

Estate Planning Essentials for Medical Professionals

What you need to know to protect your family, safeguard your assets and ensure your wishes are carried out.



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TD Wealth





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Mindi provides clients with holistic and comprehensive estate planning strategies and solutions that seek to optimize the transfer of wealth during a client's lifetime as well as to future generations. She guides clients through the estate planning process and helps clients understand their various options. She routinely deals with complex matters such as multi-jurisdictional Will and trust planning, foreign property ownership planning, blended family planning, estate planning for digital assets, probate and income tax minimization, planning for beneficiaries with special needs and U.S.-Canada cross border tax and estate planning.

Before joining TD, Mindi worked in private practice as a tax lawyer at a Toronto boutique tax law firm where her practice focused on U.S.-Canada cross-border tax and estate planning.

Mindi is originally from New Jersey, and she completed both her University undergraduate degree and her J.D. legal degree in New York City. After moving to Canada in 2012, she was admitted to the Bar of Ontario in 2013. Mindi is a New York, New Jersey and Ontario licensed lawyer.

Mindi is an experienced professional who understands the importance of a customized estate plan. She works closely with clients to help them achieve their tax and estate planning objectives and goals.

TD Wealth Pillars

Lay a solid foundation to build a successful future



Building net worth

- Private banking
- Investment management
- Custom credit services
- Cash-flow management
- Cross-border banking



Implementing tax-efficient strategies

- Tax planning
- Annuities and trusts
- Registered accounts
- Holding companies and operating companies
- Income splitting



Protecting what matters

- Asset protection
- Retirement planning
- Insurance advice
- Trusts
- Wealth transfer



Leave a legacy

- Business succession planning
- Wills and estate planning
- Estate settlement
- Gifting strategies
- Philanthropy



- What is Estate Planning?
- Wills/Multiple Wills
- Dying Intestate
- Probate
- Taxes and Fees Payable at Death
- Powers of Attorney
- Storage of Documents/Records
- Final Thoughts

Agenda





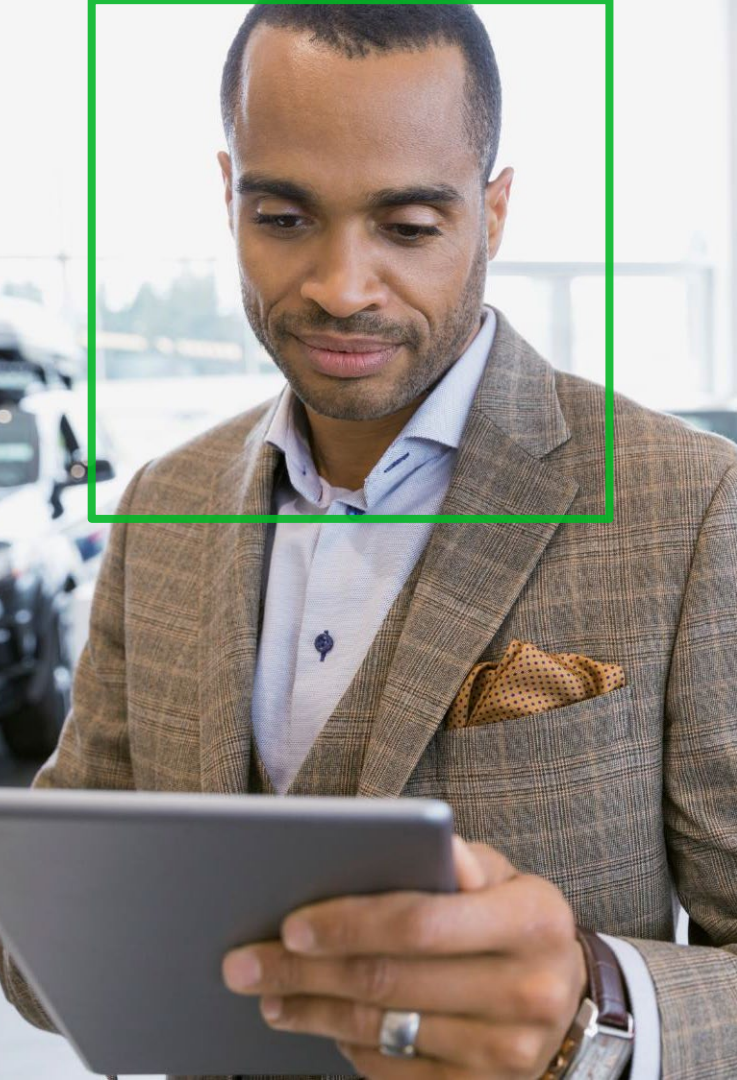
What is Estate Planning?

Estate Planning means organizing your personal and financial affairs with a **holistic plan** to:

- Ensure help with financial and medical decisions if needed **in life**.
- Efficiently pass on your wealth to your beneficiaries **at death**.

Key Documents to Consider: Will(s), Power of Attorney (POA) for Property, Power of Attorney for Personal Care, Trusts, Digital Estate Plan (to manage online accounts, digital assets, and social media profiles).

Note: Not everyone needs all these documents. Your specific circumstances will determine which are needed.



The Importance of Having an Estate Plan

- Assess personal, family and financial situation
- Articulate vision and future goals
- Identify opportunities, potential risks, and shortfalls
- Provide roadmap to achieve objectives

Myths Debunked

- too young to begin
- too late to start
- too little net worth to matter
- too straightforward to require planning

Wills

- Having an Up-to-date Will(s) is the cornerstone of estate planning

A Will is a legal document, it:

- Appoints a representative (executor)
- Determines how and to whom your assets will be distributed
- Sets up any necessary trusts
- May also identify a guardian for minor children (or other dependents)

Intestacy occurs when a deceased person has no Will



Up-to-Date
Will(s)

- Appoint both a **Primary Executor** as well as either an **Alternate executor** or a Co-executor
- A competent adult or corporate executor who is:
 - Experienced, Knowledgeable, Trustworthy, Impartial, Reliable
 - Available, willing and able
 - It is often recommended that if you decide to appoint a person, such person is resident in the same jurisdiction as you
- You can name as Executor:
 - Family member or friend
 - Professional: lawyer, accountant
 - Corporate executor (i.e., The Canada Trust Company)

Your Executor



Executor Responsibilities and Challenges

Responsibilities of an Executor

- Determine/make funeral arrangements
- Locate and review Will
- Locate, safeguard and itemize assets
- Apply to court for probate
- Determine/pay debts and funeral expenses
- Deal with Service Canada and Canada Revenue Agency, file final tax return(s) and obtain clearance certificate
- Keep records and provide full accounting for the estate
- Manage assets in the interim period
- Make interim and final distributions of assets to beneficiaries
- Handle foreign assets, including compliance with foreign tax laws
- Manage or wind down a corporation (e.g., a medical professional corporation)

Challenges for Executors

- Lack of expertise or time
- Conflict of interest
 - No self-dealing
 - Even Hand Principle
- Managing conflict amongst estate beneficiaries
- Making decisions
- Geographical distance
- Grieving
- Personal liability

Corporate Executor

- An impartial third party who may help preserve family harmony
- Take burden and liability for damages off family members
- Provide continuity and permanence for testamentary trusts of long duration
- Can be appointed as Executor or Co-executor with a family member or friend
- Generally, fees not payable until estate administration begins
- May have lower fees than court approved rates for an executor

Dying Intestate

What Happens if You Die Without a Will?

Distribution in Ontario: (Intestacy laws vary by province)

Married with No Children: Your spouse receives everything.

Married with Children: Your spouse receives the first \$350,000 of your estate (the “preferential share”).

- If one child: The remainder is split 50/50 between your spouse and child.
- If multiple children: Your spouse receives one-third of the remainder, and the children share the other two-thirds.

No Spouse or Children: Your parents inherit.

No Parents: Siblings inherit.

No Siblings: Nieces and nephews inherit.

No Living Relatives: Your estate goes to the Ontario government

****Please note:** In Ontario, common-law spouses do not inherit under intestacy laws. However, depending on their circumstances, they may be able to claim support as a dependent and/or bring an equity claim.

Dying Intestate

What Happens if You Die Without a Will? (Cont.)

Administration

- The Court appoints an estate trustee (executor/administrator) to manage your estate, which may not be the person you would have chosen.
- Delays in administration until executor appointed

Costs

- Additional Costs to family to hire lawyer for court application for executor appointment

Minor Child

- A trust will need to be set up for the minor
- Inheritance is usually managed by a court-appointed trustee until the child reaches the age of majority (age 18 or 19 depending on the province)
- Child may receive the entire inheritance as a lump sum at the age of majority, which may not be in the child's best interest
- A court will decide who becomes their guardian. You lose the opportunity to identify a guardian you trust.

Tax

- Your estate may face higher taxes due to the lack of planning

What is Probate?

Probate is the process of applying to the Court to confirm:

- Validity of the Will
- Appointment of the Executor



Probate is needed to:

- Transfer real estate
- Transfer bank & financial institution accounts, vehicles, etc. (3rd parties)

Probate fees vary by province:

- In **Ontario**, referred to as *Estate Administration Tax*, probate fees are levied at the following rates:
 - **No fees on the first \$50,000** of an estate's assets; and
 - **1.5%** on the estate's value above \$50,000
- Only applies to assets that pass through the Will that is being probated. Assets passing outside of the estate (e.g., beneficiary designations and joint assets with the right of survivorship) are not subject to probate
- If assets are situated in other jurisdictions (i.e., in other provinces), other probate fees may apply

Probate fees vs. Taxes at Death: Two Separate Concepts

Estate Administration Tax (Probate Fees)

- Administrative fee paid to the court system, based on the estate's value
- NOT related to income or capital gains

Income Tax / Capital Gains Tax

- Deemed disposition of all capital property on death:
 - Income inclusion of RRSPs/RRIFs
 - Capital gains/losses realized
- Tax-deferred transfers available if certain conditions are met, such as
 - Spousal rollover
- Applied to the deceased's estate or their final tax return

Multiple Will Strategy

Primary (Public) Will

Deals with **assets subject to probate** (e.g., bank/investment accounts, real estate registered in your sole name)

Secondary (Private) Will

Deals with **assets not expected to be subject to probate** (e.g. privately held shares (such as shares held in a medical professional corporation), personal effects, shareholder loans, assets with a beneficiary designation)

Potential Advantages

- Minimizes Probate Fees
- Privacy
- Expedites the transfer of certain assets

Potential Disadvantages

- Legal set up fee
- Complexity – inadequate planning may mistakenly revoke a Will

Multiple Wills: Key Considerations

- **Availability Across Provinces:** While Multiple Wills are **widely used in Ontario** and British Columbia, they may not be recognized or available in other provinces
- **Executor Considerations:** In Ontario, it's generally recommended to have the **same executor** for both the primary and secondary Wills to avoid administrative complexity. However, in other provinces (such as British Columbia) it's a legal requirement to appoint separate executors for the Primary and Secondary Wills.
- **Asset Division:** It is important that both the Primary Will and Secondary Will **clearly specify which assets are covered by each**. Typically, the Primary Will covers all assets not addressed by the Secondary Will, while the Secondary Will explicitly lists assets that are not expected to require probate, such as shares in a private business and personal property.
 - **Foreign Assets:** Even if Multiple Wills are recommended, you should assess whether a separate Will is needed for foreign assets. This may result in having more than two or three Wills, making careful asset division essential.
- **Revocation Clause:** It's essential to ensure that all Wills – whether within Canada or across multiple jurisdictions – are **carefully drafted to avoid unintentional revocation** of each other and to prevent one Will from inadvertently revoking another.

Who Should Consider the Multiple Will Strategy?

Ideal Candidates:

- Incorporated Doctors: Separate personal assets from medical corporation shares.
- Business Owners: With shares in private companies that can bypass probate.
- High-Net-Worth Individuals: With significant valuables (i.e., jewelry, artwork, antiques) that do not need to go through the probate process.
- Real Estate Investors: With multiple properties, especially in various jurisdictions.
- Complex Estates: Where different assets require separate treatment.

****It is important to seek legal advice before implementing.**



Powers of Attorney (POAs)

Delegates to an authorized person (your "Attorney") the legal authority to act if the individual cannot do so, including during incapacity

- **Two separate POA** documents are needed:



POA for Personal care
applies to your personal care
(including medical care)



POA for Property
applies to your property
and finances only

- Can have **more than one Attorney** named, either jointly making decisions (unanimously or by majority) or jointly and severally
- Can designate an **alternate Attorney** if primary attorney is unable to act
- Can **appoint a professional Attorney** over property (e.g., The Canada Trust Company)
- Consider a POA(s) for each jurisdiction where **foreign assets** are held
- **Multiple Powers of Attorney for Property:** Consider appointing separate attorneys for specific assets, such as one for business assets and another for personal investments
 - **Doctors** should consider designating a **specific attorney to manage their private medical records** to comply with provincial privacy laws and regulatory college requirements.

Secure Handling of Patient Records Upon Incapacity/Death

Medical professionals are encouraged to ensure the secure handling of patient records by including clear instructions in their:

- **Power of Attorney** (for management during incapacity),
- **Will** (for post-death management), and/or
- **Other written agreements** to appoint a trusted medical successor or colleague (e.g., could be included in an electronic medical record (EMR) agreement).



Secure Handling of Patient Records Upon Incapacity/Death (cont)

Why this matters:

- **Privacy Laws:** Provincial privacy laws (like Ontario's *Personal Health Information Protection Act, 2004* (PHIPA)) require that patient records be securely maintained and properly transferred or destroyed, even after a physician's death.
- **College Regulations:** Many provincial medical colleges (like the College of Physicians and Surgeons of Ontario (CPSO)**) have guidelines for how patient records must be managed if a physician retires, becomes incapacitated, or dies.
 - ****CPSO Requirement:** If a physician dies, their estate trustee or the person who administers their estate is deemed to be the custodian of the records until custody and control of the records passes to another legally authorized person. [PHIPA, s. 3(12)]
- **Risk of Privacy Breaches:** Unauthorized access, improper transfer, or loss of patient records can lead to severe penalties and reputational damage.
- **Continuity of Patient Care:** Designating a trusted medical professional ensures patients are not left without care.

Understanding the Difference:

POA for Personal Care vs. Living Will/Medical Directive

	POA for Personal Care	Living Will/ Medical Health Care Directive
Purpose	Appoints a trusted person to make personal care decisions if you become incapable.	Provides instructions about your healthcare preferences directly.
Legally Binding?	Yes, under Ontario's Substitute Decisions Act.	Varies by province or jurisdiction. In Ontario, it may guide Substitute Decision Makers (SDM) but it is not legally binding on its own.
Flexibility	Can specify a wide range of personal care decisions (healthcare, housing, etc.).	Typically focuses on specific medical treatments you do or do not want.
Who Makes Decisions?	The appointed attorney (Substitute Decision Maker) makes decisions if you are incapable.	No decision-maker is named. Healthcare providers or SDMs follow the instructions.

Where to Store Your Original Estate Planning Documents

Two Key Goals:

1. **Security:** Your documents must be kept safe from loss, damage, or unauthorized access.
2. **Accessibility:** Your attorneys (if you lose capacity) and your executor (after death) must be able to access them.

Popular Storage Options:

- Safety Deposit Box (at a Bank)
- Lawyer's Office
- Trust Company Vault (e.g., The Canada Trust Company)
- Home Safe

Best Practices:

- Inform Executors: Ensure they know where the original Will is stored.
- Mark Copies Clearly: Keep a photocopy of the Will stamped with the location of the original.
- Regularly Review Storage: Make sure your chosen storage method remains secure and accessible.



Final Thoughts

- Choose a lawyer with **expertise in estate planning**.
- Consult with other **specialists** as necessary (e.g. tax advisors, cross-border tax and legal advisors, etc.)
- **Communicate your wishes** with your family, your appointed attorney(s) and your named executor(s)
- Review your estate plan regularly (**every 3 to 5 years**) or as important life events occur.



Thank You!

Questions?



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