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WILLS, ESTATES AND TRUSTS

Choosing the Right Estate Trustee

The Estate Trustee (also known as the executor) is the person appointed in an individual's will to carry out the instructions in the will. As this role requires much time and effort, the person so appointed should be chosen with great care. The duties of an estate trustee include:

1. arranging for the funeral and burial of the deceased;
2. preparing a detailed inventory of estate assets;
3. retaining a lawyer to advise and assist in the administration of the estate;
4. preparing and filing the deceased's tax returns and paying any tax due;
5. maintaining proper accounts;
6. distributing assets to beneficiaries according to the will and paying any debts; and
7. setting up and administering trusts established by the will.

In light of the duties to be performed, an estate trustee's traits should include:

- (a) being close to where you live, so that duties can be performed efficiently and inexpensively;
- (b) having administrative skills and judgment.
- (c) being cooperative and communicative, particularly if they are not a member of your family.
- (d) being honest and financially responsible, as they will be dealing with your assets and investments.

Some people name a trust company as an estate trustee to take advantage of the experience of the staff, especially where the estate is complex, the availability of investment, tax and accounting expertise, its permanence, especially for long trust periods and stability, where there are negative family dynamics.

Any trust set out in your will being administered by a non-resident estate trustee becomes a non-resident trust. They are taxed differently and possibly subject to taxation laws in the jurisdiction where the estate trustee resides. The Court will generally require an estate trustee non-resident to Ontario to obtain a bond before granting a Certificate of Appointment.

One should always ask a person's permission before appointing them as estate trustee as a matter of courtesy and to better ensure they will act in the role at the relevant time.

Please contact Andrea P. Kelly for further information, including about estate administration in general.





Effective Succession Planning for Cottages and Investment Properties

Despite the obvious benefits of owning a cottage or investment property, there are numerous issues that can arise when they are transferred. For example:

- Which children, if any, are interested in future ownership? Which one(s) do you want to transfer it to?
- What are the tax and probate fee implications to transferring the property now or on death?
- Does each child have the resources to maintain the property?
- Do you need to sell the property to maintain your lifestyle until death or can you keep it for transfer after you die?
- Can children/spouses/grandchildren jointly own the property? Will they get along?

For most individuals, 50% of the increase in value of their property determined when the property is sold or by the deemed disposition that occurs at death or when the property is gifted, will be included in their taxable income (capital gains tax). As many cottages have significantly increased in value in recent years, the



tax liability is often substantial. Land transfer tax may also apply. A principal residence exemption may avoid all or a portion of the capital gains tax. One should also consider life insurance for funding the tax liability rather than having to sell the property or even to equalize the division of the estate if a beneficiary will not receive an interest in the property.

Estate administration tax (probate) may be applicable when a property is transferred on death. Joint ownership or a living trust are options to avoid

probate, however the implications must be carefully examined to achieve optimal results.

Selling the property and dividing the proceeds may be prudent for maintaining family harmony, avoiding probate fees and enabling you to pay any capital gains tax while living rather than at your death.

As each family's circumstances are unique, contact Andrea P. Kelly, to ensure your property succession plan is appropriate for your overall family wealth plan.

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