

CHOO'S FINANCIAL INSIGHTS

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HollisWealth™



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Do you have a complete Will?

In this issue of Choo's Insight, we'll discuss some of the pitfalls which could arise if your Will was not properly drafted by a Lawyer with Estate Planning expertise.

Whether you already have a Will in place or in the process of getting one made, I hope you will peruse your Estate Plan to ensure that any of the problems discussed here have been addressed.

PROTECT YOUR ESTATE FROM BEING SUED!

When one gets estate planning done, the main goal is to preserve the estate assets by reducing the tax liability of the deceased's estate.

Common factors that tend to spark estate litigation are disgruntled family members who believe they are entitled to some, if not all of the estate, or that they didn't receive their fair share; sibling rivalry, favoritism, blended families or second marriages.

With estate litigation, the threat is very real that it can deplete estate assets besides destroying families, straining relationships, huge legal bills, emotional stress and grief.

If you have a high networth, the likelihood of a will being contested grows. So let's make sure that your wills are created with minimal room for interpretation.

Do note that no strategy can guarantee an estate from being contested, but the following strategies may reduce the likelihood of such an event:

MAKE A WILL:

Studies show that approximately 50% of Canadians don't have a will. A will spells out how you wish to distribute your assets upon your death. If there is no will, there is a high likelihood the estate may be sued.

It is very important to have a lawyer that specializes in estate planning and administration. Too many lawyers are dabbling in wills and estates where their expertise lies in other areas.

Lawyers specializing in wills and estates are very thorough and will make sure their clients get properly crafted wills.

INCLUDE AN IN TERROREM CLAUSE IN YOUR WILL:

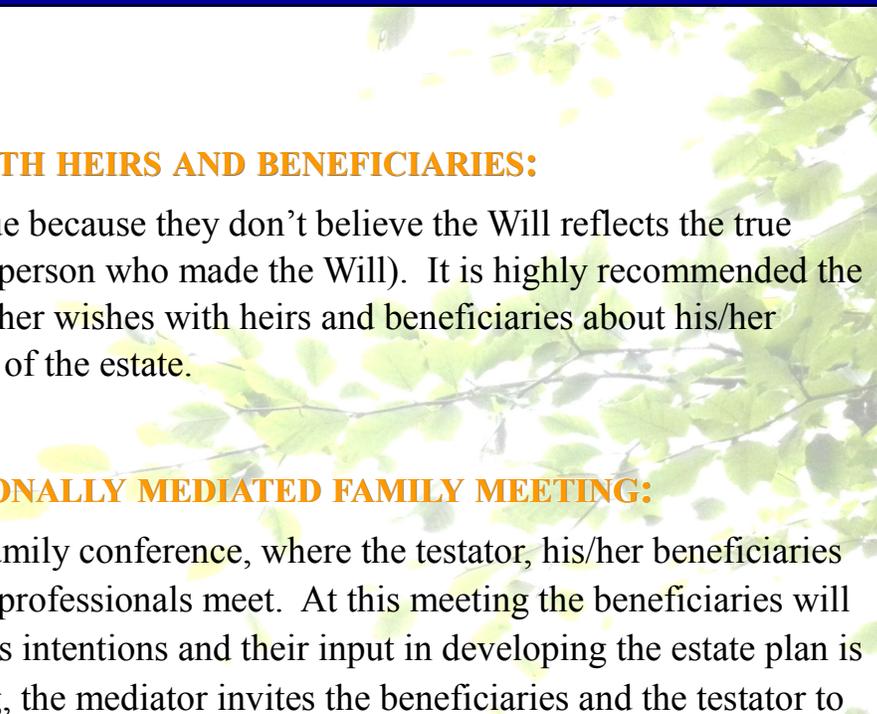
This clause states that any beneficiary who contests the will automatically forfeits their gift or inheritance. Do note that for this clause to be effective, the beneficiary's gift must be valuable enough to merit serious consideration about pursuing litigation.

HAVE CAPACITY TEST/ NOTES BY DOCTOR AND

LAWYER:

This test is used to certify that an individual has the mental fitness and capacity when he/she made the will. Doctors' notes regarding the individual's mental condition is highly recommended. Also recommended is for the lawyer drafting the will to make notes about the individual's mental state and capacity.

A well drafted Will backed by a video offering some insights into the decisions and attesting the state of mind would also be very helpful too.



COMMUNICATE WITH HEIRS AND BENEFICIARIES:

Often, family members sue because they don't believe the Will reflects the true intentions of the testator (person who made the Will). It is highly recommended the testator communicate his/her wishes with heirs and beneficiaries about his/her intentions for distribution of the estate.

HAVE A PROFESSIONALLY MEDIATED FAMILY MEETING:

It is sometimes called a family conference, where the testator, his/her beneficiaries and other estate planning professionals meet. At this meeting the beneficiaries will be advised of the testator's intentions and their input in developing the estate plan is sought. After the meeting, the mediator invites the beneficiaries and the testator to sign an agreement NOT to contest the Will.

AVOID HOMEMADE WILLS:

There have been many litigations arising from problems with holograph Wills (Will drafted in your own handwriting) or a Will from a kit. It is not possible that a Will kit is going to suit everyone's needs. How can one figure out for themselves that they have that standard scenario and that they're going to fit within that?

A properly crafted Will requires specific legal language and terms that the average person wouldn't know or use!

CHOOSE YOUR TRUSTEE CAREFULLY:

An estate trustee's job is to administer the deceased's estate. It is an extremely important job and requires a certain level of skill and understanding. If the trustee doesn't do his/her job correctly, or is negligent, legal consequences may follow, and they may become liable.

If there is a chance that there may be conflict between the trustee and beneficiary (ies), it is advisable to consider appointing a corporate trustee instead.

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Management of High Networth
Individuals, Executives and
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REVIEW AND UPDATE YOUR WILL REGULARLY

One should update their Will following any major event: birth or death of a child, change in financial status, death of spouse or remarriage, etc.. If there are no events, then a Will should be reviewed every three years.

If one fails to do that, it can lead to litigation from an unintentionally disinherited family member or unknowingly leaving a portion of an estate to an unintended beneficiary.

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