

Beneficiary designations

Factoring in beneficiary designations as part of your overall estate planning

All Canadian provinces and territories allow direct beneficiary designations on personally owned insurance products, such as segregated funds, annuities and permanent or temporary life insurance contracts (collectively referred to as “Policies”). Only Canadian common law provinces (all provinces except Quebec) allow direct beneficiary designations on investment assets, such as those held in tax-free savings accounts, registered retirement savings plans, registered retirement income funds and pooled registered pension plans (collectively referred to as “Plans”).

Beneficiary designations are important estate planning tools because they provide several important benefits, including:

- **Avoiding probate:** Designating beneficiaries directly on these assets allows them to pass outside of your estate and avoid probate (if such a process exists within your jurisdiction) and the associated delays. Probate is a process whereby the executor(s)¹ you have appointed in your will apply to court to approve the will. To provide the approval, the will must have been executed in an acceptable manner and the executor must swear to the value of the assets that pass through the estate. Probate provides protection to the executor(s) when administering the estate and to third parties (such as banks, mutual fund companies and land titles offices) who are asked to transfer the assets. The probate process can often be lengthy and might cause delays in distributing your estate assets to your loved ones. Helping your executor minimize delays in administering your estate may be especially important if you have dependants who require ongoing or urgent financial support.
- **Reducing probate fees:** During the probate process, most provinces assess probate fees on the value of the assets that are passing to your beneficiaries under your will. Since probate is needed for only those assets that pass through your estate, appointing beneficiaries directly on your assets (where possible) will help your estate reduce or avoid the probate fees.
- **Providing potential creditor protection at death:** As part of the probate process, your executor(s) must notify your heirs, creditors and any other persons with an interest in your estate (such as an individual who was dependent on you while you were alive) that you have died. Your executor must wait for a specified amount of time to see whether any such person wishes to bring a claim against your estate. When you appoint beneficiaries directly on your assets, you prevent those assets from becoming part of your estate, which potentially protects them from these types of claims.
- **Providing potential creditor protection while alive:** For certain classes of assets (such as life insurance policies), if you appoint beneficiaries that fall within a special class of persons (such as spouses, children, grandchildren or parents), you may potentially protect these assets and their proceeds from your creditors while you are alive.
- **Providing a measure of privacy in your affairs:** During the probate process, any document (including your will) that your executor(s) provides to a court becomes a public document that any member of the public can see. Since assets with beneficiary designations are not governed by your will (unless you appoint your estate as the beneficiary), your executor is not required to provide them to the court and as such, your beneficiary designations will likely not become public documents. This provides you with a measure of privacy in your affairs.
- **Avoiding intestacy rules:** If you die without a valid will, your assets with beneficiary designations may avoid the mandatory provincial intestacy rules. These rules determine which individuals will receive your assets and the amount each individual will receive. These individuals may not be the people you wish to receive an inheritance from you or you may not wish them to receive the amounts prescribed by the intestacy rules.

¹ Also known in certain provinces as “liquidators,” “estate trustees,” “personal representatives” or “administrators.”

Contingent or alternate beneficiaries

Even if you have designated beneficiaries on your Plans or Policies, you should consider appointing contingent beneficiaries on those assets where possible. Not appointing contingent beneficiaries could mean that if you are involved in a common accident with your primary beneficiary(ies) and all of you die because of the accident, then the proceeds from your Plans or Policies would fall into your estate, and be subject to probate fees and any potential claims against your estate.

The methods of designating beneficiaries

When opening an account for a Plan or buying a Policy, it is typical to appoint a beneficiary as part of the contract or application process. However, when planning the distribution of your entire estate, it is wise to revisit the beneficiary designations on your Plans or Policies to ensure that they reflect your desired estate distribution, liquidity and tax planning goals. Please note: Policies owned by your corporation should have the corporation named as beneficiary.

If you wish to change a beneficiary designation on your Plans or Policies, you may do so by making a declaration.

You can make a declaration by:

1. completing the relevant financial institution's beneficiary designation form;
2. updating your will; or
3. creating a separate declaration document.

Declaration by a financial institution's form

Completing the relevant financial institution's beneficiary designation form is usually the simplest and most cost-efficient method of changing your beneficiary designations; however, it has limitations. For example, the forms do not typically consider distribution schemes that are more complex than merely dividing up the proceeds by percentages, including, for instance, creating a discretionary trust for a minor or disabled beneficiary.

Declaration by updating your will

You may change your beneficiary designations by including one or both of the following declarations in your will:

- **Insurance declaration:** You may choose to include a declaration naming primary and contingent beneficiaries of your life insurance policies as a part of your will. The declaration will only take effect after:
 - you send a notarial copy of your fully executed will to the life insurance company that issued your insurance policy; and
 - you receive confirmation from the insurance company that it has received your will and has updated its records.
- The declaration is effective as of the date of your will. If you make another beneficiary designation after the date of your will, the new designation will override the insurance declaration.
- **Registered plan declaration:** You can also make a similar declaration in your will for your registered plans. The discussion above relating to the insurance declaration applies equally to a registered plan declaration in your will.

Declaration by a separate document

You may also choose to make a declaration by creating a separate document. Doing so means that the proceeds of your Plans will likely:

- not be distributed according to the terms of your will;
- not form part of your estate; and
- not be subject to probate fees or any potential claim against your estate.

If you wish to make a declaration by a separate document, the document must stand on its own, with its own definitions and dispositive provisions. If the declaration creates a trust, it must expressly address matters such as trustee powers, including investment powers, the replacement of trustees and compensation for trustees. Like a declaration by will, a separate declaration will only take effect after you send a notarial copy of your fully executed declaration to each life insurance company that issued your insurance policies, and you receive confirmation from each company that it has received your declaration and has updated its records to reflect it.

Factors to consider

In choosing a method of changing your beneficiary designations, consider:

- There is a risk that you may forget to review or update a separate declaration when you update your wills.
- You will have to reveal the contents of your entire will to the relevant financial institution or insurance company if the Plan or Policy designation is contained in your will.
- If your designations are included in your will, when your executor probates your will, it becomes a public document, so any designations lack privacy.
- You cannot make an irrevocable beneficiary designation by will.
- Corporately owned Policies have different tax rules than personally owned Policies. Caution should be taken when making changes on these Policies.

Please consult with your financial, insurance and legal advisors when considering changes to your beneficiary designations.

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An "executor" is called a "liquidator" in the province of Quebec and an "estate trustee" in the province of Ontario.