Probate Taxes in New Brunswick*	
Estate value	Tax
Under \$5,000	\$25
\$5,001 to \$10,000	\$50
\$10,001 to \$15,000	\$75
\$15,001 to \$20,000	\$100
\$20,001 plus	\$5 per \$1,000 (or portion thereof)

* As of December 2016.

These probate taxes can be minimized in a variety of ways, including:

- > Gifting during your lifetime;
- > Designating beneficiaries on registered plans such as RRSPs, RRIFs, TFSAs, life insurance policy proceeds, pension plans and segregated funds;
- > Transferring real property into joint tenancy;
- > Adding joint owners to bank and investment accounts; and
- > Transferring property into a trust during your lifetime.

Please note that the above techniques do not replace the need for a will. They are merely additional tools for transferring assets.

There are significant advantages and disadvantages with each of the above planning techniques. If you focus too much on avoiding probate fees, your plan may have unintended consequences. For example, you may create trusts in your will and also designate beneficiaries for your major assets such as your RRIF and insurance policies. The end result may be that your estate avoids probate on these assets but there may be insufficient assets with which to establish the trusts because the assets are no longer part of your estate that is subject to the terms of your will. In many of these cases, the probate fees saved will be less than the potential benefits of trust planning and proper will drafting. In addition, transferring property into joint ownership can lead to reduced control over your assets during your lifetime and potential disputes among your heirs after your death.

❖ We strongly recommend that you have a discussion with your legal advisor before implementing any of these options to ensure they fit with your overall estate plan.

❖ Should you have any questions,
do not hesitate to contact us.

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nbc.ca/estate



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