



GLOBAL ASSET
MANAGEMENT

Tax, Retirement
and Estate Planning

Seven Deadly Sins in Estate Planning

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Agenda – a catalogue of sins

- No estate plan/an outdated plan
- Incorrectly named beneficiaries
- Inappropriate choice of executor
- Ignoring an asset's sentimental value
- Lack of care in registered product designations
- Inappropriate use of probate minimization tools
- Failure to consider the words and powers set out in the will



Sin #1 – No estate plan/outdated estate plan

51% of Canadians do not have a will. Of the Canadians who have a will, only 25% said the document is up to date¹

- An intestate estate must be distributed as per intestacy rules in Ontario's Succession Law Reform Act
- Holograph wills, although recognized, are open to misinterpretation
- An out-of-date will does not reflect the current state of the family or Canadian estate and tax laws.



¹ <https://www.bnnbloomberg.ca/51-of-canadians-don-t-have-a-will-in-place-poll-finds-1.976147>

Sin #2 – Failure to name the beneficiary correctly

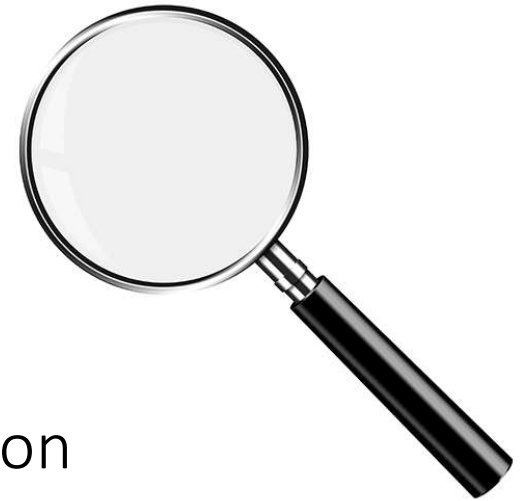
- Take care with the words chosen
 - What does “children” mean?
 - Who are “nieces and nephews”?
 - Naming individuals – what happens to people not included?
- Per stirpes vs. per capita
- What will happen if a charity is misnamed or merges after the date the will is drafted?



A closer look at charitable gifts – advantages

A charitable gift has several advantages in an estate plan:

- Benefits a charity or charitable cause important to the testator
- A tool for handing values to the next generation
- Enhanced tax advantage – tax credit may be claimed by the deceased in the year of death or the immediately preceding year, or by the graduated rate estate (GRE) in the year of the donation or in any of the next five tax years of the estate
- Capital gain realized on donation of public securities reduced to NIL



Misnamed charity could defeat these advantages

Cy-pres *doctrine* – a gift to a charity will fail should the charity be improperly named or the named charity ceases to exist, unless the will provides the **executor** with the power to choose a succeeding charity which, in the executor's view, closely resembles the one in the will



Make sure any charity is named correctly

When updating an estate plan, check that the charity has not changed names or merged

Consider providing the executor with the power to select a replacement charity

Sin #3 – Inappropriate choice of executor/trustee

The person or institution appointed in the will to administer the estate

Typical errors:

- Failure to ensure chosen candidate has the time or ability
 - Failure to consider the impact on family relations
 - Appointing too many people to act
 - Failure to consider geographic limitations on the chosen candidate
-



What does your executor do?

- Locates, safeguards and itemizes assets
- Manages all assets, business interests and investments
- Submits an application for probate to the court
- Pays debts, taxes, funeral expenses and legacies
- Keeps records and provides full accounting for the estate
- Distributes assets to all beneficiaries
- Prepares and file tax return(s)
- Deals with the CRA



What are the challenges of your executor?

- Lack of expertise or time
 - Conflicts of interest
 - Managing conflicts amongst estate beneficiaries
 - Making decisions
 - Geographical distances
 - Grieving
 - Personal liability
-



Sin #4 – Ignoring sentimental value assets

People fight out of emotion over things,
not just money

- Do you have assets with special or sentimental value to members of your family? What steps have you taken to distribute these assets?
 - Do you own an interest in a family business or cottage?
 - How important is it to you for the business or cottage to stay within the family?
-



Sin #5 – Lack of care in registered product designations

- An beneficiary designation and a registered product designation is a “testamentary disposition” and can be made in the contract or in a will
- Beneficiary designations may be deemed to be held in trust unless sufficient evidence of intention is available
- Care must be taken in the general revocation clause in a will as a poorly worded clause will revoke all beneficiary designations
- A beneficiary designation in a will only affects policies and contracts in effect on the day of the will, regardless the language used



Sin #6 – Inappropriate use of probate minimization tools

- Probate minimization tools are often used without fully considering the effect on the estate plan
 - Joint assets between parent and child are subject to the doctrine of resulting trust. Was that intended?
 - Watch the loss of control and family law issues of gifting and joint assets
-



What is probate?

Fee charged by the province to issue a Certificate of Appointment of Estate Trustee

- Confirms executor's authority to act
- Provides some protection to the executor
- May be required by asset administrator(s) to transfer estate assets
- Appoints an estate trustee without a will in the case of intestacy

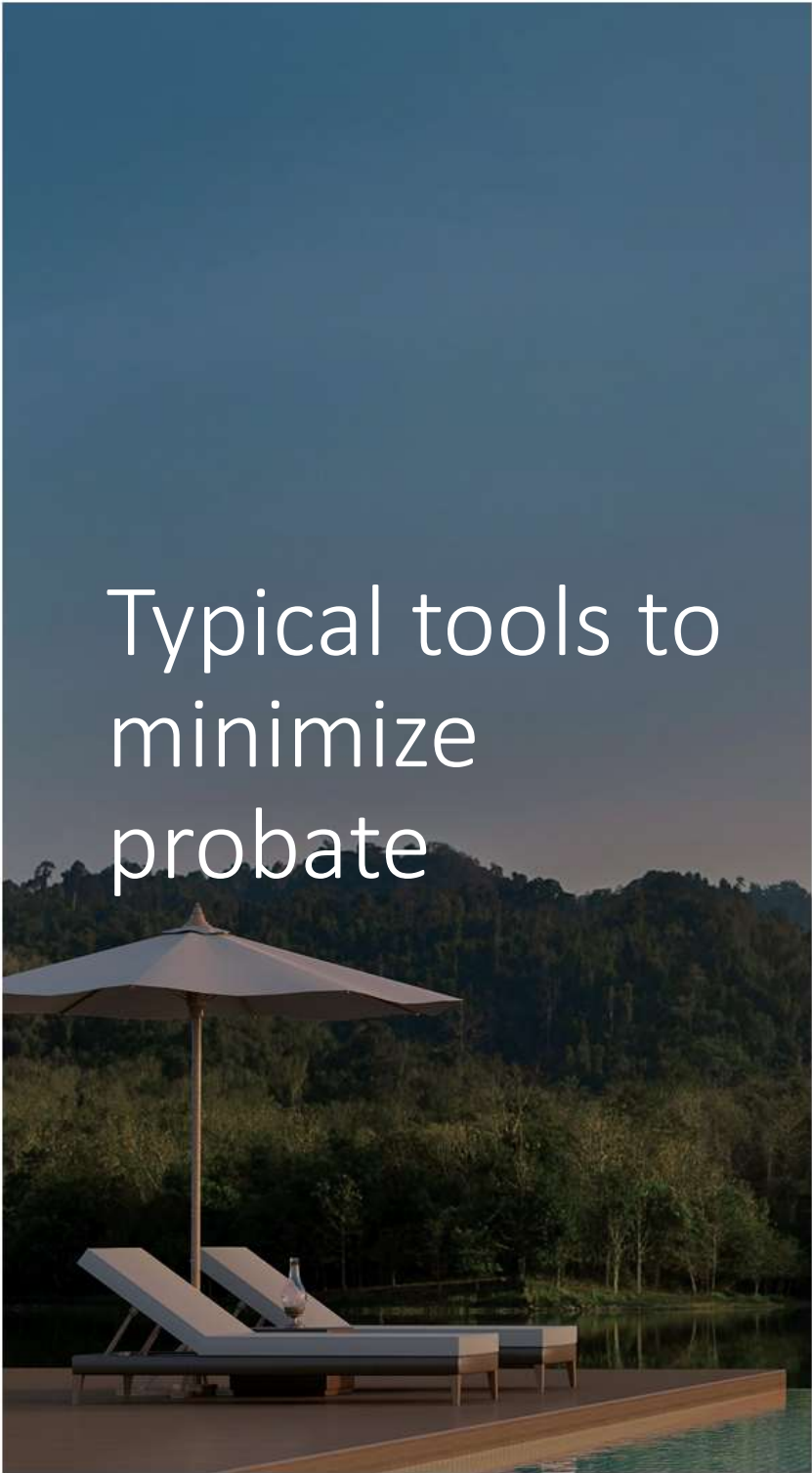


Probate fee calculation

Estate value	Probate fee
< \$50,000	0.00%
> \$50,000	1.5% of amounts in excess of \$50,000

Example

Estate value = \$2,000,000
Probate Fee = 1.5% of \$1,950,000
= \$29,250



Typical tools to minimize probate

- Named beneficiaries on RRSP/RRIF/TFSA/RPP or locked-in accounts
- Named beneficiaries on insurance contracts
- Jointly owned assets (with rights of survivorship), but be careful of issues of control and creditor concerns
- Gifting before death
- Transfer of assets to an inter vivos trust
- Multiple wills

Sin #7 – Failure to consider the words and powers in the will

- An executor or trustee only has the power provided in the deed or in the Trustee Act
 - Have you handcuffed your trustee, beneficiaries and advisors in the words you have chosen?
 - Is the deed broad enough to allow investment in mutual funds – be careful of *Haslam v. Haslam*
 - Can the beneficiary access capital and if so under what circumstances?
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Conclusions

Conclusion – avoid sin

- ✓ Read the estate planning documents carefully. Make sure you understand all the words used and they comply with your client's wishes
 - ✓ Ensure you understand the estate plan before suggesting probate minimization
 - ✓ Review the plan periodically to ensure beneficiary names are accurate
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Ontario Estate Planning changes, 2021



Agenda

Ontario Estate Planning
changes, 2021

- Provincial legislative changes to estate process
- Federal legislative changes to estate process
- Court made changes to estate process



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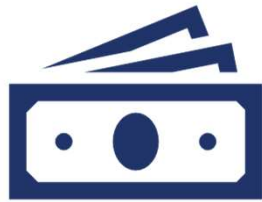
Provincial Changes

Virtual signing of Estate documentation

Virtual signing of a Will using video conferencing is now permitted.

Wills can be witnessed in counterpart

Probate Process



Probate fees reduced

First \$50,000 generates no fee
Estate value over \$50,000, generates a fee of 1.5%



Simplified Probate application Process

Probate process for “small estates” of
\$150,000 or less, simplified

Intestate Succession

Preferential share for a spouse increased from \$200,000 to \$350,000

Separated spouses no longer entitled to a share of an intestate estate

Intestate succession does not apply to common law couples only married spouses

The effect of marriage and separation upon Will planning

- Marriage will no longer revoke a Will. Although a spouse might not be mentioned in partner's Will, a survivor continues to have the protection of the Family Law Act and Succession Law Reform Act
- Separated spouses will be deemed to have predecease their spouse when interpreting a Will

Payment to children



As a general rule a minor cannot receive funds on his or her own behalf from an inheritance, registered product designation, insurance product or court settlement



A parent, although the guardian of a child's person is not a guardian of their finances and therefore cannot receive the funds unless named as trustee



New rules will permit a payment of \$35,000 or less to be paid to a parent or guardian without a court order

Strict compliance and substantive compliance

The court will now have a discretion to find that a document is a valid Will even if it does not have the strict legal requirements for execution



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Federal changes

Medical Assistance in Dying (MAID)

- Criminal code amended to allow medical assistance in dying even where natural death is not reasonably foreseeable
- Where death is reasonably foreseeable require of a final consent removed
- A power of attorney cannot make decision on your behalf

The proposed Digital Charter Implementation Act

Will define a “person authorized to administer an estate” as a person who may instruct digital providers

Act will also provide powers of attorney with the same power

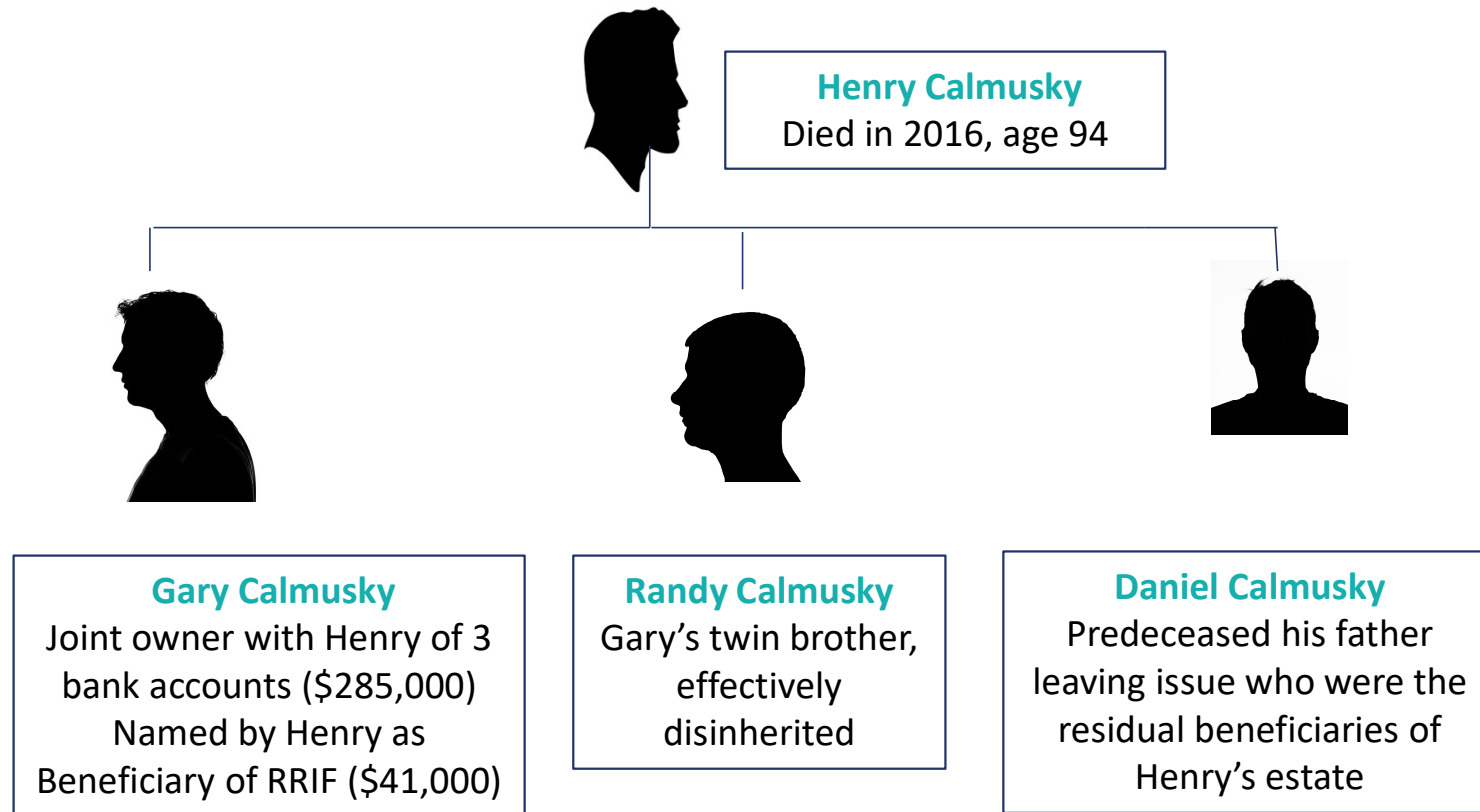


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Case Law: the Calmusky decision

Calmusky v. Calmusky Estate



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Thank you