

# Estate planning beyond the will: Wealth transfer strategies

Jon Hreljac , CPA, CMA

AVP Regional Tax & Estate Planning, Wealth  
Manulife

 **Manulife** Investment Management



# Agenda

---

- Estate Considerations Related to Retirement Savings
- Common Mistakes
- The Role of the Executor & Probate Process



# Estate Considerations Related to Retirement Savings

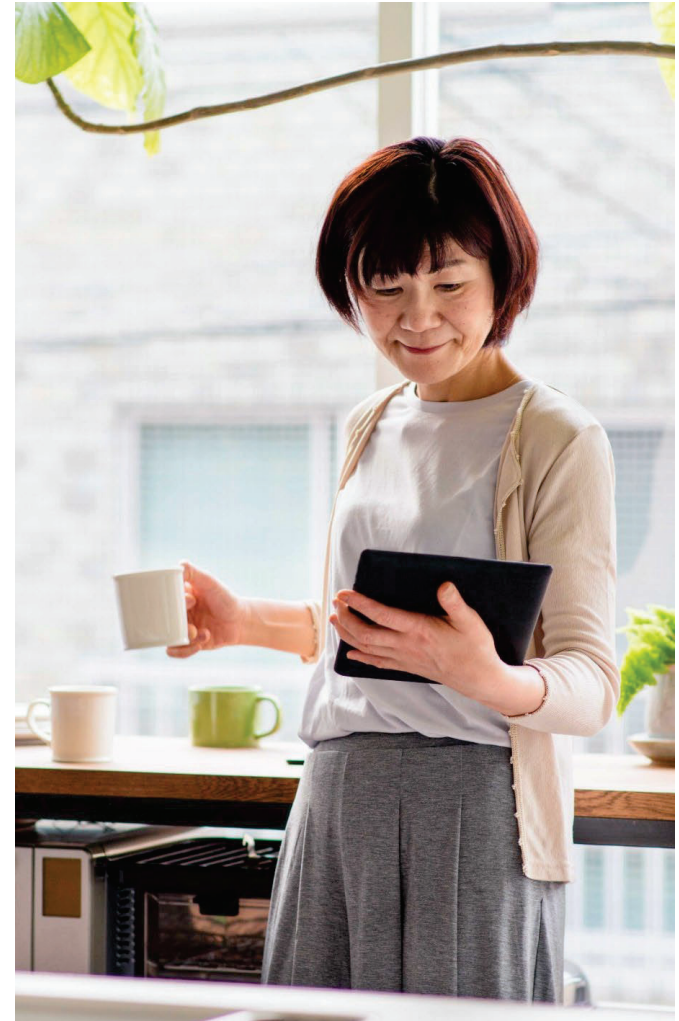


## Choose beneficiaries carefully

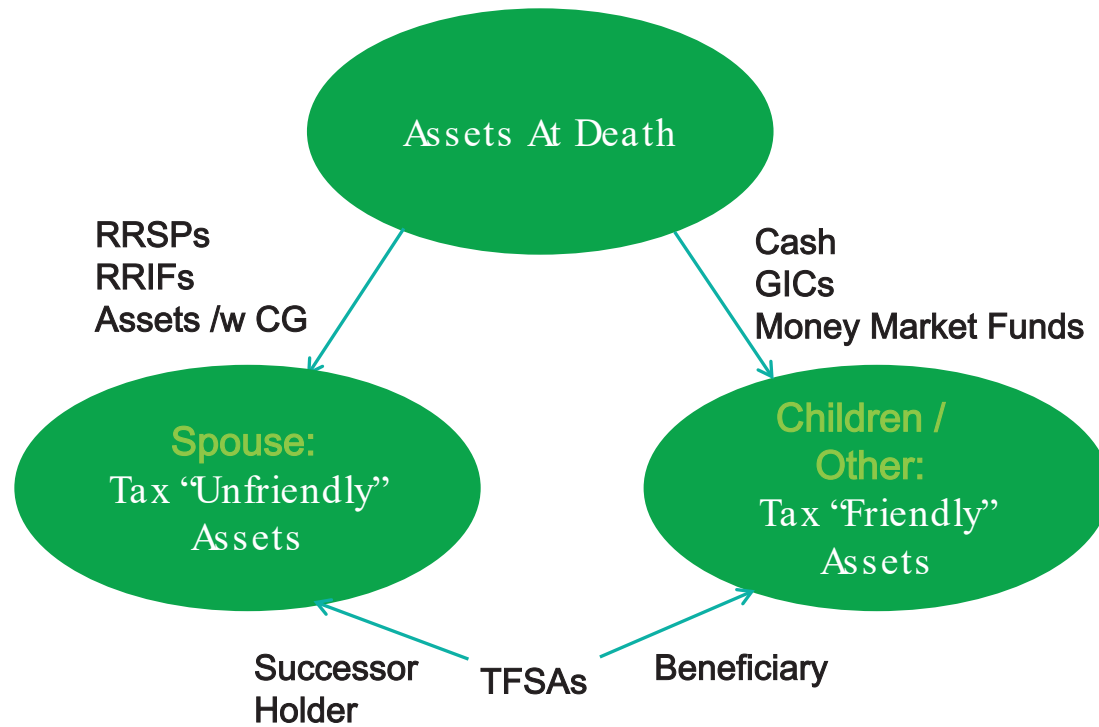
- Spouse<sup>1</sup> or spousal trust: assets that have appreciated in value, RRSP/RRIF/TFSA\*
- Other beneficiaries: other assets (eg. cash, Guaranteed Interest Contracts (GICs), money market funds)
- May provide authority for executor to decide based on taxation

<sup>1</sup> The terms spouse and spousal includes a spouse or common-law partner as defined by the *Income Tax Act* (Canada).

\* Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF), Tax Free Savings Account (TFSA)



## Choose beneficiaries carefully



## Track your Adjusted Cost Base for Your Assets!

- Capital gain = Fair market value – Adjusted Cost Base
- Higher the ACB = lower estate tax bill

Investment Portfolio	Cottage
- Purchases of same security over time at different values	- Purchase price
- Reinvested distributions / dividends	- Legal & land transfer costs
- Return of Capital (“ROC”)	- 1994 capital gains election to “bump up” cost base
	- Capital Improvements*

Examples of capital improvements include the addition of a deck, a dock, a new roof or new windows that were better than the original roof or windows, new well or pump. General repairs are not capital improvements.

# Gifting Assets

## To Charity

- Donations made in will = donation credit for estate
- Donating marketable securities = 0% capital gains inclusion

## To Beneficiaries Prior to Death

- You know who you want to receive them
- Don't need the assets to fund day-to-day living
- Consider tax implications



# Common Mistakes



## Failing to have a will

- Died “intestate”
- Government NOT client determines how assets will be distributed using “intestacy” rules

### A Will:

- Facilitates the administration of estate
- Can help save taxes
- Allows for potential choice over executor and guardians



# What Happens If I Don't Have a Will in Saskatchewan?

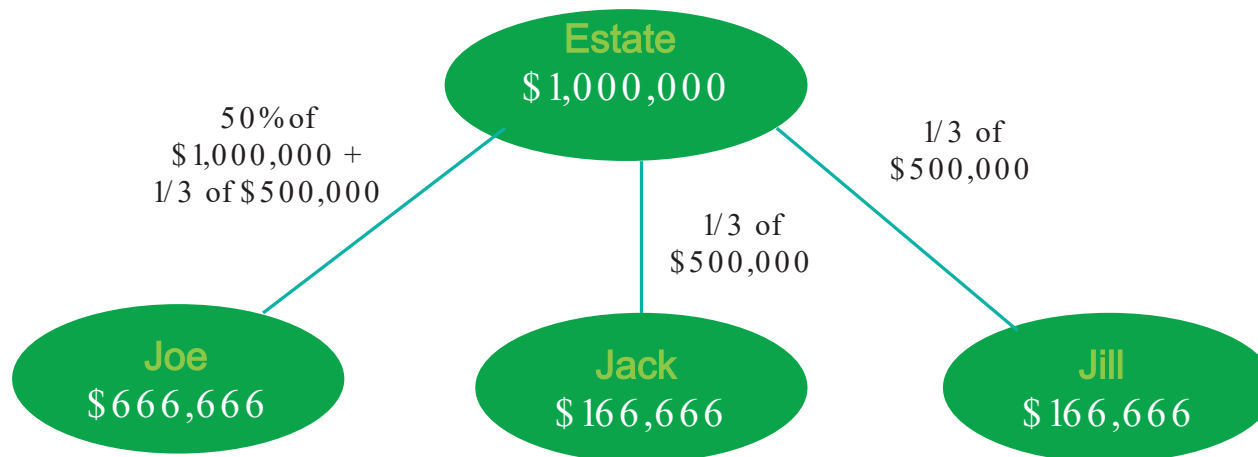
- If you die without a Will, your property will be distributed according to the rules set out in the *The Intestate Succession Act, 2019*
- **This law does not take into account your wishes!**
- Your next of kin must generally apply for Letters of Administration to deal with your estate
- The Administrator must distribute your estate in accordance with the Act
- Taxes, debts, and funeral expenses are paid first, the rest of your estate is distributed according to certain rules

# What Happens If I Don't Have a Will in Saskatchewan?

- Your entire estate goes to your spouse if ...
  - You have a spouse but no descendants, or
  - You have a spouse and children, and all children are children of you and you and your spouse
  - The value of your estate is not more than \$200,000 and you have a spouse and children who were not children of you and your spouse
- If the value of your estate is more than \$200,000 and you have a spouse and children who are not children of you and your spouse, your spouse will inherit the first \$200,000 or 50% of the estate, whichever is more. The remainder of the estate is shared as follows:
  - If there is one child, the remainder is split evenly between your spouse and child
  - If there is more than one child, 1/3 of the remainder goes to your spouse and the remaining 2/3 is shared by the children

## Intestacy Example in Saskatchewan\*

- Janice passes away with \$1,000,000 of assets & no will
- Janice has a spouse\*\* (Joe) and 2 children from a previous relationship (Jack & Jill)



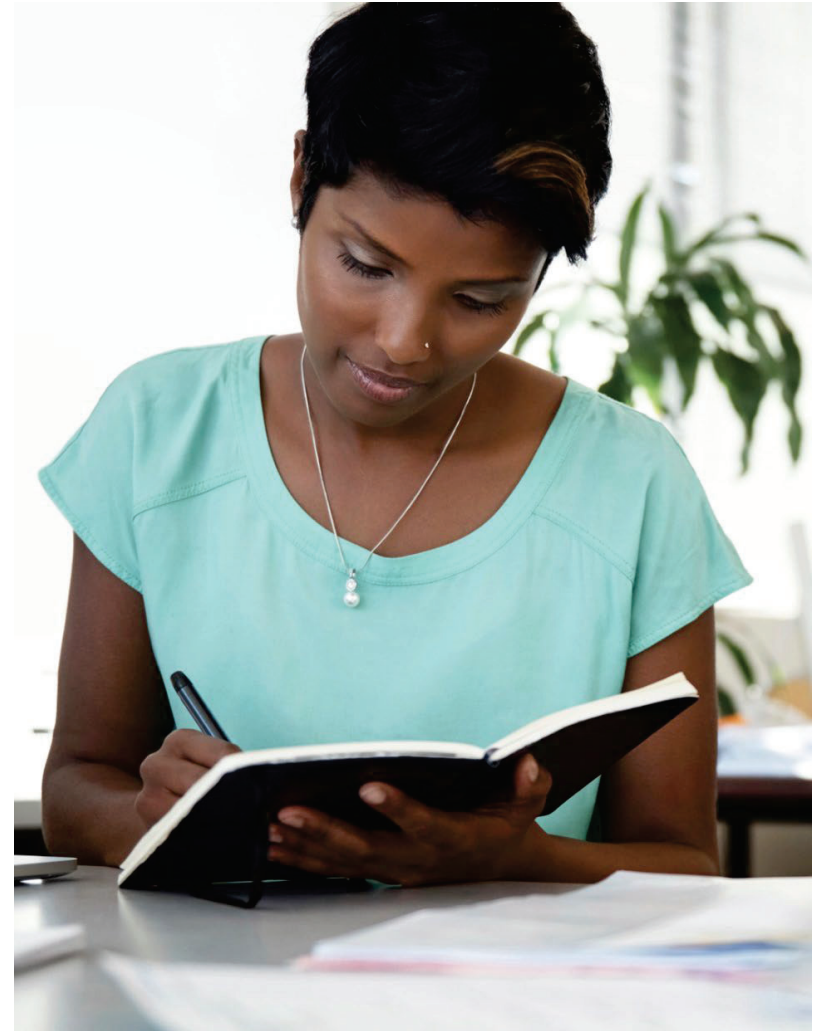
\*Saskatchewan uses the *Intestate Succession Act, 2019* to distribute the estate if you die without a will.

\*\* In Saskatchewan, provided certain conditions are met, common law partners are also considered a spouse under the intestacy rules.

## Appointing the wrong executor

### EXECUTOR/TRUSTEE – QUALITIES AND SKILLS REQUIRED

- Enough time to devote to estate administration
- Willing, able and patient
- Possesses integrity, objectivity, good judgment
- Financially and administratively inclined
  - Reasonable business prudence
- Familiar with the deceased's affairs
- Resident of the same province as deceased
  - Not required but recommended
  - Should be Canadian resident



## When should my will be updated?

- Review regularly and amend when significant changes occur in life or heir's life
  - Marriage or divorce
  - Births or death
  - Children growing up
  - Purchase or sale of a business
    - Shareholder agreement v. will
- Change if there are changes to income tax, family or succession laws
- Can change by codicil
- Ideally, review every three to five years



# Failing to have a Power of Attorney (“POA”) in Place

## 1. Non-Enduring POA

- Used in specific situations for a specific length of time (i.e. when out of country)
- Automatically revoked when mentally incapacitated

## 2. Enduring POA

- Authorizes another person to act on financial matters (can be effective upon signing or if mentally or physically incompetent)
- Can make decisions about personal affairs (i.e. where you should live) but no power to make health care decisions

## 3. Health Care Directive

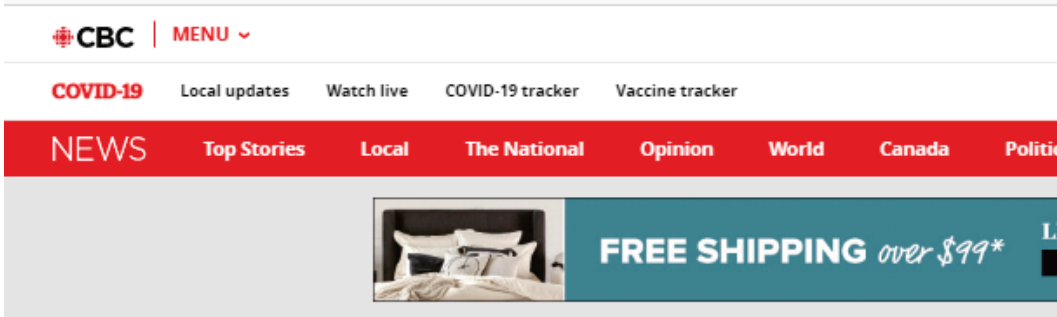
- Appoints someone to make decisions related to your health and outlines your wishes for personal healthcare decisions
- A proxy is the power you give someone in a **health care directive** to make decisions about your health care when incapacitated



## Failing to Update Beneficiary Designations

- Birth, death, marriage, separation or divorce = updating wills AND beneficiary designations
- Minor beneficiaries –
  - Cannot receive funds (use a trustee)
  - Full access to funds at age of majority
  - Don't name as irrevocable beneficiary
- Lump sum to adult beneficiaries
  - Financially irresponsible or Disabled
  - Consider the annuity settlement option or a testamentary trust





Nova Scotia

## Halifax woman calling for more protections on RRSPs after husband's sudden death



'There's definitely a gap in law, something like this should never be able to happen,' Diane Taylor says

 [Emma Davie](#) · CBC News · Posted: May 10, 2021 6:00 AM AT | Last Updated: May 10



Tuesday, November 24, 2020



## Beneficiary Designations on Separation and Divorce: Your Ex May Take More than the Couch

### NEXT STEPS

- Forward to a friend
- Contact us
- Subscribe to our blog
- Visit our website

When major life events occur, it is important to consider your estate planning and what updates and changes must be done. In no circumstances is this more true than when a person gets married, separated or divorced. Each of these life events affects a person's estate plan in different ways. Failure to properly update your Will and other estate planning can have serious unintended consequences. Assets can end up passing to someone you would not have wanted. It can often lead to litigation over the person's estate as well, resulting in time, expense and bitter resentments which could otherwise have been avoided.

The logos referenced above are registered trademarks of the firm represented.

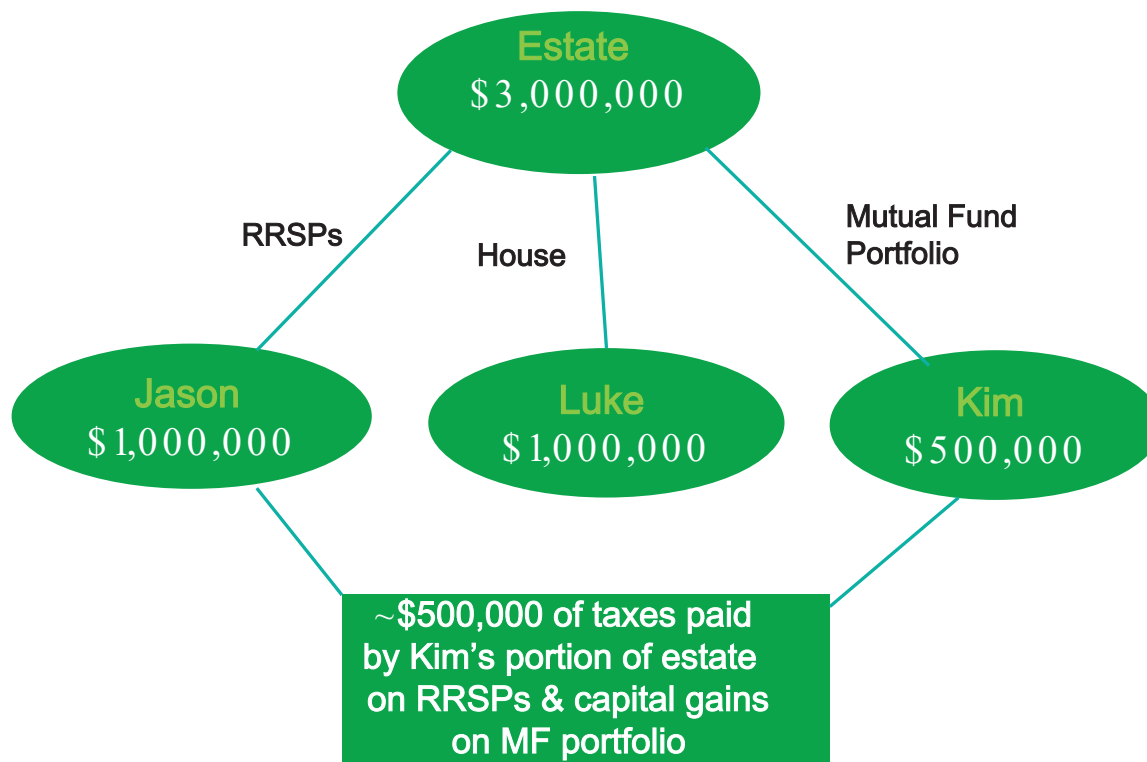
<https://www.osullivanlaw.com/blog/2022/07/think-of-your-executor-when-planning-with-joint-assets/>

## Treating equal beneficiaries unequally

- Fail to take into account tax consequences
- Example:
  - \$1 million RRSP, \$1 million home and \$1 million non-registered mutual funds
  - 3 children – Jason, Luke, & Kim
  - Give 1 asset to each child



## Treating equal beneficiaries unequally

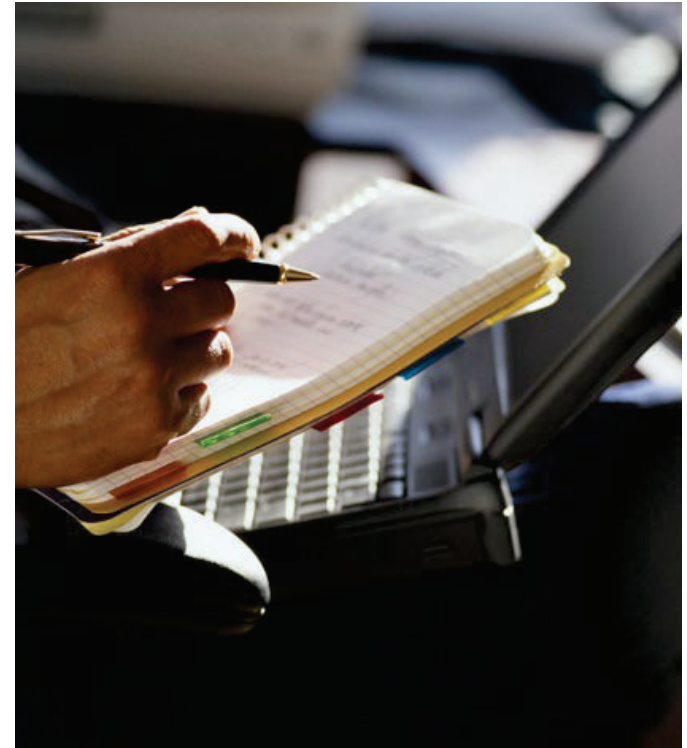


# The Role of the Executor & The Probate Process



## Probate Process

- An application is made to Court to have the Will validated
- Letters Probate are court orders that prove the authority of the person(s) named to deal with the property of the deceased person
- Pay probate fee, court fee, & potential legal fees
- A will does not always need to be probated



## HOW MUCH ARE PROBATE FEES IN SASKATCHEWAN?

- The cost is generally based on value of assets that pass through the estate (varies by province).

Value of estate	Fees
Any amount	\$7 for each \$1,000 or portion (0.7%)

### Example:

\$500,000 Estate = \$3,500 in probate fees

\$1,000,000 Estate = \$7,000 in probate fees

\$5,000,000 Estate = \$35,000 in probate fees

## When is Probate Typically Required?

- When the deceased holds an interest in land in their name alone
- When the deceased holds financial assets (depending on the financial institution policy)
  - Bank accounts
  - Investment accounts
- When the executor wants to obtain protection for themselves
- When the deceased holds personal items
  - Household goods (i.e. china and silverware)
  - Personal items (i.e. jewelry)
  - Cars / boats

## What assets are excluded from probate?

- Asset exclusions:
  - RRSPs, RRIFs, TFSAs with named beneficiary other than the estate
  - Pension monies with a named beneficiary
  - Life Insurance and segregated fund contracts with named beneficiary other than the estate
  - Potential for assets held jointly with right of survivorship
- Other exclusions: gifts before death & trust planning

## Important information

This communication is published by Manulife Investment Management. Any commentaries and information contained in this communication are provided as a general source of information only and should not be considered personal investment, tax, accounting or legal advice and should not be relied upon in that regard. Professional advisors should be consulted prior to acting based on the information contained in this communication to ensure that any action taken with respect to this information is appropriate to their specific situation. Facts and data provided by Manulife Investment Management and other sources are believed to be reliable as at the date of publication.

Certain statements contained in this communication are based, in whole or in part, on information provided by third parties and Manulife Investment Management has taken reasonable steps to ensure their accuracy but can't be held liable for such information being inaccurate. Market conditions may change which may impact the information contained in this document.

You may not modify, copy, reproduce, publish, upload, post, transmit, distribute, or commercially exploit in any way any content included in this communication. Unauthorized downloading, re-transmission, storage in any medium, copying, redistribution, or republication for any purpose is strictly prohibited without the written permission of Manulife Investment Management.

Manulife Investment Management is a trade name of Manulife Investment Management Limited and The Manufacturers Life Insurance Company.

Manulife, Manulife Investment Management, the Stylized M Design, and Manulife Investment Management & Stylized M Design are trademarks of The Manufacturers Life Insurance Company and are used by it, and by its affiliates under license.





**Manulife** Investment Management