PUBLIC LEGAL INFORMATION
Association of NL

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Legal Information Officer

An Introduction to Wills and Estate Planning

Today's Presentation

- What is PLIAN?
- Wills and Estates
- Enduring Powers of Attorney
- Advance Health Care Directives

Core Services

WHAT DO WE DO AND WHO IS IT FOR?

We provide these services and more to all people in Newfoundland and Labrador

- LEGAL INFORMATION LINE/LAWYER REFERRAL SERVICE
- PLAIN LANGUAGE LEGAL PUBLICATIONS AND PRESENTATIONS
- ONLINE RESOURCES
- PROJECT WORK:
  - Journey Project
  - Legal Rights for Newcomers
  - Labrador Office

Legal Information Line and Lawyer Referral Service

- General Legal Information only
- Phone Line/Email/In-Person
- Operates Monday – Friday, 8:30AM – 4:00PM
- Primarily self-represented litigants, people with everyday legal problems

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GET IN TOUCH WITH US

1-888-660-7788

709-722-2643

info@publiclegalinfo.com

www.publiclegalinfo.com

Lawyer Referral Service

- Consultation with a practicing lawyer (approximately 50 throughout NL)
- 30 minutes for $40 (taxes included)
- "Summary legal advice" only - meaning no legal work or representation done during the consultation
- Client may choose to hire the lawyer after the 30 minutes, but no obligation to do so, and no obligation for lawyer to take the case

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NEWCOMERS PROJECT OVERVIEW

OBJECTIVE

Support for newcomers to the province, including immigrants, refugees, international students, temporary foreign workers

Primary focus is “everyday” legal problems and understanding legal rights

Legal Rights for Newcomers

ACTIVITIES

- Highest demand: labour/employment rights, residential tenancies/housing, family law, immigration
- Working directly with individual clients, developing print legal education materials (and translating), presentations in-person and via Zoom to MUN Internationalization Office, Association for New Canadians, etc.

CONTACT:

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NEWCOMERS@PUBLICLEGALINFO.COM

- Partnership between PLIAN and End Sexual Violence NL
- Funded by Justice Canada with support from Department of Justice and Public Safety

Two parts:

-Outreach and training of justice personnel and front-line service providers

-Free legal advice for survivors of any form of sexual violence (including sexual assault, sexual harassment, distribution of intimate images w/o consent, etc.) or intimate partner violence (including physical violence, sexual violence, financial abuse, emotional/psychological abuse, etc... in the context of an intimate relationship)

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Legal Information vs. Legal Advice

LEGAL INFORMATION

- EXPLAINS THE LAW AND THE LEGAL SYSTEM IN GENERAL TERMS.
- NOT TAILORED TO A SPECIFIC CASE OR A PERSON'S INDIVIDUAL CIRCUMSTANCES.
- MAY INCLUDE DISCUSSION OF POTENTIAL LEGAL OPTIONS IN GENERAL TERMS, WITHOUT RECOMMENDATION OF ANY COURSE OF ACTION.

LEGAL ADVICE

- LEGAL ADVICE APPLIES THE LAW, INCLUDING STATUTE AND CASE LAW AND LEGAL PRINCIPLES TO A PARTICULAR SITUATION.
- PROVIDES RECOMMENDATIONS ABOUT WHAT COURSE OF ACTION WOULD BEST SUIT THE FACTS OF THE CASE AND WHAT THE PERSON WANTS TO ACHIEVE.

Wills and Estates

- What's a Will?
- What's an Estate?
- Why Have a Will?

Requirements

- Requirements under the *Wills Act*
- Must be in writing – typed or handwritten
- Must be at least 17 years of age or older
- If not handwritten, must be signed in front of two witnesses
  - Both witnesses must be present at the same time you sign the will
- Must be making the Will free from pressure
- Must have legal capacity when making the will

Capacity to Make a Will

- Capacity is fluid – meaning that it might change from day to day and moment to moment
- Generally means that a person making a will:
    - Understands what they are doing
    - Remembers and understands what they own and what they are giving away
    - Understands who they are giving items to and who they are excluding in their will.

Important Parts of a Will

- The Date
  - Necessary to prove which Will is the correct one to use
- The Executor
  - The person who will handle your money and assets according to your will
- Gifts under the Will
  - Small gifts, monetary gifts, and/or residuary gifts

Executors Matter

- Executors can be anyone or more than one person
- They become your legal representative: They handle your legal and financial matters after death
- They must act *In Good Faith:*
  - They must ensure that your estate doesn't lose money unnecessarily
  - They can't take money from your estate and spend it on themselves
- Logical and Practical Considerations:
  - Where they live
  - Professional background
  - Time/Capacity to spend on Executor's duties
- Can direct your executor to hire professionals to manage the estate
- Can direct your executor to provide accounting to your family

Contents of a Will

Personal Property

Any personal items

Real Estate/Land

Family home, cabin, land

Money

Residuary Clause

- One of the most important clauses under the Will
- States who is getting anything not mentioned in the Will, the “leftovers” of the estate
- Can expressed as a percentage:
  - I give all my remaining assets to Sally Smith of the Town of Paradise, NL
  - I want my remaining assets to be split in the following
    - 50 % to John Bravo
    - 50% to My Favourite charity
- “Remaining Assets” covers anything we did not specifically mention

Things to Note:

- A will should be in clear, understandable language
- If there is another possible interpretation, the gift could be nullified
  - Example – I give my money to my friends
- Be as specific as possible to clearly identify what you are giving away and to whom.
  - Example – I give my cars to my brothers
  - Better - I give my 2024 Hyundai Elantra to my brother John Smith, of the Town of Gander, NL

Other Considerations

- **Guardianship**
  - Can list instructions in a will for the care of minor children or adult children with disabilities, or other dependents. However, this is subject to approval by the Court (the best interests of children)

- **Marriage**
  - If you get married your original Will is void unless steps are made to ensure it is still valid

- **Divorce & Separation**
  - Does not affect the Will, so likely want to review and make changes

- **Death of a Beneficiary**
  - If a beneficiary dies, the gift to them may be cancelled and the property that was being given becomes part of the residual estate, unless there is a specific provision in the Will.

Special Considerations

Matrimonial Property

- The *Family Law Act* allows a spouse to apply to court for one half of shared assets when a spouse dies
- If the court determines that the spouse is entitled to more than they were given, the court will override the Will
- Only applies to married spouses, not common law partners

The Matrimonial Home

- In Newfoundland & Labrador, if you are married and own your home, in most cases, the spouse will receive title to that property in the event of a death. This may not apply for couples considered common-law partners
- If you are not married, your “common law” partner may not receive anything from your estate

Joint Bank Accounts

- If your spouse dies with a joint bank account with you, often nothing is needed to be done for you to access the jointly held money
- If money is held in a joint bank account with your child (or another person), the money will not necessarily be considered money for your child.
- Banks may freeze these accounts until it can be determined who should be allowed to handle/receive the funds in the account

Digital Assets

Digital Assets are common and should be considered when making estate plans.

Things such as:

- Online banking
- Cryptocurrencies
- Email accounts
- Social media accounts

These accounts should be closed to help prevent the deceased family's being victims of fraud or other illegal activities

Common Misconceptions

There is no reading of a will unless it is put into the Will or the Executor decides to do so.

An executor is required to keep a Will private, including from family members.

Common law relationships do not mean you are automatically entitled to anything under the law, no matter how long the relationship was.

You don’t need a justice of the peace, lawyer or notary to witness your Will, or be a part of your Will in any way.

Diagnosis of dementia or Alzheimer’s disease does not always mean you can’t make a Will.

Why have a Will?

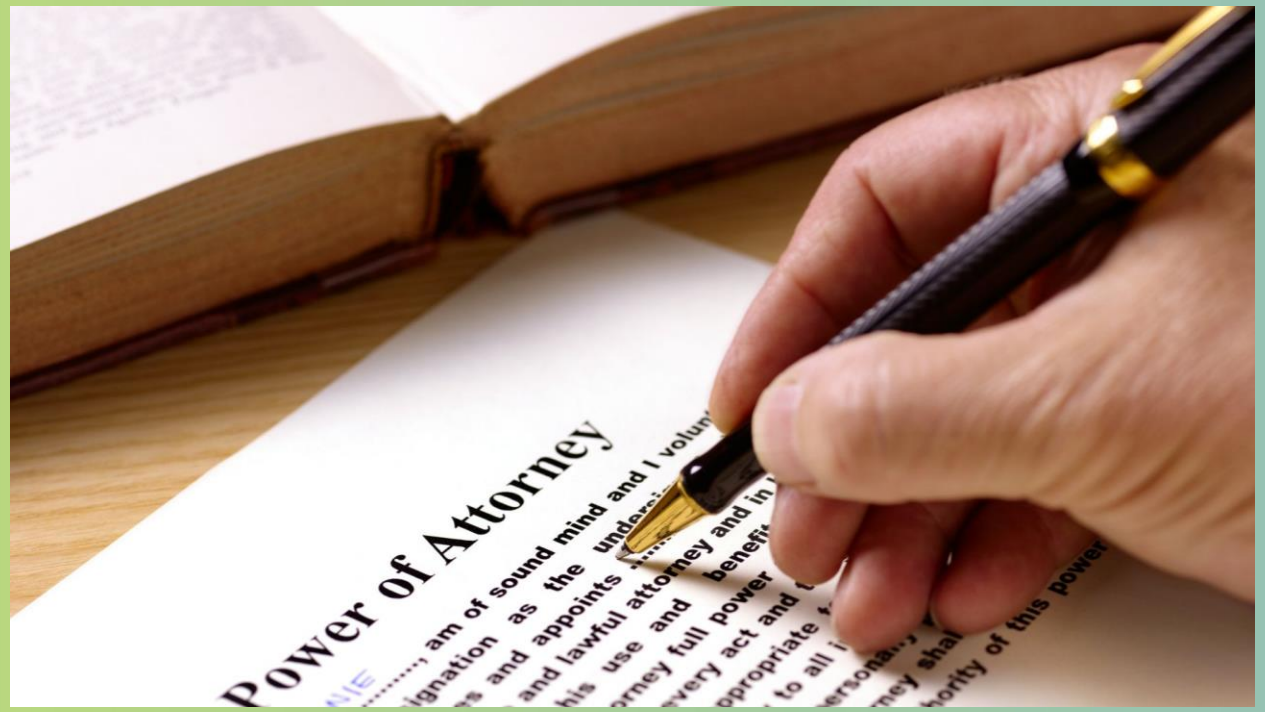
- Peace of mind for you
- Helps you maximize your estate's financial wealth
- Takes stress away from your family/friends
- Prevents fights in your family
  - "Mom wanted ME to have her earrings!"
  - "Dad always said I would get the cabin!"
- Allows YOU to choose who handles your financial affairs
- Allows YOU to choose how your financial affairs are handled

What Happens if I don’t have a Will?

- Someone will have to apply for Letters of Administration
- Costly
- A ton of forms
- Rules would be under the *Intestate Succession Act*
- Your estate will be divided as per the Act, not your wishes.

Questions?

Enduring Powers of Attorney



Considerations

- Follow the rules of the *Enduring Powers of Attorney Act*
- Must have legal capacity to create
- Must be signed by the person making the document, as well as one independent witness
- How it comes into effect – Legal Incapacitation
- Can be revoked
- You can place specific restrictions on your property to force your attorney to act in a certain way
  - Ex: “Do not sell my home as it is under my Will”
- Consider requiring an Attorney to make annual financial reports for your children or other family members

The Appointed Attorney

- Can be any person, persons or a trust corporation
- Can do almost anything with your estate
- Must pay your bills/taxes and use the money for you and your life
- Must act in good faith

Why Have An Enduring Power of Attorney?

- It's insurance for when we may be in need
- It allows someone to access your financial affairs when you are unable:
  - In a coma
  - In the advanced stages of dementia
- It can take stress off your family/loved ones
  - Ex: Banks won't let your son/daughter access your account
- It prevents family fights and legal bills
  - *"Mom had so much money before she passed away – you stole it!"*
- Allows you to choose who will help you and how your finances are handled

What *Isn't* A Power of Attorney?

- A Power of Attorney is not a will.
- Powers of Attorney cease to be in effect the moment a person passes away.
  - This means that the appointed attorney cannot act for you when you have passed
- A Power of Attorney gives no right to do anything under the estate of a person
  - It is not a document that gives powers like a will

What Happens When You Don't Have A Power of Attorney?

- A Power of Attorney provides an opportunity for you to appoint someone to help you when you are in need (while you can)
  - But what happens if you don't appoint someone and then you're in need?

- If you don't have a Power of Attorney, then someone must be appointed by the Supreme Court of Newfoundland and Labrador through *Guardianship*.
  - Costly;
  - Many forms (at least 8 forms);
  - No guarantee that someone will come forward.

Guardians

- Appointed by the court
- Must reside in NL
- Must act in Good Faith
- Can be revoked by court application

What Happens if there is no Guardian?

- Practically, you may be okay, but you may not have anyone to care for your finances
  - Ex: Filing taxes, paying bills, etc
- It's open-ended as to what can happen
- In the context of Elder Abuse, it becomes an opportunity for someone to abuse mom/dad
- Often hear stories of someone collecting mom/dad's pension or CPP cheques or accessing their bank accounts and taking the money
- Guardians are supposed to prevent this and pursue anyone who is stealing from you

Questions?

Advance Health Care Directives

- A document that allows an individual to give instructions about their future medical care and/or designate an individual to make health care decisions for them when they are no longer able

- This document only comes into effect and only remains in effect when the individual does not have capacity to make their own health care decisions, or is unable to communicate such decisions

Advance Health Care Directive Requirements

- Can be found in the *Advance Health Care Directives Act*
- An individual must be 16 years of age or older
- The individual must have capacity
- The document must be in writing and signed by both the individual making the directive and the individual(s) indicated as the substitute decision-maker(s), as well as two independent witnesses

- If a substitute decision maker is not appointed, the *Advance Health Care Directives Act* sets out a list of who will be asked to act as the substitute decision maker—the rest of the Directive will remain valid

- If there are members of a family that an individual does not want to act as a substitute decision maker, they can specify this within their directive

- This procedure also applies if a person has not made an Advance Health Care Directive

Considerations

- **Substitute Decision Maker**
  - This individual is responsible for communicating instructions in the directive to the health care professionals and, when necessary, this person will make health care decisions

- **Instructions**
  - Provide guidance to the substitute decision maker—this can include general principles regarding an individual's health that they want the substitute decision maker to keep in mind while making health care decisions

Questions?

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