

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 will in Alberta, you are considered to be "intestate", which means that your estate will be distributed to your "next of kin" according to the laws of Alberta. 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 Alberta, the distribution rules of that province will apply to that real property.

If the intestate dies leaving no spouse or adult interdependent partner, children or descendants, parents, siblings, nieces or nephews, then the estate must be distributed equally among the next of kin in a parentelic distribution under the *Wills and Succession Act (Alberta)*. An example of parentelic distribution is: George dies intestate, without a spouse or adult interdependent partner, children, parents, or grandparents, but he has an uncle on his father's side, and a first cousin on his mother's side. The uncle is considered third degree and the cousin is considered fourth degree. The uncle and first cousin inherit equally given that they are both the first remaining descendants of grandparents.

❖ 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 or Adult Interdependent Partner* ("AIP") only	All to spouse or AIP.
Spouse and AIP	If there is both a spouse and an AIP, they will share the estate equally.
Descendants only	All to children in equal shares. If child is deceased, then the deceased child's portion is divided equally among the deceased child's surviving children, if any.
Spouse or AIP and Descendants	If a person leaves a spouse or AIP and all of the descendants are of the relationship with that spouse or AIP, everything goes to the spouse or AIP.
Spouse or AIP and descendants of a different relationship	The spouse or AIP inherits the greater of 50% of the net value of the intestate estate or \$150,000. The rest is divided equally among the deceased's descendants from the other relationship(s). If there is both a spouse and an AIP, they will split the greater of 50% of the net value of the intestate estate or \$150,000.
No spouse or AIP or Children	See Table 2

* Adult Interdependent Partner is defined as a person who: i) has lived with the deceased in a relationship of interdependence for a continuous period of at least 3 years, or ii) in a relationship of some permanence if there is a child of the relationship by birth or adoption, or iii) the deceased entered into an adult interdependent partner agreement with the other person.

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

No spouse or AIP or children	100% divided equally between father and mother, or wholly to the survivor of them.
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Incapacity Management

In Alberta, incapacity planning includes the preparation of:

- › An Enduring Power of Attorney to take care of property and financial matters, and
- › A Personal Directive to take care of your personal and health care needs.

The Enduring Power of Attorney entitles the attorney to do anything with the property of the donor that the donor could do if capable, with certain restrictions, such as making or altering a will on behalf of the donor. 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 adults, it is essential to appoint a younger person, possibly as an alternate attorney, to act if the first person selected cannot fulfill his or her duties. In some cases, it may be appropriate to appoint a professional trust company, such as National Bank Trust, as your attorney for property.

The Personal Directive gives the authority to a named individual (the agent) to make decisions related to health care, accommodation and medical treatments on your behalf when you are no longer capable of making decisions or communicating your wishes. Usually your agent is someone who respects your philosophy of life and who you trust will honour your wishes. Discussing your wishes ahead of time with your agent will help him or her understand the type of care you wish to receive and will make it easier for your agent 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 Superior Court of Justice of Alberta to verify that the document is your last will and that it is valid in accordance with the laws of Alberta. 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 Alberta, probate fees are among the lowest in Canada.

Table 3* – Probate fees in Alberta	
Estate value	Fee
Less than or equal to \$10,000	\$35
Over \$10,000 to \$25,000	\$135
Over \$25,000 to \$125,000	\$275
Over \$125,000 to \$250,000	\$400
Over \$250,000	\$525

* As of December 2016

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

- › Gifting during your lifetime;
- › Designating beneficiaries on registered plans such as RRSPs, RRIAs, TFSAs, life insurance policies or products and pension plans;
- › 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 to have a will in place. 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 on 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.

✦ 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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