

Will, Power of Attorney and Health Care Directive: Do I need them?

by: Stacy Senkbeil, Partner

published 11 August 2023

A comprehensive estate plan is one of the best ways to ensure that your wishes and intentions for your assets are followed, and your healthcare needs are managed during a time when important decision-making can be difficult. Estate planning is essentially planning for the future if you become incapacitated or if you pass away.

There are three important documents that you should have in place when planning for your estate: Will, Power of Attorney, and Health Care Directive.

Will

A will is a legal document that directs how your assets will be distributed upon your death. Here are top four reasons why you need a will:

1. You decide who will be the executor or administrator of your estate. In the absence of a will, the administrator must be a Manitoba resident and must be nominated by all those entitled to act on your behalf. The court may also require that the administrator post a bond and/or surety in order to be authorized to act on your behalf.
2. You get to decide who your beneficiaries are and at what age your beneficiaries will receive their funds. There are very few people who are mature enough to responsibly receive an inheritance at the age of 18. By having a will, you can designate a later age for the beneficiaries to receive their inheritance and you can include terms to allow withdrawals for their well-being and/or education prior to that age. For example, you can allow them to withdraw costs for college, but they will not receive the remaining funds until they reach the age of 25.
3. Those with minor children would benefit from a will so that you can name the individual/s you want to apply to become the guardian of your minor children.
4. Depending on the circumstances of your estate on passing, when you have a will, you can sometimes avoid the court process of probating the will. This is usually where there is no real property or funds that fall below the bank threshold for probate.

Power of Attorney (POA)

The POA is a legal document in which you appoint someone to manage your property, finances, healthcare, or legal affairs. Some of the circumstances where you can authorize a representative to act on your behalf include physical/mental incapacity or when you work overseas. Having a POA is also ideal if an elderly person is unable to manage their affairs due to a serious illness.

Without a POA, your next of kin is not permitted to make those decisions for you. If something happened where you are unable to make decisions on your own, your spouse/children/next of kin would have to make a court application for a Committeeship Order and then provide regular reports to the court on how your affairs are being managed. Alternatively, if your loved ones do not make an application, the Public Guardian and Trustee's Office will step in and manage your affairs on your behalf.

Health Care Directive (HCD)

HCD is a document that outlines who can make medical decisions on your behalf, and it provides direction and guidance to that individual on your wishes. You can discuss your HCD with your doctor prior to consulting a lawyer to assist you with preparing same. Your doctor may provide you with a form of HCD to complete. They will be able to have real conversations with you about your medical situation and explain the effects that the treatments would have on your quality of life.

Whether you do your HCD with your doctor or your lawyer, it is important to have a copy of the HCD placed in your medical records so that in case of an emergency, the hospital is able to easily obtain contact information of your substitute decision-maker.

DISCLAIMER: *This article is written for informational purposes only and does not constitute legal advice. The views expressed are solely the author's and should not be attributed to any other party, including Meighen Haddad LLP. If you want to seek legal advice, please contact the author directly or call our office at (204) 727-8461.*