

This Valentine's Day, say "I love you" with an estate plan

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Estate planning is more than just a formality – it is a crucial part of ensuring that your wishes and intentions are honoured, your assets are protected, and your loved ones are cared for after your passing. Whether you have said “til death do us part” or not, couples are very much involved in one another’s end-of-life preparations. Working together towards getting your estate in order will provide you with the comfort and peace of mind that comes with knowing you have taken steps to protect each other’s future.

While it is important that every person have a Will, there are certain considerations that are unique to couples. One way that couples can plan for the future is by setting up Mirror Wills.

Mirror Wills are two separate documents that mirror each other in terms of the distribution of assets. While each partner makes their own Will, Mirror Wills allow couples to work together and come up with a mutual agreement that reflects both of their shared wishes. Typically, when couples make Mirror Wills, they will name each other as executors. This means that your spouse and most trusted loved one will be the person who helps manage and distribute your estate after your passing.

It is also common for couples to have second families with a new spouse or common-law partner. In many cases, this includes having children from a previous marriage or relationship. Because spouses and common-law partners have special, legislated rights that arise on death, it is important that people with second families plan properly to identify these unique issues and help minimize potential conflict that may arise.

One way that lawyers can help find balance between current partners and children from a previous relationship is through the creation of a spousal trusts. Spousal trusts can be used to provide for a spouse during their lifetime, while still ensuring that their assets end up in the hands of their children. Essentially, upon one’s passing, assets are placed in a trust for the benefit of the surviving spouse – this means that the spouse can draw or take money from the trust in order to maintain their standard of living.

Once the surviving spouse passes away, the assets are transferred to an ultimate beneficiary which is quite often children from a previous relationship. Spousal trusts are an effective way to ensure that your loved one is cared for, while simultaneously preserving an inheritance for your children.

There may also come a time when you or your partner may no longer be able to manage your own affairs. A power of attorney (POA) is a document that allows you to appoint a loved one or a trustworthy person to assist you if the need arises. Often, couples will appoint each other (with backups in place) to help manage day-to-day tasks. Without a valid POA, your spouse or family member may be required to make a court application in order to handle your affairs for you. For this reason, it is important for couples to have this type of conversation and plan ahead to deal with such scenarios.

As partners, you should communicate and ensure that your estate wishes are clear – especially if something happens to one of you and the other has to help manage your affairs. By working together, the process will become easier, knowing that your loved one is creating their plan alongside of you.

Because every couple and every family are different, the advice you get from a lawyer can range quite drastically. From simply structuring the ownership of your assets to using wills or trusts to protect vulnerable beneficiaries or shield you and your family from unnecessary tax consequences, our team of trusted legal advisors can help you come up with a plan to best protect your needs.

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