

MILLER THOMSON LLP

Barristers & Solicitors
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Estate Planning: Wills and Powers of Attorney

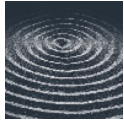
NORTH YORK GENERAL HOSPITAL FOUNDATION

April 15, 2010

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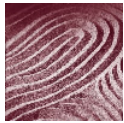
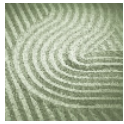


Introduction



- Powers of Attorney:

- Attorneys take care of your affairs during lifetime

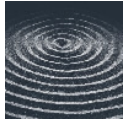


- Wills:

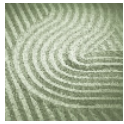
- Estate Trustees implement your Will following death



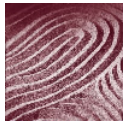
Powers of Attorney



- Continuing Power of Attorney for Property

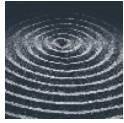


- Power of Attorney for Personal Care
 - Health Care Directive, “Living Will”



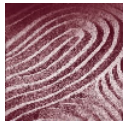
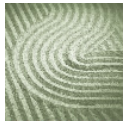


Acting under a POA



- POA-Property:

- When you're capable – your agent
- When you're incapable – fiduciary
 - Best interest of the incapable person
- Joint tenancies

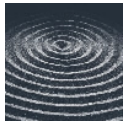


- POA-Personal Care:

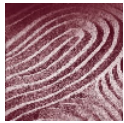
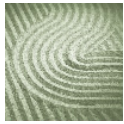
- Attorney makes personal care decisions YOU want
- Only when you cannot make them



Powers of Attorney – Capacity



- When is someone “incapable”?
 - To manage property
 - To make personal care decisions
 - To make/revoke a power of attorney for property or for personal care
- *Substitute Decisions Act*
- Registered capacity assessors





What does an Attorney for Property do?

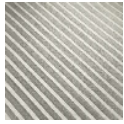
- Anything in respect of property that the grantor, if capable, could do, except make a Will
- The grantor's property includes all assets and finances unless specific things are excluded from the POA document



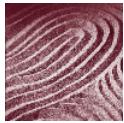
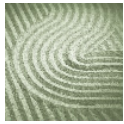
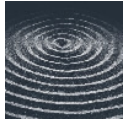
What are an Attorney's responsibilities?

The attorney is a fiduciary and must:

- Account to the grantor
- Use reasonable care in acting
- Not act in conflict with the grantor's interest
- Not benefit personally



Compensation

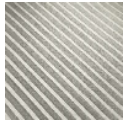


- POA may specify the amount and mechanism for calculation of fees or that the Attorney is to act without compensation
- If POA is silent, Attorney may take annual compensation in accordance with legally prescribed fees:
 - 3% of capital and income receipts
 - 3% of capital and income disbursements
 - $\frac{3}{5}$ th of 1% of annual average value

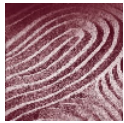
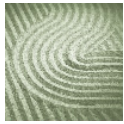


When does POA for Property take effect?

- Unless the POA document states otherwise, upon execution
- Usually, the lawyer acting for the grantor will keep the original and only release it on the incapacity of the grantor



POA for Personal Care



- Appoints an Attorney to make decisions for the grantor respecting the grantor’s “personal care”
- Personal care encompasses health care, nutrition, shelter, clothing, hygiene and safety
- Subject to conditions in the *Health Care Consent Act*, the POA for Personal Care places the attorney ahead of all the grantor’s relatives for purposes of giving or withholding consent for a treatment

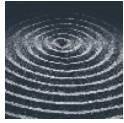


When does POA for Personal Care take effect?

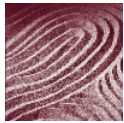
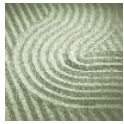
- Powers take effect when:
 - The *Health Care Consent Act* applies to the decision and authorizes the Attorney to decide
 - When the *Health Care Consent Act* does not apply and the Attorney has reasonable grounds to believe the grantor is incapable of making the decision, subject to any limitations in the POA document



Living Will/Health Care Directive

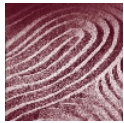
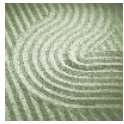
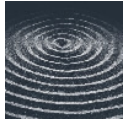


The POA for Personal Care can function as a “living will” by setting out instructions in the document as to what treatments may or may not be administered





Wills



CORNERED

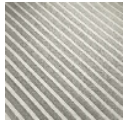
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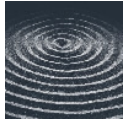
“Ocean view, or would you prefer to watch them fight over the will?”

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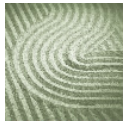
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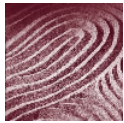
Do I really need a Will?



- Intestacy rules

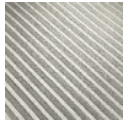


- Appointment of Estate Trustee Without a Will

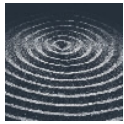


- First \$200,000 to (legal) spouse

- Remainder – divided between spouse and children; if none – to parents, then siblings, then nieces and nephews

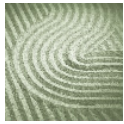


What is in a Will?



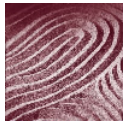
- Appointment of Estate Trustees

- Chose wisely!
- Primary, alternates

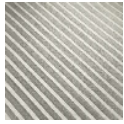


- Distribution to beneficiaries

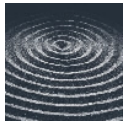
- Outright
- Trusts for spouse, children, grandchildren
- Disabled beneficiaries
- Charitable donations



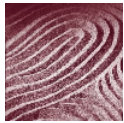
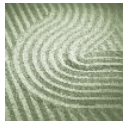
- Powers and authorities of Estate Trustees



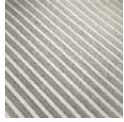
What does an Estate Trustee do?



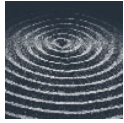
The Estate Trustee is in charge of administering an estate:



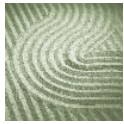
- Obligated to fulfill the terms of the Will
- Responsible for ensuring debts, taxes are paid by the Estate before distribution of the assets
- Account to beneficiaries and, if necessary, to the Court



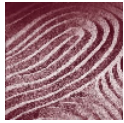
Choosing an Estate Trustee



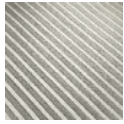
- Family member, close friend, advisor (lawyer, accountant), trust company



- Same jurisdiction – helpful!



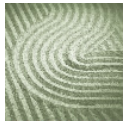
- Trustworthy, will carry out wishes of the deceased
- Responsible, has time to devote to tasks
- Include alternates



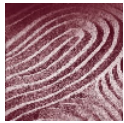
Compensation



- An Estate Trustee is entitled to compensation for administering the Estate

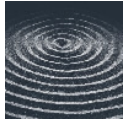


- Generally, compensation is based on a formula:
 - 2.5% of receipts and
 - 2.5% of disbursements
 - But the Will or the Courts can vary the amount.

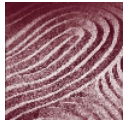
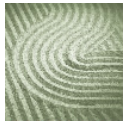




Considerations for Will planning



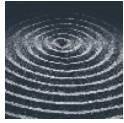
- You can leave your assets to anyone, but...



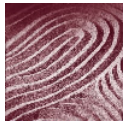
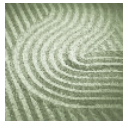
- *Family Law Act* considerations
 - Spousal election
- *Succession Law Reform Act*
 - Dependant's relief

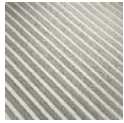


Tax considerations

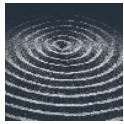


- Deemed disposition of all assets
 - “roll over” to spouse
 - Tax on capital gains, except:
 - Principal residence
 - Capital gains exemption for certain business assets
- Tax on RRSP/RRIF

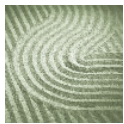




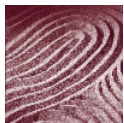
Probate planning

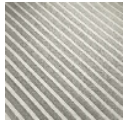


- Ontario – 0.5% on first \$50,000, 1.5% on remainder

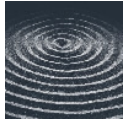


- Reduce value of estate through:
 - Designations (insurance, pensions)
 - Joint tenancies
 - BEWARE
 - Multiple Wills
 - Private corporation
 - Other Canadian jurisdiction

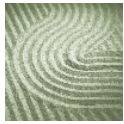




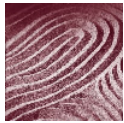
Considerations re beneficiaries



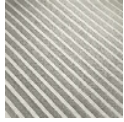
- Second spouse



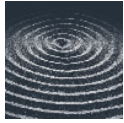
- Minor children



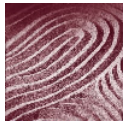
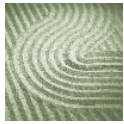
- Disabled beneficiaries
- Citizenship and residency of beneficiaries
- Charitable donations

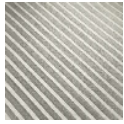


Testamentary trusts

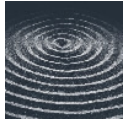


- Spousal trust
 - Second marriage
 - Protection
 - Tax benefits
- Trust for minors
- Henson trust

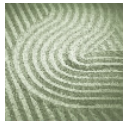




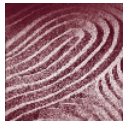
Charitable bequests



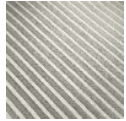
- Specific legacy



- Percentage of residue

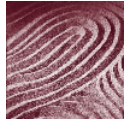
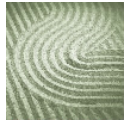
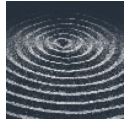


- Shares of appreciated stock
- Life insurance



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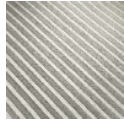


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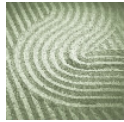
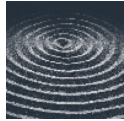
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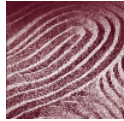


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Estate and Will Planning



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