

HELPING OUR READERS MINIMIZE TAXES AND INCREASE THEIR NET WORTH

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CREATE A WILL AND APPOINT A WILLING EXECUTOR

You don't have to look too far to find an advertisement extolling the virtues of the "do-it-yourself" will kit. Although these commercials serve an important function for Canadians by emphasizing the importance of having a current Will, they downplay the importance of having the Will prepared and reviewed by a lawyer. Instead, these ads highlight the ease and economy that do-it-yourself Wills purportedly offer. However, if you are like most Canadians and have an estate worth thousands of dollars, you can get legal advice which affords you the comfort of knowing that your last wishes will be honoured after your death as you intended for only a fraction of your estate's value. It is only with the guidance of a lawyer who has an in-depth understanding of estate law that you can rest assured that your Will will perform as anticipated.

A Will is the cornerstone of your estate plan. It is your forum to state to whom you wish to bequeath your assets upon your death, to name a guardian for your minor children, to designate a trustworthy person to handle your affairs and see that your wishes are followed as outlined in the Will. This person is, in a word, your executor.

If you die without a Will (dying intestate) or if your Will is invalid because it was improperly prepared, your property will be distributed

following provincial laws. The process of getting court approval to divide your assets may be time consuming and costly, as your heirs would have to apply to the court to appoint an administrator to handle the distribution of your assets according to formula's set out in each province's legislation. This legislated distribution of assets generally passes your property to your spouse, children, and your closest heirs, which may or may not be as you wish. In addition, if you do not name a guardian for your minor children in a Will, it's possible that someone of whom you do not approve may become your children's guardian. However, in many provinces, the designation of a guardian in a Will is not binding.

Many Canadians die intestate, causing their families to suffer legal problems, needless taxation, delays, and worst of all, possible family bitterness and discord during a time of grief. Creating a Will is an effective way to prevent these unfortunate events from befalling your

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family after your death. Furthermore, a Will can reduce the tax burden on your estate and on your beneficiaries when it is set up with the expertise of your professional advisor.

The requirements for a Will vary across the country, however, the following rules and regulations will generally apply:

- Will must be in writing (not verbal)
- You, the Will maker (also known as the testator), must be mentally capable and of legal age.
- Will must be signed at the end of the document
- Testator must acknowledge their signature in front of two witnesses who will verify that they witnessed the testator's signing or acknowledging of the signature in their presence
- Witnesses must be neither the spouse of the deceased nor beneficiaries named in the Will
- The witnesses must have reached the age of majority, and be competent to testify in court

Although it is not an official requirement that the Will be dated, it is wise to include the date on the document.

The term "executor" is valid in most provinces. This is the person you select to carry out the directions and requests of your Will according to the terms given. Keep in mind that the executor's responsibilities are great, and in some cases, can be as demanding as a full-time job. He or she must gather all of your assets, arrange for appropriate appraisals, pay any outstanding debts, taxes and final expenses, and ensure the proper allotment of the remaining assets to the beneficiaries.

It may be wise to select someone who is impartial, who is comfortable with legal, financial and business matters, and who lives within a

reasonable distance to your executor. Perhaps a friend or relative could fulfill this role on your behalf. Often the primary beneficiary (your spouse, for example) will be appointed as the executor/executrix. However in some situations, it may be inappropriate to name any of your beneficiaries as the executor of your Will. Naming a beneficiary as your executor may give the appearance of a conflict of interest.



It's a good idea to appoint an alternative executor just in case your first choice is not able or willing to act. If you have not appointed an alternate executor and your executor dies, your estate may be left in the hands of your executor's executor...not likely what you had in mind. Remember that an executor is not bound to their position and may opt out of the role resulting in costly court proceedings. To avoid this scenario, discuss your intentions and wishes with your executor in advance so they are prepared to act as per your directions upon your death.

If you find yourself in the role of executor of a Will, be sure that you consult your lawyer, accountant, or financial advisor about how to best lower the tax liability of the estate entrusted to you. If you fail to handle the estate in a tax efficient manner, you may find yourself being sued by the beneficiaries. Courts have found executors accountable for failing to actively

avoid negative tax effects on the estate. An executor is expected to handle the estate entrusted to their care with the same skill and diligence as a prudent investor would use in managing his or her own property. This requirement of prudence extends to the executor's management of the investments within the estate's property.

CRITICAL ILLNESS INSURANCE: What is it all about?

Critical Illness insurance. Perhaps you've seen an advertisement or read a newspaper article about it. Over a decade ago it was practically unheard of here in Canada. These days most Canadian insurers offer critical illness (CI) coverage. But what is it really, and why is it so popular?

The beginnings of CI...

About 30 years ago in South Africa, Dr. Marius Barnard and his brother Dr. Christiaan Barnard, a well known heart surgeon, performed the first successful human heart transplant. After this milestone, Dr. Marius Barnard noticed that while many patients were surviving critical illnesses including transplants, heart attacks, strokes, and cancers, they also faced enormous financial hardships as a result of their illnesses. Dr. Barnard's concern led him to develop the concept of critical illness insurance; a product he came to describe as insurance not because you are going to die, but because you are going to live. Dr. Barnard's critical illness concept has become so popular that it spread throughout Europe and is now receiving enthusiastic acceptance in Canada.

Several factors have come together to make critical illness coverage an important form of insurance for our times. The incidence rates of

critical illness are high. The Heart and Stroke foundation of Canada reports that 1 in every 4 Canadians will suffer from a critical illness by the age of 65. Fortunately medical advances have made the chances of surviving a critical illness more likely than ever before. In fact 50% of patients diagnosed with cancer go on to live full and productive lives, and 80% of heart attack victims admitted to the hospital survive (Canadian Cancer Society and the Heart and Stroke Foundation of Canada). Combined with the fact that diminishing government-sponsored health care programs have made us responsible for a greater portion of treatment costs, the time has come for critical illness insurance in Canada.

What is Critical Illness insurance?

Critical illness insurance provides a lump sum benefit, generally to the person insured by the policy, once some specific circumstances described by the policy are met. These circumstances typically involve diagnosis of one of the conditions covered and defined by the policy, and survival of a specific period following the diagnosis (30 days in most cases). Critical Illness insurance is different from life insurance in that you...not your beneficiaries...can be the recipient of the critical illness benefit payout.

One of the most appealing aspects of critical illness coverage is that the benefit payout you receive is yours to spend as you wish. If treatment at a top medical facility outside of Canada would set your mind at ease, you could use the lump sum benefit for that. Or use the benefit as income during recovery, hire help to look after your kids, pay off your mortgage and debts, or keep your business running while you recuperate...the choice is yours. Just think of the people you know that have suffered from a critical illness. Wouldn't a lump sum of money have helped?

Critical Illness policies available today cover a wide variety of conditions. Almost every policy covers the “big three” conditions (heart attack, stroke, cancer). Some of the additional conditions include Multiple Sclerosis, blindness, deafness, loss of limbs, coronary artery bypass surgery, Alzheimer’s, and Parkinson’s disease. Comprehensive policies cover a condition called “Loss of Independent Existence”. This condition allows an insurer to cover various ailments meeting the criteria of “loss of independent existence” as set out in the policy, without having to list and define specific illnesses.

Some policies will return the premiums paid for your coverage if you die without submitting a claim or provide the option of having premiums returned on either policy surrender or expiry as set out in the policy contract.

How do I get critical illness insurance?

Your financial advisor is your best source of information in helping you understand the critical illness definitions and deciding on what riders and coverage types will best meet your needs. Coverage amounts typically range from \$25,000 to \$2 million. When applying you will be asked for evidence of your ongoing good health, and, because many diseases are hereditary, you will also be asked to provide information about your family’s health history. Your age, gender, and health information are all taken into account to arrive at the premium charged for the coverage amount you desire.

Just as Dr. Marius Barnard recognized, critical illness insurance can remove the financial worry accompanying diagnosis of a critical illness. The lump-sum benefit can allow you to focus your energy on recovery, rather than worrying about how to finance it.

Tax Tip

The deadline for RRSP contributions for the 2006 tax year is March 1st 2007. The allowable RRSP contribution for the current year is the lower of:

- \$18,000 OR
- 18% of your earned income from the previous tax year OR
- The remaining limit after any company sponsored pension plan contributions

Earned income includes salary or wages, alimony received, and rental income, among other income sources, but does not include items such as investment income. You’ll find the exact amount you can contribute to your RRSP for the current year on the Notice of Assessment you receive from Canada Revenue Agency after they process your previous year’s tax return.

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