




YOUR GUIDE TO ESTATE PLANNING:

Wills, Enduring Powers of Attorney, and
Personal Directives.



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Estate planning is not just for people who are older or wealthy. It applies to everyone, and the sooner you start working on your estate plan, the better prepared you will be. Although taxes and costs cannot be eliminated even with the most thoughtful plan, it's still an important endeavour to provide you, your loved ones and beneficiaries with the peace of mind that a plan exists and provides details of your final wishes.

A comprehensive estate plan typically includes three essential documents: a will, an enduring power of attorney (EPA), and a personal directive (PD). In this guide, we explain each one and why they are an important piece of your estate plan.

Your will is a crucial document that outlines who will inherit your estate upon your passing, specifies how your beneficiaries will receive their gifts, appoints a personal representative (executor) to administer your estate and names a guardian for minor children.

It is vital that your will contains appropriate clauses, powers, and directions to enable your personal representative to fulfill your wishes. While legal obligations exist towards a spouse/partner and other family members as defined by Alberta legislation, the law also grants considerable testamentary freedom, allowing for personalized estate planning.

The specifics of your will are ultimately shaped by the size and nature of your assets, your desires for your estate, and the unique characteristics of your beneficiaries. A well-considered and comprehensive will can significantly contribute to ensuring your wishes are carried out as closely as possible to your vision.

So who should you name as your personal representative? This is a substantial responsibility and requires someone you trust. Your personal representative is obligated to ensure your will is properly administered in a timely and accurate manner. This process can be time-consuming—even straightforward estate administrations can take two to three years to complete. Therefore, careful thought must be given to selecting an appropriate personal representative, especially if there is complexity or family dynamic concerns. In such situations, some individuals opt for a corporate personal representative/executor, often referred to as a trust company. For a fee, a trust company will administer your estate (and manage any testamentary trust established in your will). At ATB Wealth, our partner, Cidel Trust Company, headquartered in Calgary, provides corporate personal representative/executor, trustee, and attorney services.

WHAT IF I DON'T HAVE A WILL?

Without a Will, you are considered intestate, and the distribution of your estate will be governed by legislation that provides what family members receive. In this scenario, an application must be made to the court to appoint an administrator (similar to a personal representative/executor) so someone has authority to deal with your estate. This leads to delays and results in you having no say on who administers your estate and who become your beneficiaries.

▶▶ ENDURING POWER OF ATTORNEY (EPA)

Unlike a power of attorney, which often has limitations, an enduring power of attorney (EPA) designates someone (your attorney) to manage your legal, financial, and tax affairs if you become unable to do so. An EPA typically becomes effective upon loss of capacity, but it can also be immediate or take effect when you decide, as specified within the document.

Your EPA is a very important component of your estate plan for several reasons, primarily because you (the donor) are still alive and the attorney will be responsible for a wide range of activities, including managing your income, paying bills, reviewing investments, preparing and filing tax returns, and in some cases, even selling your home. Given that your attorney will manage all your assets, the selection of your attorney is as crucial as choosing your personal representative. Due to the significance of your EPA and the potential for it to remain active for many years, it is also imperative that a well-drafted EPA includes a broad range of clauses to empower your attorney to perform their duties effectively.

▶ PERSONAL DIRECTIVE (PD)

Your personal directive (PD) names an individual (your agent) to make personal, medical, and health care decisions on your behalf when you are unable to do so.

Your agent's responsibilities may encompass decisions regarding your living arrangements, the standard of care you receive, your social interactions, and even discretion over do-not-resuscitate orders and pain management. Unfortunately, many individuals named as agents have not had meaningful discussions with the donor about their desired medical care and treatment. Because not every health event can be anticipated, a PD is typically broad, requiring the agent to exercise considerable discretion. Nevertheless, where possible, it is important to personalize your PD by including provisions that reflect your wishes, and engage in discussions with your named agent about these wishes.

WHAT IF I DON'T HAVE AN EPA OR PD?

If you don't have an EPA and/or PD, your family or someone acting on your behalf will have to apply to court under the Alberta Adult Guardianship and Trusteeship Act. If there is no EPA, the court will issue an Order of Trusteeship that appoints someone to oversee the management of your financial affairs and property. If there is no PD, an Order of Guardianship would be issued to give someone authority to make personal and medical decisions on your behalf. In all such cases, these applications involve a public process that is time-consuming, costly, and, most importantly, deprives you of any say in the outcome.

AN EFFECTIVE ESTATE PLAN WILL PROVIDE GREAT PEACE OF MIND

Estate planning applies to everyone regardless of age or net worth. Establishing your will, enduring power of attorney and personal directive as part of your comprehensive estate plan ensures your wishes will be carried out properly by people you trust.

ESTATE PLANNING CHECKLIST

Use this form to identify updates to your estate plan as a starting point for discussion with your legal and tax advisors.

Review Date (mm/dd/yyyy) _____

Will

- ☐ Do you have a will?
- ☐ Is your will up-to-date and signed?
- ☐ Have you experienced any major life events that require you to update your will?
- ☐ Is your will stored safely, yet accessible?
- ☐ Have you chosen your personal representative?
- ☐ Have you selected an alternative personal representative in case your primary is unable to fulfill his or her duties?
- ☐ Have you notified your potential personal representative about the duties expected of him or her?
- ☐ Have you considered appointing a professional personal representative?

Enduring Power of Attorney

- ☐ Have you prepared an enduring power of attorney?
- ☐ Is your enduring power of attorney up to date?
- ☐ Is your Attorney aware of their duties?
- ☐ Have you named an alternative Attorney in case your primary is unable to fulfill their duties?

Personal Directive

- ☐ Have you prepared a personal directive?
- ☐ Is your personal directive up to date?
- ☐ Is the person acting on your behalf aware of their duties?
- ☐ Have you named an alternative person in your personal directive in case your primary is unable to fulfill their duties?
- ☐ Do you have any specific wishes relating to your care that should be included in your personal directive and discussed with your loved ones?

Beneficiaries

- ☐ Have you named a beneficiary for your RRSP?
- ☐ Have you named a successor or beneficiary for your RRIF?
- ☐ Have you named a successor or beneficiary for your TFSA?
- ☐ Have you named a beneficiary for your life insurance policies?
- ☐ If your RESP does not have a joint subscriber, have you provided for a successor subscriber in your will?

Arrangements for dependents

- ☐ Have you named a Guardian and a Trustee for your children?
- ☐ Have you planned for their future income?
- ☐ Have you planned for any ongoing physical and psychological needs?
- ☐ Have you planned for their ongoing education?

Charitable giving

- ☐ Have you made arrangements for any charitable giving?
- ☐ Are there charitable causes you would like to support after your death?

Financial planning

- ☐ Have you organized your financial assets properly and efficiently to minimize taxes and probate fees?
- ☐ Do you have an inventory of your estate assets and liabilities along with advisor contact information?

Funeral arrangements

- ☐ Have you made pre-arrangements for your funeral with a funeral home?
- ☐ Have you discussed your funeral wishes with your loved ones? Have you set aside enough money to cover funeral costs?



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