

# The Ins and Outs of Estate Planning



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# **Part of A Presentation Series On Topics of Interest to Seniors**

# Estate Planning



# What is to be covered in this presentation?

- Explain the key areas of estate planning.
- Provide an understanding of wills
- Review powers of attorney
- Examine trusts
- Choose an Executor
- Examine probate reduction strategies
- Review discussion material you need to have with your executor and your family

# Disclaimer

This presentation provides information about estate planning.

The information should not be construed as providing specific legal or financial advice.

Use of any information acquired from this presentation is voluntary.

Always obtain a qualified assessment of the accuracy and timeliness of information by consulting legal and/or financial advisors.

# Estate Planning

- Estate planning refers to the process required to transfer and preserve your wealth in an orderly and effective manner.

# Estate Planning

Examining estate planning from a tax perspective you want to:

- Minimize and defer tax on your estate;
- Minimize taxes on your death to preserve your estate for your heirs;
- Move tax burden to your heirs only to be paid on the future sale of the assets

# Estate Planning





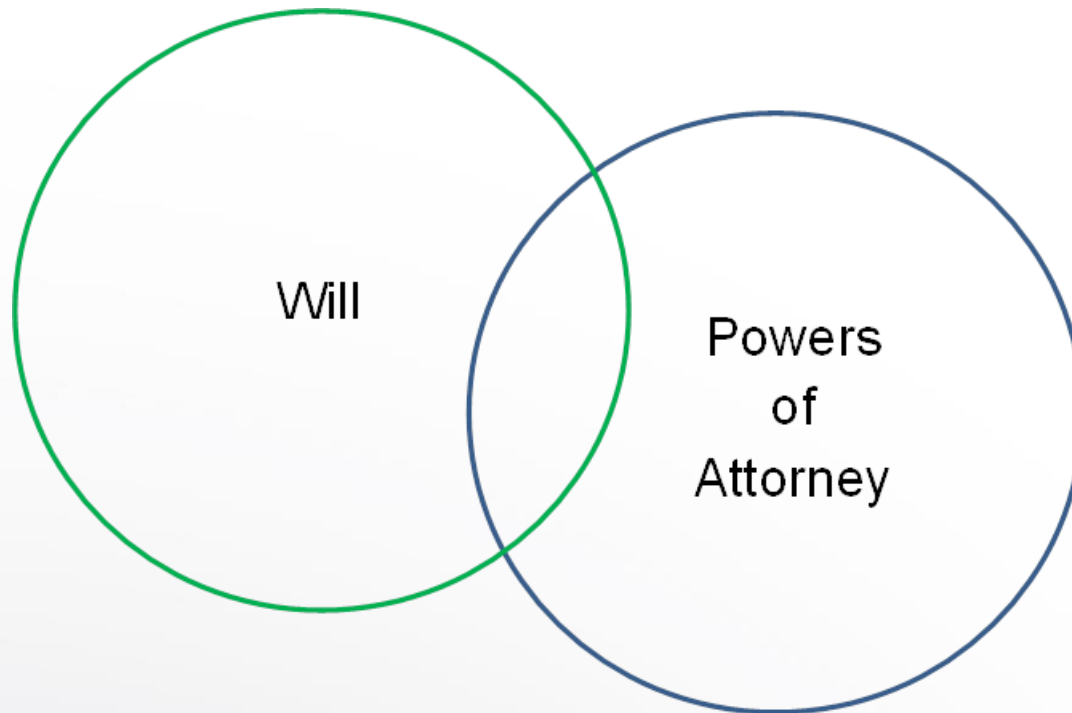
# Estate Planning

Do you have a power of attorney?

Who is your attorney?

How many PoAs do you need?

# Estate Planning



# Estate Planning

Do you wish to provide for your spouse, children grandchildren?

Do you wish to provide to charitable organizations?

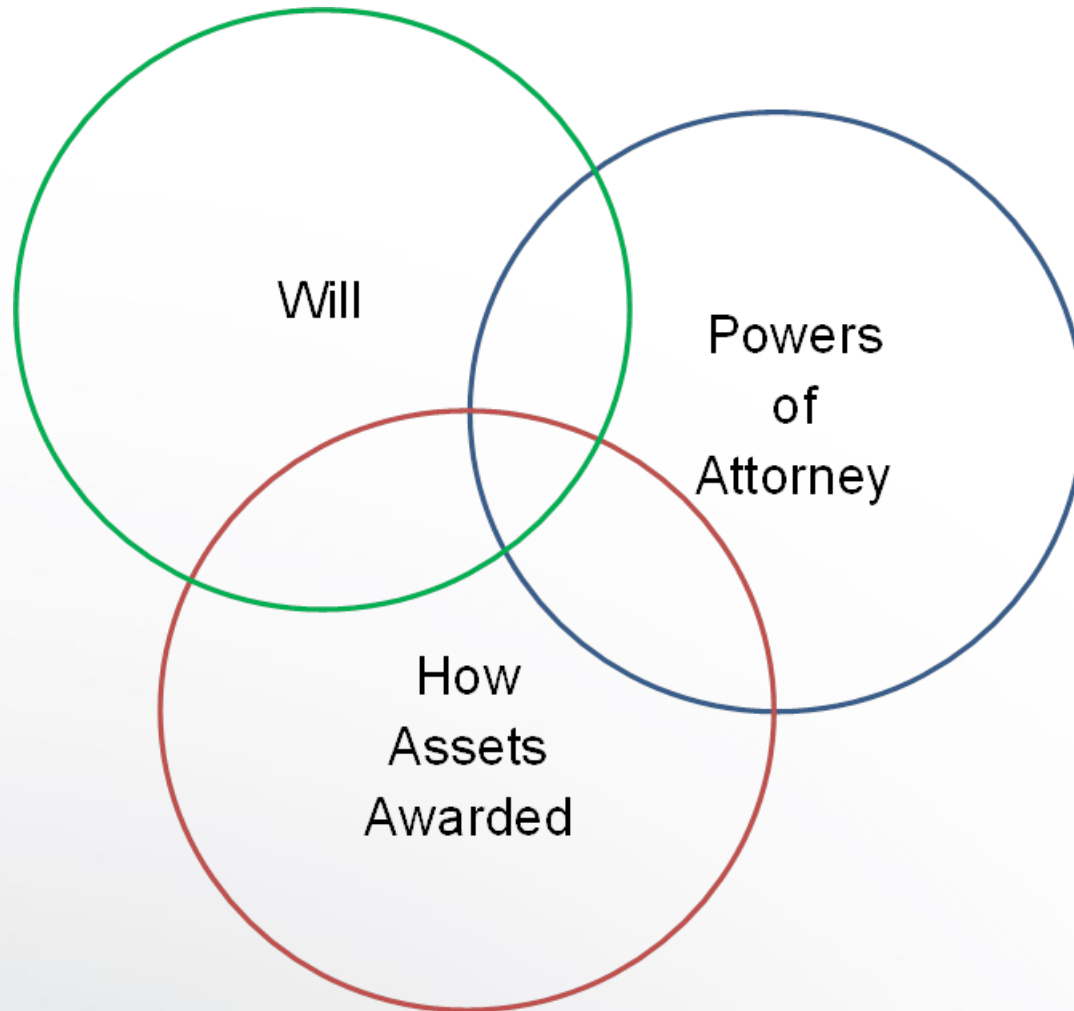
How do you wish to provide for people – outright or through trusts?

Are there particular items you wish to pass on?

If you have no beneficiaries how do you want your estate distributed?

Do you wish to disinherit anyone?

# Estate Planning



# Estate Planning

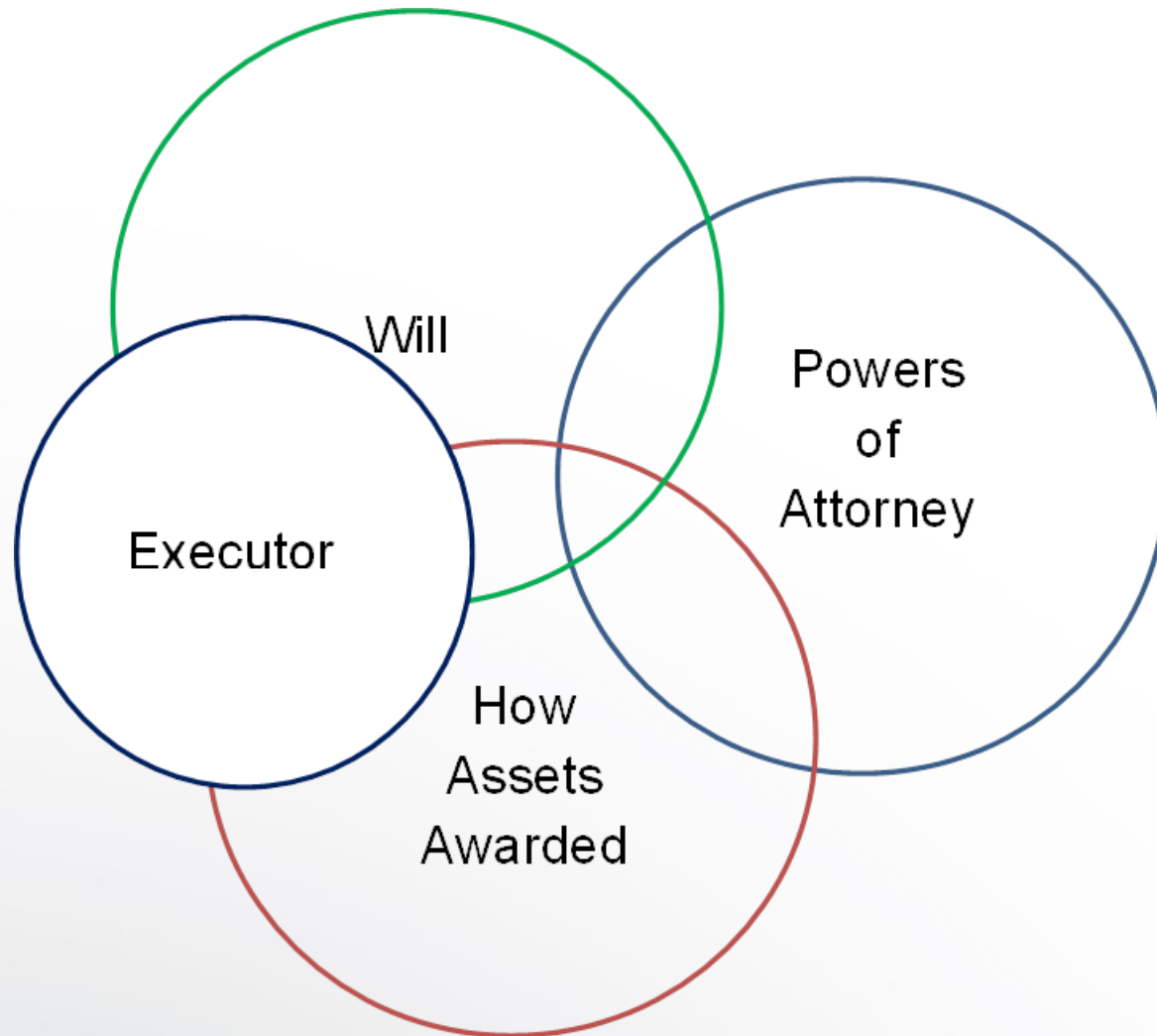
Do you have an executor?

Do they know your wishes?

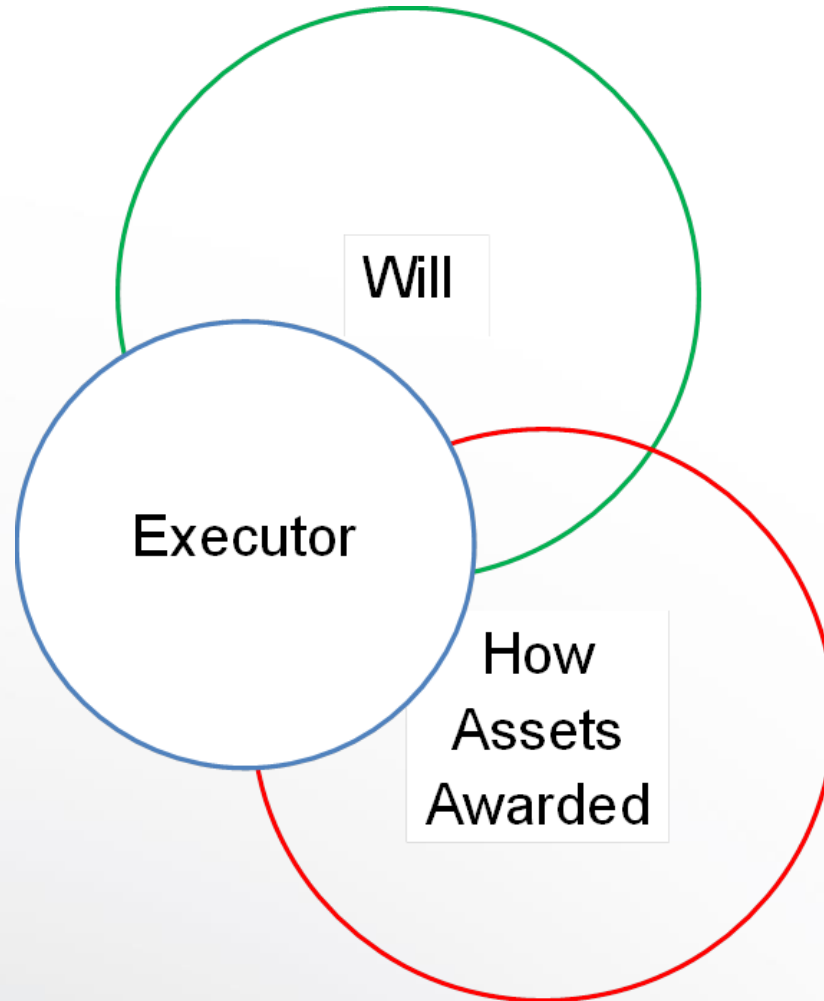
Do they know what has to be done to close your estate?

Can they do what needs to be done?

# Estate Planning



# Estate Planning



# Some Background First

- *Two out of three adult Canadians do not have a will.*
- *Over 50% of them have children.*
- *One out of four Canadians will die suddenly.*



# Some Background First

- *Can you take the risk that the CRA will end up with more money because of poor tax and estate planning and lack of a will?*
- *Here are some classic pitfalls to avoid when preparing your will and doing your estate planning.*

# Classic Pitfalls

- Not preparing and updating a personal inventory and information list.
- Not having and/or updating your will.
- Not selecting the right executor, trustee, or guardian.
- Not having sufficient financial resources to cover taxes, expenses and debts.
- Not obtaining professional tax and legal advice.

# Classic Pitfalls

- Not understanding and utilizing the benefits of trusts.
- Not adopting an investment strategy for your RRSPs and other investment portfolios that is consistent with your estate planning goals.
- Not taking full advantage of second property tax strategies.
- For snowbirds, not taking the necessary steps to protect your estate from US taxes.
- For small business owners, not taking a strategic approach to estate planning.

# Common Fears of Estate Planning

**Procrastination is often an impediment to taking on estate planning because of a range of fears**

- Fear of Losing Capital
- Fear of Taxes and Fees
- Fear of Giving Up Privacy
- Fear of Delays
- Fear of Giving Too Much

# Common Fears of Estate Planning

## Fear of Losing Capital

- Erosion of investments from poor decisions and/or from a declining market.
- Protection achieved by instruments with a guarantee of capital such as GICs and segregated funds.
- This protection to provide peace of mind comes with a cost: lost opportunities for capital growth and fees are charged eating into the meager returns.

# Common Fears of Estate Planning

## Fear of Taxes and Fees

- Estates are subject to taxes and fees such as probate fees, executor's fees, legal and accounting fees, plus the bite of taxes.
- Tax & fee avoidance can be achieved by leaving specific assets such as RRSPs and RRIFs to a spouse instead of another beneficiary.
- Other costs can be reduced through careful tax planning by selling assets or transferring to beneficiaries before death.

# Common Fears of Estate Planning

## **Fear of Giving Up Privacy**

- With probate, the size of your estate, identity of beneficiaries and amount of inheritance is in the public domain. Anyone, general public, media or fraud artists can view a copy of your will.
- Protection can be achieved by avoiding the probate process with investments in insurance companies (GICs, segregated funds and life insurance) or through the use of trusts.

# Common Fears of Estate Planning

## Fear of Delays

- Days and weeks after death are stressful as family members cope with grief, funeral arrangements, memorial services and setting the estate settlement in motion.
- Ensure proper planning is done in advance to avoid delays.
- Make sure your will is up to date and done properly.
- Use products from life insurance companies to efficiently transfer assets.



# Common Fears of Estate Planning

## **Fear of Giving Too Much**

- Parents worry about giving too much money to their children and their ability to manage and invest the money sensibly.
- Concerned their legacy will be squandered; come under the influence of unsavory people; or children will lose the drive to succeed.
- To avoid the transfer of inheritance to a specific heir all at once, you can set up a trust but be aware of the cost, complexity and ongoing management.

# Stages of Estate Planning

- Estate planning is an ongoing process with needs and wishes changing with your own circumstances
  - Young Family
  - Mature Family
  - Older Family

# Stages of Estate Planning

## Young Family

- Draw up a list of assets and liabilities
- Outline a 5 year plan of goals and needs
- Assess life and disability insurance needs
- Review savings programs (RRSPs, RESPs)
- Decide on asset distribution if you die
- Select an executor/trustee for your will
- Choose a guardian for your children
- Consult on wills, estate planning and trusts

# Stages of Estate Planning

## Mature Family

- Assess your financial status
- Review your will
- Re-assess your professional advisors
- Re-assess your executor
- Consider a special trust

# Stages of Estate Planning

## Older Family

- Assess your financial status, personal and life needs, goals and priorities (eg. travel, sell home and buy condominium).
- Review your will so you can balance needs of spouse against those of children.
- Reconsider your executor and trustee.
- Obtain professional advice on minimizing taxes to avoid seriously depleting your estate.

Personal Inventory  
Wills  
Powers of Attorney  
Living Wills  
Beneficiary Designations  
Finding an Executor  
Trusts  
Probate  
Impact of Probate  
Engaging Your Executor  
Action Plan  
Summary



# Personal Inventory



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Where to Start?

- Preparing and updating a personal inventory and information list.\*\*
- Gathering the information.
- Making the inventory and information known and accessible.



# Personal Inventory

- Assists with developing an estate plan.
- Identifies any potential cash flow shortfalls for the surviving spouse.
- Helps clarify your wishes for the distribution of your assets.
- Enhances your peace of mind.
- Ideally reviewed and updated annually.

# Personal Inventory

- All your personal information, that of your spouse, your children, grandchildren and any dependents.
- All your financial information – assets and liabilities (property, loans, investments, tax shelters, business).
- All of your advisors.
- Your funeral information.

# Key Documents

- Your Will
- Your Living Will
- Your Powers of Attorney
- Proof of Ownership (house, land, vehicles, stocks, or other assets)

# Key Documents

- Six years or more of tax returns
- A list of bank accounts, safety deposit boxes
- Stock certificates and savings bonds
- Pension retirement, RRSPs, RRIFs and annuity documents

# Key Documents

- Insurance policies
- A list of your debts and loans
- Marriage licence (and/or divorce papers)
- Canadian immigration papers

# Key Documents

- Your user names and passwords for your on-line accounts
- Your funeral arrangements

Taking action and doing these tasks will get you well on your way to having an orderly estate

# Personal Inventory Summary

- Collect all your personal information
- Collate and document your inventory
- Use the information to establish how you wish to distribute assets
- Inform your spouse and executor of its location.

# Wills



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux



# No Will

What if there is no Will?

Creates problems for those you  
leave behind.

# Dying without A Will

- *Property is divided according to the laws of Ontario, which may not be the same as your wishes.*
- *The court will have to appoint someone to act as your personal representative.*
- *Count on extra time delays and expenses to wrap up your affairs.*

# Dying without A Will

Ontario *Succession Law Reform Act*  
governs how your property will be  
distributed

# No Will

- 1) **If you have a spouse, but no children**, your spouse inherits everything. Common-law spouses do not automatically inherit everything.
- 2) **If you have a spouse and children**, your spouse first takes a *preferential share* - up to \$200,000 worth of assets. Of the residue, 1/2 each for one child; or 1/3 to spouse and rest divided equally among all children

# No Will

- 3) **If you have children, but no spouse,** then the children each inherit an equal portion of your estate.
- 4) **If you have no spouse and no children,** your parents inherit your entire estate.
- 5) **If you have no spouse, no children, and no parents,** your brothers and sisters divide your estate equally.

# No Will

- 6) **If you also have no brothers and sisters,** then your nieces and nephews each inherit an equal portion of your estate.
- 7) **If you have no nieces and nephews,** then all other next of kin inherit an equal portion of your estate, and
- 8) **If you have no living next of kin,** then your estate goes to the Ontario government.

# Types of Wills

- Attested Wills
- Holographic Wills

# Attested Wills

- Most common, “formal” will
- Attested = signed by witnesses
- Most typed or fill-in-forms
- Must be signed in front of two witnesses
- Each page initialled by you and the two witnesses



# Attested Wills

- Witnesses must sign an affidavit, a written statement that the witnesses saw you sign and that they have no reason to believe you are not capable of making the will.
- Witnesses should not be receiving a gift in the will, nor spouses of anyone receiving a gift.

# Holographic Wills

- Less formal
- Must be entirely handwritten
- Must be signed and dated
- Does not require witnesses
- May not be valid if unclear or missing important legal details

# Wills

- Basically three ways to prepare a will:
- *Do it yourself*
- *Get a lawyer*
- *Get a trust company to arrange a lawyer to do it.*

# Wills

- *Do it yourself is the poorest choice*
  - Defects or inadequacies could result in legal, financial and administrative grief for your family, relatives and beneficiaries.
  - Ambiguities could void a clause in the will or the whole will could be considered void for various technical reasons.

# Wills

- *Get a lawyer*

- qualified to provide legal advice, and knowledgeable about how to complete the necessary legal work.
- a lawyer specializing in wills could recommend various tax and estate planning experts to assist you.

# Wills

- *Get a trust company to arrange a lawyer to do it.*
- Trust companies have expertise or access to expertise to perform an all encompassing role to assist with all aspects of estate planning.

# Will Contents

- *Your full name and where you live*
- *Cancel any previous will*
- *Appoint an executor*
- *Direct debts to be paid*
- *Specify gifts to named beneficiaries*
- *Residue directed as per your wishes usually in equal shares*
- *Testify you are signing*
- *Witness declaration*

# Will Contents

*“per stirpes”*

*If a child predeceases you, the child’s share of the estate goes to their children in equal shares.*

*“per capita”*

*If a child predeceases you, the child’s share is divided equally among the surviving siblings.*



# Powers of Attorney



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Powers of Attorney

In Ontario there are basically three types of power of attorney:

- General Power of Attorney
- Continuing Power of Attorney for Property
- Continuing Power of Attorney for Personal Care.

# Powers of Attorney

## General Power of Attorney

- *Gives authority to someone else to look after ALL your financial affairs.*
- *Give all the powers now, but protect yourself by not giving the original document.*
- *Alternatively, triggered on specified event.*
- *Unless the POA has an enduring feature, it is void if you are mentally incapacitated.*

# Powers of Attorney

## Continuing Power of Attorney for Property

- *Gives authority to someone else to represent your interests in financial matters.*
- *It remains valid even if you are mentally incapacitated.*
- *Generally must be reviewed every three years unless there is a clause to the contrary.*

# Powers of Attorney

## Continuing Power of Attorney for Personal Care

- *Gives authority to someone else to make decisions regarding your health and medical treatment.*
- *It becomes valid if you become mentally incapacitated or unable to look after your health affairs.*

# Powers of Attorney

## Limited Power of Attorney

- *Gives authority to someone else to look after a specific matter for you, such as selling a home.*
- *Criteria for the authority are very clearly spelled out.*
- *It is not valid if you are mentally incapacitated.*

# Powers of Attorney

## Bank Power of Attorney

- *Gives authority to someone else to act on your behalf on financial matters with a specific financial institution.*
- *The bank wants to see you personally and watch you sign their own documents.*
- *May or may not include an enduring clause if you become mentally incapacitated.*

# Powers of Attorney

## *Benefits*

- Establishing a power of attorney is inexpensive.
- You can decide who should make decisions on your behalf.
- You control whether the agent has general or specific power.
- The POA can require the agent to become bonded or to give an account of his or her transactions.



# Powers of Attorney

## *Limitations*

- Competence at time of writing POA might be questioned later.
- Multiple POAs may be in place as some financial institutions recognize a POA only if prepared on their forms.
- Some institutions will not recognize a POA after six months to one year.
- If powers are too general, open to abuse.
- The attorney could turn out to be untrustworthy.

# Powers of Attorney

*Upon your death all  
Powers of Attorney documents  
become void.*

# Living Wills



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Living Wills

- *Designed for those concerned with the quality of life when death is near.*
- *Written statement of your wishes to those most likely to have control over your care.*
- *Expressly for the event where there is no reasonable expectation of recovery from physical or mental disability.*
- *Make it known you have a living will.*

# Living Wills

- *You must specify your wish to die naturally, with dignity, and not be kept alive by artificial means or “heroic medical measures”.*
- *As it an expression of your wishes it is not legally binding upon your doctor or hospital in charge of your care.*
- *Give a copy to your family doctor.*
- *Keep a copy where it can be accessed quickly.*

# Living Wills

**Is a “living will” the same thing as a “Power of Attorney”?**

- No.
- A Power of Attorney is a legal document in which you name a specific person to act on your behalf.

# Living Wills

**Is a “living will” the same thing as a “Power of Attorney”?**

- A “living will” just addresses your treatment and personal care wishes .
- It does not need to name anyone or be written in any specific way.

# Living Wills

**Is a “living will” the same thing as a “Power of Attorney”?**

- As part of your Power of Attorney document you can write your treatment wishes (“living will” or “advance directive”)
- Allows you to make sure your attorney is aware of them.



# Beneficiary Designations



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Beneficiary Designations

- Appointing beneficiaries on the various products you own (RRSPs, RRIFs, LIRAs, Life Insurance policies) is one of the key decisions made when setting up your estate plan.
- Payment of proceeds goes directly to your beneficiaries bypassing your estate, saving time and money.

# Beneficiary Designations

- Irrevocable Beneficiary
- Revocable Beneficiary
- Contingent Beneficiary

# Irrevocable Beneficiary

- Beneficiary cannot be changed without their consent.
- Not easily changed, so careful thought and consideration should go into naming a beneficiary.
- Additional documentation required by financial institutions.

# Revocable Beneficiary

- Most familiar type; you can name and change at any time your designated beneficiary.
- Remember that re-writing your will or any family change does not change the beneficiary on any financial products.

# Contingent Beneficiary

- Always consider naming a contingent (alternative) beneficiary.
- Your primary beneficiary may die before you do.
- Later in life, you may not be in any condition or ability to appoint a new beneficiary at that time.

# Minor Children as Beneficiaries

- Make sure you appoint a trustee to receive and manage the proceeds on behalf of the minor child or children named as beneficiaries.
- Discuss the implications of naming children as beneficiaries with your financial planner.

# Tax Planning Aspects of Appointing Beneficiaries

- For RRSPs and RRIFs the value at time of death is included in the income of the deceased, except the taxes can be deferred if the beneficiary is
  - Spouse (including common-law partner)
  - Financially dependent child or grandchild under 18 years
  - Financially dependent mentally/physically infirm child or grandchild of any age



# Tax Planning Aspects of Appointing Beneficiaries

- When converting your RRSP to a RRIF do not assume the beneficiary designation would continue to apply. You are setting up a new contract and must designate a beneficiary at that time.
- When naming your spouse as beneficiary of your RRIF, the option is to have your spouse receive the RRIF as a lump sum, or your spouse becomes the successor annuitant.

# Tax Planning Aspects of Appointing Beneficiaries

- Receiving a lump sum causes a disposition of assets of the RRIF followed by rollover to the spouse's RRSP or RRIF.
- May not be a good time to sell the assets; may be selling costs; issue of paperwork at a difficult and stressful time for surviving spouse

# Tax Planning Aspects of Appointing Beneficiaries

- The successor annuitant designation is effortless.
- The spouse takes over from the deceased and continues to receive RRIF payment in his/her place.
- Investments within the RRIF are not affected.

# Tax Planning Aspects of Appointing Beneficiaries

- Can receive a credit of up to 100% of taxable income for donations made through a will.
- Taxes on RRSPs and RRIFs arising from death by the annuitant can be avoided completely if a donation equal to the value of the RRSP or RRIF is made in the will.

# Summary

- Appoint beneficiaries when possible and review them regularly.
- Change of circumstance (marriage, divorce, re-marriage, having children, death of a beneficiary) is a trigger to review and change your beneficiary designations.

# Finding an Executor



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# What is an Executor?

- In Ontario an executor is called an personal representative or estate trustee.
- An executor is responsible for settling an estate according to the deceased's wishes while complying with provincial laws.

# Executor Responsibilities

- Deal with immediate issues
- Make preliminary arrangements
- Secure the assets
- Value the estate
- Pay debts, resolve tax issues
- Carry out administration
- Distribute the estate



# Issues to Consider for an Executor

- Family dynamics may be complex
- Time constraints may be present
- Lack of expertise
- Living outside Ontario or Canada
- Personal liability

# Typical Duties of an Executor

- Meet beneficiaries to set expectations and give them an overview of the process\*\*
- Arrange funeral, memorial, cremation or burial as required
- Locate and prepare a detailed inventory of assets
- Review insurance coverage for the assets

# Typical Duties of an Executor

- Arrange for the residence to be emptied, cleaned, locks to be changed and if required the property to be sold
- Find, review and file claims for life insurance and pension benefits
- Prepare and file up to five separate income tax returns
- Consider executor liability coverage

# Typical Duties of an Executor

- Determine if an RRSP contribution should be made to reduce taxes, or to transfer assets
- Locate missing beneficiaries
- Pay legacies and other bequests
- Distribute the residue of the estate

# Executor Liabilities

- Not paying the Estate Administration Act fees
- Not acting in good faith
- Not paying taxes to CRA
- Unpaid creditors
- Not granting share of estate to common-law spouse
- Releasing estate too soon
- Not distributing estate in a timely manner
- Failing to obtain beneficiaries releases

# Executor Compensation

Entitled up to 5% of estate value

- Now this compensation will be considered taxable income to your executor; one option you may wish to explore is the idea of the executor receiving a gift defined in the will in lieu of fees.

# Appointing an Executor

- Large responsibility
- Can be time consuming
- Must have and exercise business judgement
- May deal with emotions and/or mediate conflict
- May have to settle a complex estate

# The Ideal Executor

- Lives in the same area as you
- Has experience handling money and dealing with financial institutions
- Can deal with relatives and beneficiaries objectively
- Is comfortable dealing with lawyers and accountants



# The Ideal Executor

- Has the time to spend settling your estate (P/T job for 1.5 to 2 years)
- Has the patience to deal with government agencies (CRA)
- Is organized and willing to do lots of paperwork
- Is not afraid to ask for professional help when needed

# Appointing an Executor

- Should appoint a primary and alternate executor in your will.
- Married couples often name each other as their executor.

# Appointing an Executor

- Married couples often name each other as their executor.
  - Good if everything goes to the surviving spouse
  - Not good if surviving spouse is elderly, unhealthy or financially inexperienced
  - Also not good if spouse is the second spouse and family members from the first marriage are adversarial.

# Appointing an Executor

- Appointing more than one executor helps to share the burden
- Not a good idea if they do not live locally
- More than two is never a good idea because group decision-making is rarely easy

# Appointing an Executor

Consider a trust company or lawyer experienced in handling wills – Why?

- As you and your executor(s) age, competency may become an issue
- The executor(s) may not have the depth of knowledge or experience to handle your estate well
- The executor(s) may not fully understand the liabilities or time commitment to complete your estate

# Appointing an Executor

Consider a trust company or lawyer experienced in handling wills

- You can enter into an agreement regarding their fees
- Like any executor they will also demand repayment of expenses for example: legal, accounting and realtor fees

# Trusts



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# What are Trusts?

- Common way of dealing with a range of personal, family or business options
- Vehicles to meet financial estate and tax-planning needs
- A legal structure where a trustee deals with property or assets over which the trustee has control for the benefit of beneficiaries
- Ownership rests with the beneficiaries



# Reasons for Trusts

- Allows you to see where your money goes
- Do whatever you want with the assets
- Avoids probate
- Pass down more than just money (cottage)
- Keep your wealth a secret

# Types of Trusts

- **Living (inter-vivos) Trusts**
  - Established while you are alive
  - Comes into effect once an agreement is signed and trust is funded
- **Testamentary Trusts**
  - Created under terms of your will
  - Activated upon your death
  - Funded from the assets of your estate

# Testamentary Trusts

- Spousal Trust
- Trusts for Minors
- Trusts for Charities
- Spendthrift Trust
- Special Needs Trust

# Testamentary Trusts

## Spousal Trust

- Meant to provide income for life of your spouse with capital remaining at death of spouse to go to children or grandchildren.
- Used when spouse is ill or incapacitated or lacks financial expertise.
- A variation if there are no children or grandchildren is to leave the capital to charity on the death of the spouse.

# Testamentary Trusts

## Trusts for Minors

- In the event both parents die at the same time, or when the surviving parent dies, a portion of the estate is held in trust for minor children or grandchildren until they reach a certain age
- Trustee can pay out the income and encroach on the capital for specific needs
- May arrange to disperse money in portions when children reach age 19, 25, 30

# Testamentary Trusts

## Trusts for Charities

- Trust set up that provides family members with income for life.
- On their death the remaining capital in the trust is distributed to a charity of your choice.

# Testamentary Trusts

## Trusts for Charities

Here in our community we have two wonderful charities for you to consider:

- The Deep River and District Community Foundation

or/and

- The Deep River and District Hospital Foundation

# Testamentary Trusts

## Spendthrift Trust

- If you have a child who has a history of fiscal irresponsibility may wish to control funds the child is to receive.
- Trustees have the power to distribute as much income as appears reasonable.
- On the death of the child, the capital could go for example to the grandchildren.



# Testamentary Trusts

## Special Needs Trust

- A trust can be set up for a family member that is physically or mentally challenged and is not able to manage their own affairs.
- Encroachment on the capital could be considered in extenuating circumstances.
- If the trust is to operate for an extended time, may wish to consider the benefits of having a trust company as the trustee.

# Testamentary Trusts

## Special Needs Trust

- May also be called a “Henson” Trust
- If the child qualifies under the Ontario Disability Support Program, there are limitations on income and asset ownership to continue to qualify for benefits
- The trustee must have absolute discretionary powers; the disabled beneficiary can have NO beneficial interest in the income or assets of the trust

# Testamentary Trusts

A few final words:

- Not all assets can be transferred to a trust.
- An RSP is a trust and cannot be transferred to a trust.
- A trust is required to file an annual income tax return (T3).
- Distribution to beneficiaries who are not Canadian residents causes taxes becoming due on transfer of assets.

# Living Trusts

- Family Trust
- Joint Partner Trust
- Alter Ego Trust
- Special Needs Trust
- Charitable Remainder Trust

# Living Trusts

## Family Trust

- Useful technique for holding investments or other assets for the benefit of your children for their financial support.
- Could be set up for higher education.
- Taxes would be lower as children would be in a lower tax bracket than you.

# Living Trusts

## Joint Partner Trust

- If 65 or older, and you wish to leave your assets to your spouse or partner, you can transfer funds while alive.
- You continue to use the trust's assets while alive, and receive any income or capital gains.
- Assets can be transferred to a joint partner trust at cost without triggering capital gains tax.

# Living Trusts

## Alter Ego Trust

- Similar to joint partner trust but is for those over 65 who do not have a spouse or partner.
- At the time of death assets deemed to be disposed of at fair market value triggering capital gains tax.

# Living Trusts

## Special Needs Trust

- For family members who are not able to handle their own financial affairs.
- Provides lifetime financial needs.
- On recipient's death residue could go to a charity or as a gift to other children.



# Living Trusts

## Charitable Remainder Trust

- Assist your charity of choice by donating a residual interest in a trust to the charity.
- You receive the income earned from the assets and on your death the charity receives the residual.
- You could receive a donation tax credit when the trust is established based on the projected fair market value at your death.

# Summary of Living Trusts

- With aging, many do not feel comfortable managing their own affairs. Their children may not have good money management skills, may be busy or live away.
- So, a living trust managed by a trust company and a responsible family member can be set up.

# Summary of Living Trusts

- Allows parents to receive income for life and the capital distributed to children and grandchildren on the death of the surviving parent.
- Trusts bypass the estate and are not included in the probate process.
- On death, assets are not part of the owner's estate on death, you achieve confidentiality as the assets are not included in public record at probate.

# Probate



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Probate

When an executor applies to the court for a *Certificate of Appointment of an Estate with a Will*, probate fees (aka taxes) have to be paid\*\*

# Probate

Courts acknowledgement will

- Confirm authority of executor
- Allow funds to be released  
(Institutions generally require a “Letter of Probate” before they will release funds)

# Is Probate Required?

For estates that have any  
assets in financial institutions  
the answer is  
**YES!**

# Probate

Estate Administration Act  
(January 2015)



# Estate Administration Act

- Probate Taxes are imposed on the assets of the estate of the deceased person
- Probate Taxes are paid as a deposit when the estate trustee applies for the Certificate of Appointment of the Estate Trustee with Superior Court of Justice

# Estate Administration Act

- Estate information must be received by Ministry of Finance within 90 days following issuance of the Certificate of Appointment of Estate Trustee

# Estate Administration Act

Probate Taxes are based on the value of the estate assets

- Real estate in Ontario (less encumbrances)
- Investments (stocks, bonds, trust units, etc.)
- Vehicles and Vessels (cars, trucks, boats, ATVs, motorcycles, snowmobiles)

*plus*

# Estate Administration Act

- All property held in another person's name
- All other property wherever situated including: goods, intangible property, business interests, and insurance proceeds (if no named beneficiary)

# Estate Administration Act

Probate Taxes are based on the value of the estate assets

HOWEVER, no outstanding debts, loans or liabilities can be subtracted from the estate assets to reduce the estate value!

# Estate Administration Act

Probate Tax imposed is

\$5 for each \$1000 or part thereof on the first \$50,000 of the estate

\$15 for each \$1000 or part thereof on the remainder of the estate exceeding \$50,000

As executor you must find the funds to pay the taxes  
WHEN you submit the estate to probate

# Estate Administration Act

## Probate Taxes for a \$250,000 estate

- on the first \$50,000 of the estate -> \$250

$$(\$50000/\$1000 \times \$5)$$

- on the remaining \$200,000 -> \$3000

$$(\$200000/\$1000 \times \$15)$$

Total probate fee = \$3250

# Estate Administration Act

Probate Taxes for a \$500,000 estate

- on the first \$50,000 of the estate -> \$250

$$(\$50000/\$1000 \times \$5)$$

- on the remaining \$450,000 -> \$6750

$$(\$450000/\$1000 \times \$15)$$

Total probate fee = \$7000



# The Impact of Probate



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Evaluate Impact of Probate

Is paying probate really a problem?

Probate is required by third parties to ensure the executor has the authority.

Do the costs and consequences to reduce probate outweigh the savings years later at your death?

# Evaluate Impact of Probate

Please note: if you consider actions to reduce probate, you may also trigger capital gains tax now.

- e.g., gifting recreational property to children –
- **now** – you pay capital gains tax
  - **after your death** – estate pays capital gains tax ( + **asset becomes part of probate value!!**)

# Evaluate Impact of Probate

Possible probate reduction strategies:

- Consider gifting assets before death
- Consider living trusts
- Consider joint tenancy with right of survivorship (JTWROS) NOT joint tenants-in-common

# Evaluate Impact of Probate

Joint Tenancy (JT) issues from other joint owner:

- Debt – asset sold to pay debts
- Divorce – asset becomes part of divorce proceedings and settlement
- Drugs – asset sold to feed habit
- Death – asset becomes part of estate

If JT just for convenience, consider POA where you remain in ownership control of the asset

# Evaluate Impact of Probate

Other probate reduction strategies:

- Consider life insurance products
  - Whole life insurance
  - Segregated funds

# Evaluate Impact of Probate

Other probate reduction strategies:

- Consider titling assets to a limited company as any personal debts you may have are not subtracted from assets to determine estate value

# Evaluate Impact of Probate

- Consider making two wills: primary for assets subject to probate; secondary for distribution direction of other assets.
  - Ensure that one will does not accidentally revoke the other.
  - Ensure that the will for probate meets provincial requirements.



# Engaging Your Executor



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Things to Do to Assist your Executor

- Spend some quality time with your executor to make sure all your wishes will be addressed.
- Make your executor aware of where you will be; where your personal inventory is, where your key documents can be found.

# Things to Do to Assist your Executor

Basically you need to answer questions now before you are not here to answer them!

If you really love your family take the time now to get organized so you do not leave them with a big mess to sort later.

# Things to Do to Assist your Executor

Manage your affairs intelligently:

- Consolidate accounts
- Review financial statements with executor
- Hire a financial planner
- Go over your funeral arrangements

# Things to Do to Assist your Executor

Manage your affairs intelligently:

- Review your estate plan
- Prepare a financial data organizer
- Itemize all your personal information and personal inventory of assets and liabilities in one book.

# Things to Do to Assist your Executor

Manage your affairs intelligently:

- Make sure your will is up to date
- Make sure you have designated beneficiaries
- Evaluate the need for trusts
- Evaluate impact of probate

# Action Plan



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Actions To Take

- Do a physical items inventory
- Do a non-physical items inventory
- Credit card & debts list
- Organization and charitable memberships
- Send copy of assets to executor
- Review RRSP, RRIF, TFSA accounts
- Update life insurance and annuities



# Actions To Take

- Assign TOD designations
- Select a responsible executor
- Create a will
- Review & update documents
- Send copies to your executor

# Actions To Take

- Visit a financial planner or estate attorney
- Initiate important estate plan documents
- Simplify your life

# Avoid Procrastination

- Prepare an estate plan
- Don't ignore legislation around TFSA's
- Consider gifts before death
- Have the correct beneficiary designations
- Have enough life insurance

# Summary



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux

# Take Away

Questions to consider to help your planning\*\*

- What word best describes your family?  
Can you think of a family story to explain?
- How did your parents acquire their wealth?
- How would an inheritance advance your dreams for yourselves, family, and community?
- In division of assets does fair mean equal?

# Take Away

- To whom are you planning to leave your wealth?
- How did your parents divide their assets?
- When did you first learn of your parent's will contents?
- Would you do the same and/or what would you do differently?

# Take Away

- What role did you play in the final care of your parents?
- What was done well and what might you have done differently?
- In detail, what are your last wishes?

# Take Away

Finally, there are copies of additional helpful material for you to take away including:

- Will & estate planning preparation checklist
- On-line information sources to help in preparing your estate plan
- Questions to help you focus and clarify your wishes for your estate



# Summary

Hopefully this presentation has:

- Explained the broad aspects of estate planning.
- Provided an understanding of wills, powers of attorney, living wills and trusts.
- Given some insight into executor duties.
- Reviewed the impact of probate.
- Provided guidance for you to assist your executor to close your estate.

Thank you for your participation today



National Association  
of Federal Retirees

Association nationale  
des retraités fédéraux