

# ROAD MAP TO THE FUTURE



Saskatchewan Association for  
Community Living

BY RITA MCLEOD, PH.D



# **ROAD MAP TO THE FUTURE**

**A FINANCIAL PLANNING GUIDE  
FOR FAMILIES OF PEOPLE  
WITH DISABILITIES**



Prepared for  
The Saskatchewan Association For Community Living

by Rita Mcleod, Ph.D.

Saskatoon, 2015

The Road Map to the Future  
A Financial Planning Guide for Families of People with Disabilities

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## PREFACE

*Road Map* is a product of many years of work, research, and development. The first issue of the book was created in 2003 with the direct participation of parents. Like you, I too felt that navigating the dizzying maze of legal issues was daunting and full of dead ends, closed doors, and lonely roads. Travis was a young teenager at that time. I remember feeling that we were lost and wanted a compass, or rather a map to guide us. Our family needed something that we could look at, find out where we were and then figure out where to go next. Thus, *Road Map To The Future* was born.

A lot has changed since 2003, so the SACL wanted to create a second edition of the book to reflect all of the many changes that have occurred over the years. The SACL wanted to map out all of the new roads that have been paved, and remove those that are no longer used. This new edition was also an opportunity to streamline the book and make it easier to read. The SACL listened to feedback from parents about the first edition and have implemented many of our suggestions. As a mother and the President of the SACL I am very proud to present this 2015 edition to our families.

I know firsthand how difficult the planning process can be. Planning for my son, Travis, has not been easy. The 2003 edition gave our family the strength to go forward. I had to educate myself about Trusts, Wills, Guardianship and what seemed like a hundred acronyms. We had to find a lawyer we felt comfortable with and would have Travis's best interests. We had to have that difficult discussion with our daughter and now, will have to have that discussion again as she now has become a mother. As well, I am constantly learning as Travis gets older of other legislation that will affect his life when Mike and I are gone. In 2003, I had the *Road Map* and that made all the difference – my husband and I made that difficult leap to get the Will written and look into Trust Accounts. Our family learned how our wishes will be honoured when we are gone. *Road Map* made it easier for us to make that plan for the future. I still have some questions and this updated book will answer my questions ... for now. Nothing for our children remains stagnant. It's a long journey from the starting line, and this book will be there for you every step of the way.

It's not easy to make plans for the future of your son or daughter, and I and the SACL hope that this book will bring you comfort and strength. If you ever feel hopeless and lost, let this book be the light to guide you as it has for our family. And when you feel like you can't go on, let this book carry you over that last mile. It's a long road and we can walk it together.

Gloria Mahussier  
President, Saskatchewan Associate Community Living

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First of all, I would like to thank the Saskatchewan Association for Community Living (SACL) for giving me the opportunity to work on this project in 2003 and also for asking me to update the material in 2013.

Second, a big “thank you” to families from all over Saskatchewan, who met with me and shared their life stories, their concerns and experiences with me. Without your input, this material would be far less relevant.

I am grateful for people who talked to me in 2002 and 2003, and also people who gave of their time to assist with the revision of this material in 2013 and 2014. This includes families, self-advocates, government workers, members of advocacy groups, lawyers and financial experts.

## 2003 Acknowledgements

Thank you to the project advisory group, consisting of Faith Bodnar, Executive Director of the SACL, Gerry King, SACL president and retired judge, Doug Surtees, Co-Director of Public Legal Education Association (PLEA) and John Coflin, the Executive Director of Regina and District Association for Community Living). Your guidance was invaluable.

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I am grateful to those who reviewed the document, to make sure that it is readable, accurate and relevant. Thank you all. Without your help this material could not have been produced.

Rita McLeod, Ph.D.

## 2015 Acknowledgements

Thank you to the Saskatchewan Association for Community Living, in particular Kevin McTavish, the SACL Executive Director, and Judy Hannah, the Grassroots Coordinator, for asking me to review and update this material. I am grateful to them and the Road Map Advisory Committee, consisting of Gloria Mahussier, the SACL President, Lori Duke and Bluesette Campbell for their invaluable comments and insightful edits in making this reviewed material relevant and updated.

The following people provided me with updated information, in particular about the Saskatchewan Assured Income for Disability (SAID) and Registered Disability Savings Plans (RDSP): Beaty Beaubier of Stevenson Hood Thornton Beaubier, Connie den Hollander of Knott den Hollander, Jim Gillis of Wardell Gillis, Andrea Rohrke of Scharfstein Gibbings Walen Fisher, Terry McBride of Raymond James, Robin Chapman from TD Canada Trust, staff from the Ministry of Social Services and Michael Richter from the South Saskatchewan Independent Living Centre in Regina.

I appreciate your input in making this material still relevant and hopefully useful.

Rita McLeod, Ph.D.

## DISCLAIMER

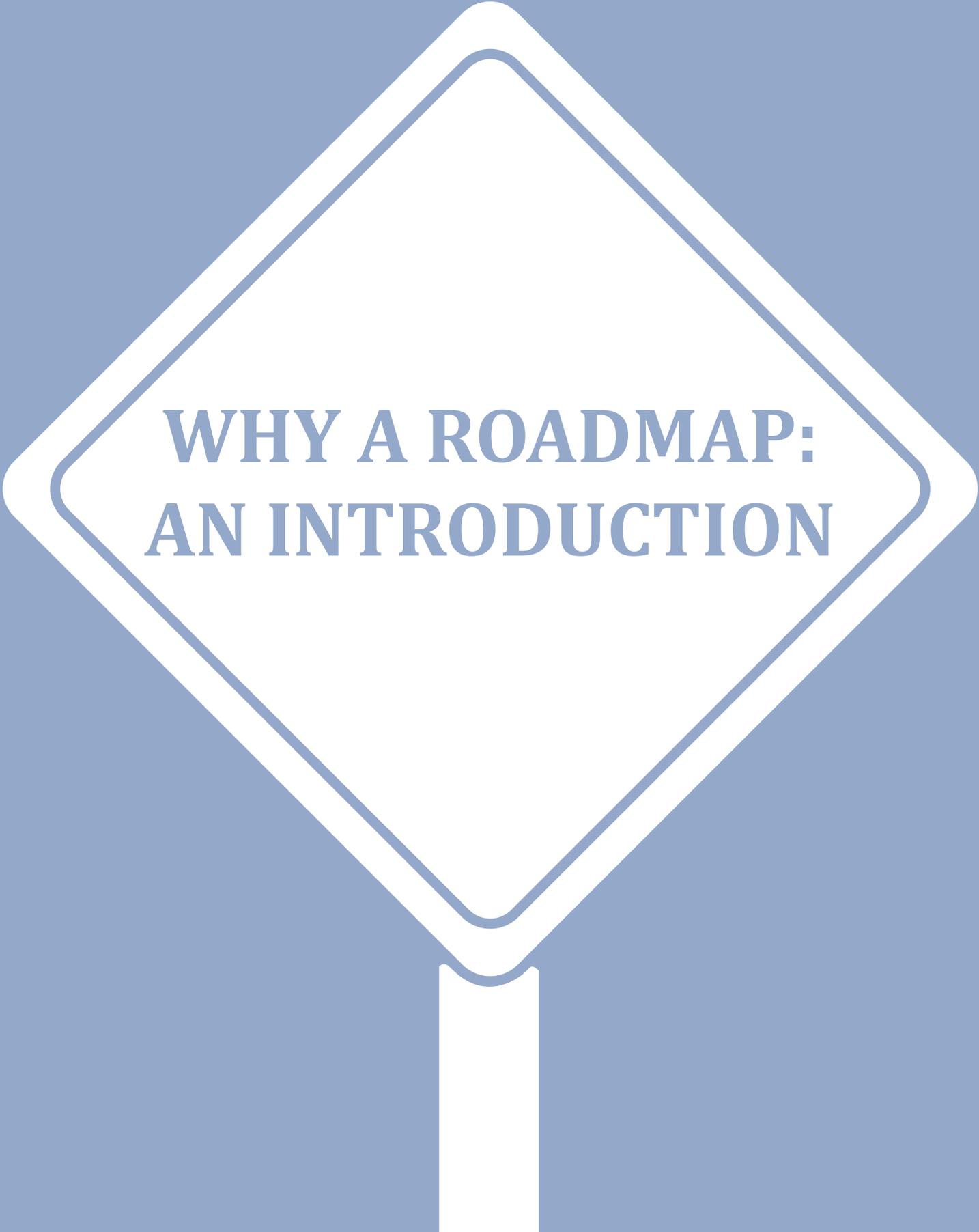
This material was developed for information and reference only. Its goal is to provide a broad overview, so that you become more knowledgeable in exploring various options, and better prepared to meet with professional advisors.

This is by no means a “do it yourself” kit, and should not be used instead of using professional services of a lawyer, and/or financial planner or advisor. This material will provide answers to some questions you might have, but it cannot replace professional advice. Providing a secure future for you dependent son or daughter is far too important, and often too complex, to carry out without professional help. Your fee to consult a competent lawyer, accountant and other trusted professionals will be money well spent.

Samples of Wills and trust agreements in the Appendices are exactly that – just samples. People should not simply copy them and insert their own names. Each family situation is different and requires individualized attention. Samples in the Guide are included to give you some ideas about how discretionary trusts look and about things that other parents have included in their Wills and financial planning. But you have to keep in mind that every family situation is unique – you could be a two-parent family with several young children, a two-parent family with only one child, or a one-parent family with one or more children. There are blended families with stepchildren and stepparents, parents with adult children, and so on. It is possible to provide only general ideas, not to cover every possible situation.

Neither the Saskatchewan Association for Community Living nor the author takes any responsibility for the inappropriate use of this document. All the information in the Guide is being provided in good faith, but is not guaranteed to be absolutely accurate at the time of your reading it. Laws, government regulations and policies change and it is important to keep abreast of new developments.

The material is based on Saskatchewan laws and regulations as of December 2014. Because provinces have jurisdiction over property matters, situations in other provinces might be different. A supplement is being prepared that will address the situation in other provinces and territories, particularly in relation to relevant Acts and regulations.



**WHY A ROADMAP:  
AN INTRODUCTION**



## WHY A ROADMAP: AN INTRODUCTION

In 2002, the Saskatchewan Association for Community Living (SACL) contracted me to research and produce a resource guide on financial planning for families of people with disabilities. In 2013, I was asked to update the content.

One of the biggest concerns families of people with disabilities have is, “What will happen to my son or daughter when I die? What can I do now, while I am still living, to assure quality of life for my child both now and when I am gone?” Many families who have an adult child with a disability currently provide for various activities, items and extras that are not covered by government. These include swimming lessons, massage therapy, going on holidays, going out for supper, buying computers, clothing or sound equipment, and much more. Parents are worried that without them, these things will not be covered. They want to make sure that the inheritance they leave will go toward paying for the extras that enrich their child’s life, but are uncertain how to ensure that the same quality of life that their son or daughter is currently enjoying will continue after they are gone.

One of the main goals of this guide, therefore, is to address people’s need to plan adequately for the future, and to provide comprehensive answers to their questions.

- *When I heard about the project, I just thought, “Oh, what a good idea to have something that would help people work through that process, you know, knowing nothing and not having any idea where to start”<sup>1</sup>.*
- *I think that there are all kinds of things that prevent people from [writing a Will]. I guess the big question is, “How do you remove some of that? How do you make it easier for people?” That’s where this Guide should come in.*
- *All people who have a child [with a disability] should be given some information. We have never been given any information whatsoever all our lives. And that is why a lot of people just sit back and don’t write a Will. They don’t know what to do.*

*When we started looking we had no clue where to start and how to go about it. It’s amazing that we would get to this age and not know anything about making Wills. It’s one of those things that is very easy to put off. It requires a lot of thought and it’s something we don’t know a lot about. Thanks to the Association for undertaking this project.*

In the first stage of the original project, I searched the John Dolan Resource Centre (then housed at the SACL), the Internet and other sources, to get a sense of what is available, and what is needed. In 2015, these materials are housed in the John Dolan Collection in the Stewart Resource Centre at the Saskatchewan Teachers Federation.

The next step was to talk to parents and families of people with disabilities throughout Saskatchewan and ask them about their financial planning concerns. I also spoke with lawyers, financial planners and social workers who have experience working with families and individuals with disabilities, and expertise about Wills and estate planning. In 2013, I re-interviewed some of the families I talked with in 2002, to find out how much had changed in their lives and how much further ahead they were in their planning. I interviewed several new families in order to find out if concerns had changed in the past decade. I also spoke to professionals who have information about new options, not available in 2002, such as the Registered Disability Savings Plans (RDSP) and the Saskatchewan Assured Income for Disability Program (SAID). In the original project, one thing soon became obvious: lack of resources was not the only reason people continue to pass away without making adequate provisions for their dependent children. According to *On Our Own... Together* (2002), more than half of all Canadians die without a valid Will. One person told me that their organization presents seminars on Wills

<sup>1</sup>Throughout the document we are using quotes from parents and others. These quotes are in italics, and quotes from different people are indicated by bulleting.

and estate planning every year. Every year many of the same people come and ask the same questions, but still don't write a Will.

So why is that so many people don't plan for their children's future, even though they worry about it and know that they should?

In meetings with parents, I asked them that question. Some of the answers show that planning for the future is not easy, especially as it means thinking about one's own death. It would appear that fear of dying and the reluctance to plan for that event is a major factor that stops many people from formalizing their plans. It is much easier to procrastinate and push the planning away to think about later. The reasons, while seemingly irrational, appeared in many responses.

- *Part of what happens to people is that they don't want to confront their own mortality.*
- *People feel like, "If I write a Will then I am inviting disaster." It is just kind of a bad premonition; a bad thing is coming. . . But you know it is too bad because they are setting their family up for a lot of problems in the future.*

*Why don't people write a Will? Because they think they are not going to die. They are thinking, "Oh, we still have lots of time." People don't like to look death in the face.*

Some families were concerned about a lack of information and not knowing where to find it. And again, that seemed like a legitimate enough reason for not doing anything.

- *Not knowing where to go. Because you just can't talk to an ordinary lawyer. When my three children were all under age, it didn't seem to matter that much until the one [with the disability] became eighteen and older. Now I have to find somebody who is experienced [in the subject].*

- *We don't have a Will, but we are in the process of writing one. I guess what is really stopping us is not knowing how to ensure our children get the money. How do you set it up in a way that is fair to the people who are going to be looking after them? Should it be a family member who looks after the money, or somebody outside?*
- *We don't know who to go to. We are not really sure where to start. We are worried that we are going to be putting out all these funds to lawyers, but we still have concerns that [our son] will not receive the proper funding. So I guess that's where we are stuck. It is too mind-boggling.*

Another factor that seemed to put people off from writing their Wills was the matter of appointing a guardian for their children.

- *When you are writing a Will, you also have to think about naming someone as a trustee or guardian. A lot of people are afraid to ask anybody, because what if they say no? Then your whole notion of your support circle could change as a result.*

Some people felt that it was very complicated to write a Will and were asking for something simple.

- *We need to have workshops where they would teach us in full how to make a Will. And also, it has to be simple – that's the key! The thing that prevents me from being more friendly with lawyers is that I absolutely don't understand what they are saying.*
- *I would say, try to make a Will seem as simple as possible. Make it less complex. That is the idea.*

To facilitate the process of future planning, and to provide as much information as possible in one place, the SACL has developed this resource guide for parents. The main purpose of this Guide is to help you become aware of some of the issues associated with planning for a person with a disability, to provide information on specific topics, to give you an idea about available resources, and to help you get started on the planning process.

We have attempted to respond to parents' requests.

- *We need a basic map. A road map is what we really need as parents. Something to direct us.*

We hope the material in this Guide will provide the desired road map, and thus ease whatever reluctance, fear, or lack of motivation might be preventing you from planning for now and for the future.

## ABOUT THIS GUIDE

Although the goal of this Guide is primarily to discuss the process of financial planning, it also addresses broader issues. Concentrating only on financial matters could leave out the most important aspects of planning for children's lives: to ensure that they are fully active and valued members of the community, with opportunities and choices in all aspects of life.

That is why the first several chapters address questions such as why we should plan for the future and why some people don't, the importance of creating a vision for your child's life, and developing a comprehensive plan based on that vision.

We proceed with general topics associated with financial planning such as expressing your wishes about your own funeral arrangements, and suggestions about how to let your loved ones know where you keep your important documents.

The following sections touch on legal matters. In the Wills section, you will find suggestions such as how to find the right lawyer; what you have to consider when preparing your Will; and how to choose an executor. The Trusts section explains what trusts are; how they are used in financial planning for a person with a disability; what discretionary trusts are; and how to choose a trustee or trustees. Other tools used in estate planning, such as Power of Attorney and Health Care Directives (sometimes referred to as Living Wills), are also discussed. The Guide also explores issues associated with guardianship, for minors and for adults, and its alternatives.

The 2015 version of the Guide also includes a section on the **Registered Disability Saving Plan (RDSP)**, initiated in 2008, and a section dealing with the **Saskatchewan Assured Income for Disability (SAID)** program, which did not exist when the previous edition was published.

A section of Frequently Asked Questions (FAQs) attempts to answer some questions that were asked by parents during our meetings but are not addressed elsewhere in the Guide.

The final section of the Guide contains a glossary of terms most frequently encountered in financial and estate planning, and a bibliography of useful literature and websites.

There are worksheets and checklists appended to some of the chapters. They will help you sort out your thoughts and ideas, help you prepare for planning and provide background information for the time when you contact a lawyer and/or financial planner.

The Appendices contain information on two models for creating a vision for your son or daughter. Appendix 2 contains summaries of relevant Saskatchewan Acts and their Regulations. Appendix 3 contains samples of Wills and trust agreements, included to give you some ideas on what information these documents contain. It is important to note that these are sample documents, and are not meant as a guide or form to fill out without thinking critically of your individual situation. Each family is different and legal documents should reflect individual circumstances.

This Guide is written primarily for the benefit of parents and family members. However, we hope that you will actively involve your son or daughter in the planning process. After all, it is their future that is at stake:

- *We ask the question, "How will my wishes be honoured?" but we should be also asking "How will my child's wishes be honoured?" And that's really difficult for some families. We have had all kinds of*





**WHY WE SHOULD  
PLAN AND WHY SOME  
PEOPLE DON'T**



# WHY WE SHOULD PLAN AND WHY SOME PEOPLE DON'T

Many people actually never get around to planning their financial future. As the following excerpt shows, it is sometimes easier to push the matter of financial planning to the back of your mind, even though you know you shouldn't:

- *Our priority is today, right now, and not “what if.” And, actually, I think that is what living with our daughter taught us – we stopped worrying about ‘what ifs’ because it would drive us crazy. I would be so depressed you wouldn’t be able to scrape me off the floor. Because if I start thinking about what’s going to happen when she’s out of school, or when I’m gone, I just get really down. . . . And so, as soon as I stop thinking about ‘what ifs’, because that’s what it takes to get from day to day, then the ‘what if’ about making a Will is gone too. I’m just focused on today. I’m OK, she’s OK, and that’s all we are going to talk about. I don’t want to feel down all the time, so I’m not going to think about it. It’s really easy to do – denial is a wonderful thing.*

## Finding the right lawyer is another thing that stops some people from planning:

- *There are all kinds of things that prevent people from doing what it is they know they should do. I guess the big question is, “How do you remove some of that? How do you make it easier for people?” Lawyers certainly haven’t made it any easier. Part of that is because there is nothing in it for them.*
- *What’s holding me back? I’m really concerned about picking a lawyer. I don’t know if our first Will is a good Will or a bad Will . . . but I don’t have the faith in the lawyer who did it. And I’m not going back to the same lawyer. I also want to make sure that as we go forth, this document will be good for a while. I’m not going to be rewriting the Will all the time. I want it to be correct. And right now I don’t know who to phone and I’m really tossing and turning about that, right at the moment.*

Financial planning allows you to have direct input into securing your child’s future. Too many people still assume the government will care for their child when they are gone. In the past, government programs

provided only subsistence levels of funding and didn’t allow for any extras that enhanced quality of life. Today the Saskatchewan Assured Income for Disability (SAID) program has improved quality of life for people with disabilities, but there is still more to do. If you are providing for a better quality of life for your son or daughter now, you will want to ensure that, through your financial planning, you will be able to continue to provide for a better quality of life even after you are gone.

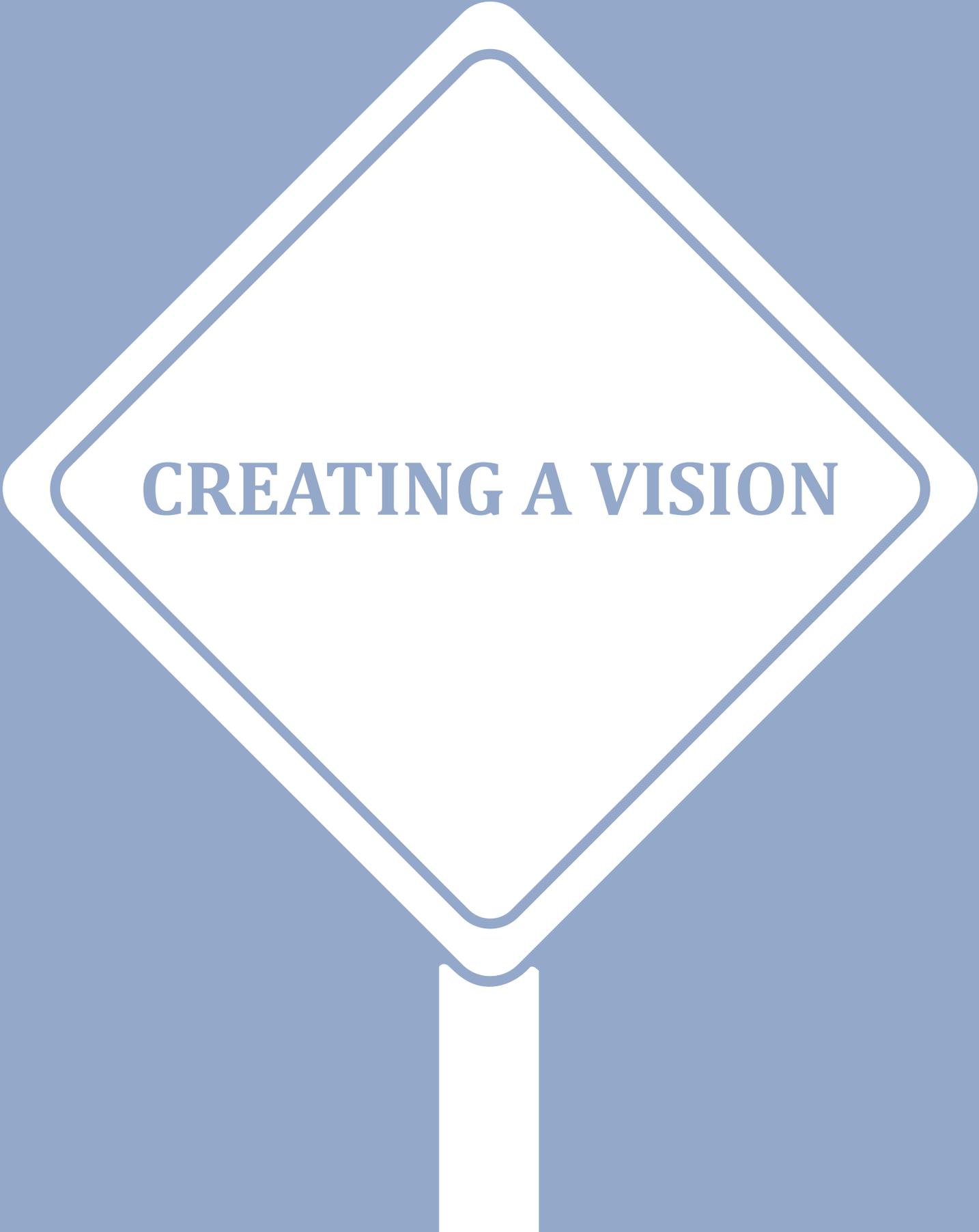
Most parents we talked to had given their financial planning a lot of thought. Analysis of their responses shows two of the most common reasons why they have done some planning for their children’s future.

## One reason was general and had to do with feeling responsibility for their children’s secure financial future:

- *I’ll give you an example. My parents were in an accident. My mom died right away and my dad was in the hospital for a week and then he died, too. Well, you can imagine the emotional turmoil when that kind of thing happens. But because my parents had proper Wills made up and they had talked to us and had given us some idea what they wanted, it wasn’t nearly as hard. If they didn’t have a Will and they had not talked about it, then to make those decisions in such an upheaval, I don’t know how we would have coped. I was sure thankful that they had written out what they did and told us what they did. So it saves a lot of anxiety for your family in the end. And really, isn’t that what it is all about?*

*What helped us most to decide to write the Will? I think more than anything it was a feeling of responsibility to our children. If we are not here, then they are going to be with people that we know will give them a life close to what we would have given them.*





**CREATING A VISION**



## CREATING A VISION

Current literature stresses the importance of developing a comprehensive life plan for your son or daughter and of communicating that plan to the people who will be involved and will provide continuity after you are gone.

As you begin thinking about your child's future, and about the process of planning, the first thing to do is to create a picture in your mind of what it is that you want for your child—in the near future, in ten years' time, when your son or daughter is forty, and so on. What are your dreams and hopes for your child? What are his or her dreams and hopes? What do you want to happen?

Think about where they would like to live. How much contact would they have with the rest of the family? How they would make, and keep, friends? What they would do for fun in their spare time? Would they work? How might they be involved in the community? Who are the people who will be a part of their life?

What are some things you would hope to avoid? Not being able to visit with family and friends? Not having anyone to talk to? Not being able to express his or her hopes and dreams?

For most people, having a group of people involved in your child's life is part of the vision. Finding friendships and making connections in the community can be a daunting task at the best of times, and even more for someone with a disability. We have provided several places where you can look for inspiration on how to build a network around your child (see the next section *How to Begin*).

It is also important to involve your son or daughter in creating the vision for their life. Involve them in your planning. What do they want? Where do they want to live? What do they want to do in their spare time? What are they afraid of?

The vision you create will guide you throughout the planning process. When faced with various choices, options, and possibilities, a clear vision will help you to decide which way to go. Without creating a vision first, it is difficult to make your plan clear and complete.

### Clarifying your vision

- allows you to focus on the results you want to achieve;
- encourages you to involve other members of your family;
- allows others to better understand what is involved in caring for your son or daughter;
- helps you to decide between preferred and undesirable results;
- suggests opportunities;
- prepares the road for moving forward; and
- provides opportunity for people to rally around.

(Al Etmanski et al. *Safe and Secure* (1996))

Generally, a vision of a good and meaningful life for a son or daughter with a disability will include the same things you would wish for yourself or for any of your other children.

*Having a vision for the life of a person with a disability is really about claiming the right to ordinary dreams... and believing that they can happen.*

Wendy Stroeve in "Clarity of Vision: A Compass for the Journey" (2007)

Some principles that will guide your vision of a good and meaningful life for your child are that your son or daughter will

- feel a sense of belonging, love and appreciation;
- have the ability to contribute and be involved in the community;
- be respected and valued for who she or he is;
- feel safe and secure at home and in the community; and
- have hope for the future.

### HOW TO BEGIN

For some people, the thought of beginning to work on a vision is not easy. Although the concept may seem logical and common sense, where do you begin? There are two models that can help you get started:

- Planned Lifetime Advocacy Network (PLAN)

- Planning Alternative Tomorrows with Hope (PATH) and Making Action Plans (MAPS)

## PLAN

PLAN is one of the most comprehensive models of planning for people with disabilities in Canada. Anyone who is serious about developing a comprehensive plan for their son's or daughter's future will be inspired and motivated by PLAN. Please be aware that there are costs associated with a PLAN membership. There is more about PLAN on page 135, or you can visit their website at [plan.ca](http://plan.ca).

During our meetings with parents, it became clear that several of them were quite familiar with the PLAN concept and some were members of the Regina chapter of PLAN.

- We are closely associated with PLAN, so we subscribe to the idea of taking care of the future, the importance of bringing people into the lives of our son, and not to leave his well-being to government programs, services or funding that might not exist tomorrow.

- [Talking about not having anyone trustworthy enough to be appointed a possible guardian] – That's where the whole thing about PLAN makes so much sense. Because it's not necessarily a family member or even a close friend of the parents. It might be someone who is an important part of your child's life.

## PATH and MAPS

These two planning tools were developed by Jack Pearpoint and Marsha Forest, founding publishers of Inclusion Press. For more information about Inclusion Press, visit their website at [www.inclusion.com/inclusionpress.html](http://www.inclusion.com/inclusionpress.html), and also see page 130.

PATH (Planning Alternatives Tomorrows with Hope) is a systematic creative planning tool that begins by creating vision, and then specifies actions to achieve that vision. The PATH consists of a detailed drawing that illustrates the dreams and wishes of the individual, but also identifies the challenges faced by each person. PATH is a powerful and challenging process when guided by an experienced facilitator.

- A family value exercise, such as PATH, is a very useful thing to do. What is it that you as a family



*currently value? What does your child value? When you dream about your child having a happy life, or when you think about your child living as an adult, what would you like to see as part of their life? To experience PATH was a very valuable thing for our family to do.*

MAPS (Making Action Plans) is a planning process for people and organizations that begins with a story of a person. The process involves listening to the person's dreams, acknowledging his or her nightmares, exploring his or her gifts and talents, and then moving on to making these dreams a reality.

## SHARING YOUR VISION WITH OTHERS

Once you create a vision, the next step, and a very important one, is to share your vision with others. After you have developed your vision together with your child, the next step is to share it with other family members, and all those who will be involved in his or her life. Sometimes parents take for granted that others know what their vision or plans for the future are, but you should never assume that they do know.

- *We know people who honestly believe that their son's or daughter's siblings and other family members know what's intended. But when you talk to the other family members, nothing has ever been discussed.*

In some cases, parents haven't discussed their plans with their children. Keep in mind their children may not have the ability, or be in a situation at the time, to carry out their parents' wishes. In other cases, parents never thought of asking their other children:

- *We were telling [our son] about the arrangements we had made for his older brother and he said, "But I thought I would take care of him." The amazing thing for us was that we had never thought of asking him. And yet we know that he loves his brother and it should not have surprised us. But it did. So we had another discussion with him and included him in our plans.*

Most parents recognize the importance of talking to others, but they also acknowledge how hard it could be to initiate conversation about something as difficult, complex and sensitive as their child's future. Similar difficulties arise when parents choose a potential guardian for their minor children. On page 94, parents share their thoughts on how hard it was to initiate discussion with potential future guardians, but also how rewarding it was for everybody involved once the discussions actually took place.

One way of sharing your vision with others, and smoothing the planning process, is to begin creating a folder for and about your child.

This folder can become a one-stop place for information about your child, and will contain documents that will be relevant to any future caregivers or family members after you are gone. All the documents should be easily accessible. They should be kept up-to-date, and should be reviewed periodically to make sure that they are still valid and relevant. It might be a good idea to have duplicate copies available, or store all these documents in a fireproof safe at home, electronically, in a safety deposit box, or with your lawyer. If you don't store the originals in the folder, indicate where the originals are kept. Other people should know where to find them.

Part of the folder can be a portfolio of your child's achievements. It could include things such as school certificates, awards, diplomas, formal and informal notes about achievements, and examples of creative work.

See the end of this chapter for a checklist that provides a list of documents that you should/could include in such a folder.

## WRITING A LETTER OF WISHES OR INTENT

Another way of sharing your vision with others can be done by writing a *Letter of Wishes*, or *Letter of Intent*. This letter can be short or long, general or detailed. Make your wishes known to any future caregivers or people who will be involved with your child.

- *You can't rule from the grave, but you can leave a "guilt letter" behind!*
- *A letter of wishes is very helpful. I just included a small part about [what I want for my daughter] in my Will. I wish that she could continue to live in the home with her friends where she is living now, and that she could visit her sister often. I don't want her to go live with my family or with my ex-husband's family. My lawyer worked all that into my Will.*

In our discussions with parents, the issue of writing a letter of wishes came up several times. People agreed that while such a letter may not be legally binding, it is an important document for potential guardians and future trustees to have, as it gives others an idea what your intentions and wishes were. This letter can be attached to your Will. Several lawyers who were consulted indicated that, while not binding, courts pay attention to the parents' wishes.

The letter serves as a guideline for future caregivers, providing valuable information on the daily life of your son or daughter. It can be used if a new person steps in to take care of him or her. The letter should outline your hopes, dreams and aspirations for your child's future, as well as his or her preferences. It can include vital information about your child's physical and mental health, about food allergies, medications, medical history, and the names of medical professionals involved. It can also include your child's likes, dislikes, hobbies, and recreational and social preferences.

Some parents choose to detail their thoughts on a variety of other issues, such as religion, relationships, having the right to date and get married, future living plans, education, and job readiness skills:

- [A letter of wishes] might be something like, "These are my hopes and dreams for my child as she continues to grow and develop. I hope that she may be in a position to articulate her own hopes and wishes. And if she wants something different from what I would have wanted, forget about what I wanted and go with what she wants."
- As parents we know our kids best. Better than

people who have only had a limited amount of contact. So in a letter, we might say, "[my son] has always loved Mickey Mouse and has always wanted to go to Disneyland, so please do that." Or, "here are some things about him that you should know."

*It's like saying, "we are trying to do what [my son] is hoping for or what he wants. What we want for him is to be able to do things for himself and it is our hope that you, as his guardian, would do the same."*

An extensive and thorough example of a letter of intent is in the book *Planning for the Future* by Mark Russell and others. This book is available from the John Dolan Collection at the Saskatchewan Teachers Federation (STF) Stewart Resource Centre.

Here is a sample letter of wishes, provided by a family who co-operated on this project:

## LETTER OF WISHES, ATTACHED TO A WILL

*Hello Joe, Mary and Tom:*

*Hopefully, you won't be reading this for a long time, but we've known enough people who died before it made any sense that we thought we should get a letter written to you. We hope we can give you some extra help and advice here that isn't necessarily considered a legal document, but will help you with the intent of what we planned.*

*We tried to make our Wills as clean as possible. We'll try to have things organized so things will be easy to find, but frankly, if we die tomorrow, it'll be up to you! There are some specific things mentioned in the Wills, but let's go through some of the details together.*

*A separate trust has been set up for Joe and we hope it's pretty well self-explanatory. He probably won't be in a position to generate as much of his own income as Mary or Tom, so we wanted to ensure that something was available for him for "extra" things.*

*Jane S. and Kevin T. are the trustees; Mary and Tom have been named as trustees if and when you want to be. We hope you know the kind of life we wanted Joe to live; that his opportunities for a regular life not be dependent*



## THE FOLDER

Use the following checklist to keep track of the documents in the folder for your son or daughter:

<input checked="" type="checkbox"/>	DOCUMENT	LOCATION WHERE ORIGINALS KEPT	DATE WHEN LAST UPDATED
<input type="checkbox"/>	COPY OF MY ESTATE PLAN		
<input type="checkbox"/>	COPY OF MY LATEST WILL		
<input type="checkbox"/>	COPY OF THE TRUST DOCUMENT		
<input type="checkbox"/>	COPY OF MY HEALTH CARE DIRECTIVE (LIVING WILL)		
<input type="checkbox"/>	COPY OF MY POWER OF ATTORNEY		
<input type="checkbox"/>	LETTER OF WISHES/INTENT FOR MY SON OR DAUGHTER'S FUTURE		
<input type="checkbox"/>	MY SON OR DAUGHTER'S BIRTH CERTIFICATE		
<input type="checkbox"/>	MY SON OR DAUGHTER'S SOCIAL INSURANCE NUMBER		
<input type="checkbox"/>	MY SON OR DAUGHTER'S HEALTH CARD NUMBER		
<input type="checkbox"/>	MY SON OR DAUGHTER'S DISABILITY TAX CREDIT		
<input type="checkbox"/>	COPIES OF RDSP DOCUMENTS		
<input type="checkbox"/>	OTHER IMPORTANT DOCUMENTS (SPECIFY): COPY OF GUARDIANSHIP PAPERS, IF ANY LIST OF PROFESSIONALS INVOLVED WITH MY CHILD AND THEIR ADDRESSES: FAMILY DOCTOR, SPECIALIST, DENTIST, PHYSIOTHERAPIST, SOCIAL WORKER(S), SPEECH THERAPIST, AND OTHERS		
<input type="checkbox"/>	LIST OF FAMILY MEMBERS AND FRIENDS, AND THEIR ADDRESSES		
<input type="checkbox"/>	PORTFOLIO OF SON OR DAUGHTER'S ACHIEVEMENTS, ACTIVITIES, HOBBIES, SPORTS. INCLUDE CERTIFICATES, AWARDS, DIPLOMAS, INFORMAL NOTES ABOUT ACHIEVEMENTS AND EXAMPLES OF CREATIVE WORK, PHOTO ALBUMS, ETC.		



**DEVELOPING A  
COMPREHENSIVE  
PLAN**



# DEVELOPING A COMPREHENSIVE PLAN

After you have clarified your vision for the future, you are ready to begin the more detailed process of planning.

Developing a comprehensive plan means that you leave nothing to chance. You think about what you want to achieve and you discuss it with your son or daughter, family members, and others who will be, or already are, involved in your child's life. It is important to engage everyone involved.

## WHAT SHOULD WE PLAN FOR?

Take a look at your vision for your child's future and create a plan that includes all the important areas in his or her life, such as living arrangements, work or further education, personal life, social life, community involvement, fun and leisure, and medical care. Think about the following topics and questions. They will assist you in moving forward. Not everyone will need to plan for all the areas. Planning will depend on your individual situation and conditions.

**Home:** What type of home will your son or daughter have? Do you have concerns about safety, security and sustainability? Describe the usual household routine.

**Family:** What relationships does your son or daughter have with other family members? Is he or she connected with other generations—grandparents, nephews and nieces, cousins?

**Friends:** What relationships does your son or daughter have with people outside the family? How well does he or she develop new friendships? Are there opportunities to have friends as well as to be a friend? Who are his or her friends?

**Health:** Are there any medical conditions that other people should know about? What about regular checkups? What opportunities does your child have to lead a healthy lifestyle and to make health choices? Are there opportunities for physical activities and exercise?

**Education:** What are the plans for further education, lifelong learning, and/or various courses?

**Employment:** What are the plans for meaningful, paid employment—part-time, full-time, or casual?

**Community involvement:** How does your son or daughter get around in the community? Is he or she involved in community and volunteer work? Does he or she have opportunities to contribute to society? Who is part of your child's support system in the community?

**Fun, leisure, hobbies:** How is your son or daughter going to pursue personal interests, participate in leisure, recreational, or spiritual activities, or make and maintain new friends?

**Financial needs:** Will your son or daughter need help in managing finances? How much annual income will be needed to assure the quality of life he or she deserves? How much is needed to cover all their needs? How can you improve your child's financial security? Answering these questions will guide you directly in developing your estate plan. Securing a financial future means understanding the tools available and making them work to make your dreams come true.

**Relationships:** What relationships does your son or daughter currently have? Does he or she hope to date, marry, or have children?

**Transportation:** Who currently provides transportation for your son or daughter? What transportation options are available in your community? Does he or she know how to access transportation options?

A very important part of the planning process is to identify or create a circle of support around your son or daughter. For inspiration on how to achieve this, you might find the work of PLAN helpful. PLAN has already been mentioned in the chapter on creating a vision, but there is more information available on page 135, or on their website at [plan.ca](http://plan.ca). As well, two books by Al Etmanski, *Safe and Secure* (1996) and (2000), include further information on this topic. Both books are available at the Stewart Resource Centre at the Saskatchewan Teachers' Federation (STF).

Thinking about the planning process can be daunting. The complexity of the issue often keeps families from delving into the planning.

- *Thinking about [my daughter's future] is such a scary process. I wouldn't even know where to start. We are dealing with so much, day to day, that pushing this onto the back burner is so very easy to do...*

The following suggestions and tips are from the PLAN website:

**REACH OUT** to other families on the same journey. You are not alone.

**OPEN YOUR DOORS** and invite others to be involved in your son or daughter's life.

**SHARE YOUR SON OR DAUGHTER.** Every person has a gift to give – including the gift of love, the gift of joy, and the gift of laughter.

**SEEK PROFESSIONAL FINANCIAL ADVICE.** Even if you have limited assets, you can ensure a secure financial future for your child.

**OPEN A REGISTERED DISABILITY SAVINGS PLAN (RDSP).** Anyone can contribute. (See **page 75** for information on RDSP.)

**INCLUDE YOUR EXTENDED FAMILY.** Others may want to contribute to an RDSP or leave an inheritance for your child. Make it easy for others to contribute to your child's future.

**MAKE YOUR WILL.** Do it now. If you don't, the government will do it for you.

**UPDATE YOUR WILL.** Your Will is a living document. It should be updated or looked over roughly every five years. You will be surprised how many things have changed, even if you didn't think so.

**EXPLORE TRUSTS.** Discretionary trusts can help protect your child's assets.

**CHOOSE A GUARDIAN.** The Office of the Public Trustee is the default and they do not know your son or daughter.

**DON'T LET TECHNICALITIES SLOW YOU DOWN.** There are many professionals who have the expertise to help you: bankers, accountants, investment advisors and lawyers.



**PREPARING THE  
FINANCIAL FUTURE**



# PREPARING THE FINANCIAL FUTURE

**Financial planning** is a process whereby you review your family's financial situation, determine your family's financial needs and goals, and decide how you are going to meet them. Key to effective financial planning is taking into account all relevant aspects of your financial situation, and identifying and exploring any potential conflicting objectives. Financial planning includes investment planning, income tax planning, retirement planning, insurance planning, and estate planning.

Some people think financial planning is only for the wealthy, but in reality everybody should develop a financial plan, regardless of income or possessions. A sound financial plan ensures that your wishes will be carried out, in a tax-effective manner, no matter how much you have.

Although financial planning can be complex and often involves emotional issues, it is important to do. A sound financial plan will provide you with a realistic estimate of what will happen to your son or daughter when you are no longer able to care for him or her, and will help you take steps to ensure that your child will live life to the fullest.

Since your family's needs and goals change, financial planning requires regular review. Plans that you make when you are beginning your career and your children are still young will be different from plans you make when your children are adults and you have retired.

## SIX STEPS OF FINANCIAL PLANNING

As an example, one of the proven processes of financial planning involves six steps:<sup>1</sup>

1. Identify your objectives
2. Assess your current situation
3. Determine whether there are sufficient resources to pay for what you want to achieve
4. Develop a strategy
5. Implement the plan
6. Review the plan

### 1. Identify your objectives

Based on your vision and overall plan, what do you want to achieve? Who do you want to benefit from your estate? Use the worksheet Estate Planning Objectives on page 42 to help you with identifying your goals.

After you complete the worksheet, you should have a better idea of how to proceed. When you think about some of the topics suggested by the worksheet, don't think just about your dependent son or daughter's current situation and circumstances. Try also to think about their likely future needs and circumstances. While it is often difficult to imagine a small child as an adult, issues such as education, suitable accommodation, support services, and quality of life in general, have to be addressed.

You should identify your objectives with the help of your financial planner before you see a lawyer. The lawyer's job is to develop the plan and prepare legal documents that reflect your wishes. While they are knowledgeable in giving legal advice and can answer technical questions, they cannot decide for you what you want to have happen. If you go to them with objectives in mind, it will save them time and you money.

### 2. Assess your current situation

Think about your present financial situation. Ask yourself, "What do I have now?" Make a list of your assets and debts. Categorize assets that you own, assets your spouse owns, assets you own jointly, and all outstanding debts. Include insurance policies and their beneficiary designations. (Worksheets Summary of Net Worth on page 43 and Insurance Policies on page 44 will help you.)

List all your children, their ages, their marital status (you can use Worksheet Personal and Family Information on page 40). Have you talked to your children about how you want to provide for their sibling with a disability? Are they supportive, non-supportive, or indifferent?

<sup>1</sup> These six steps appear on many financial planning websites, with some variations.

### 3. Determine whether there are sufficient resources to pay for what you want to achieve

Look at your current assets, wealth accumulation plan, retirement plans, and life insurance policies. Consider any other sources of funding for your child: income assistance programs such as the Saskatchewan Assured Income for Disability (SAID); or bequests from other people, such as grandparents.

Also, think about possible obstacles that might prevent you from achieving the financial goals you have set for yourself. Some constraints might include other family members who are not supportive, sudden illness, loss of work, or business failure.

### 4. Develop a strategy

Once the objectives, funding options, and obstacles have been identified, get together with your accountant or financial planner and develop a strategy of how best to formulate and achieve your financial plan. For example, you may decide to purchase more life insurance. The plan should then be reviewed by a lawyer with expertise in financial planning to make sure that all legal aspects have been considered.

The most common instruments used in the estate planning are Wills (p 53) and trusts (p 65). As of 2008, another useful instrument in planning for the future of your child with a disability is a Registered Disability Savings Plan (RDSP), page 73. You can also visit the Government of Canada's website to learn more: <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/rdsp-reei/menu-eng.html>

### 5. Implement your plan

Without implementation, planning is a waste of time. You have to put into action what you have talked about and what you have planned. Again, this step will be accomplished by working with your family, financial professionals and your lawyer.

### 6. Review the plan

Planning must be flexible. When you develop a financial plan, you should be aware that as your circumstances change, your plan will have to change accordingly, so you should review it periodically. There are

many personal and financial factors that change over the years. A career change or retirement can have a significant financial impact. You might have more children, get divorced, experience a death in the family, remarry, or enter a common-law relationship. Some of these personal changes automatically revoke your Will. The situation of your dependent children will also change. Your children become adults. Their health might change. Their wishes and needs will change. Also, factors outside your family, such as changes in government policies and new tax rules, can play a role. It is recommended that you review your financial plan (and your Will) at least every five years, and at any time when your circumstances change.

### WHAT OPTIONS DO I HAVE IN DISTRIBUTING MY ASSETS?

There are several ways of distributing your assets and each has advantages and disadvantages. The most common means of asset transfer is through a Will, but we will talk about some others as well. These alternative methods must occur in conjunction with a valid Will. Without a Will the distribution of your estate will be decided, and often complicated, by provincial intestacy rules.<sup>1</sup>

**Distributing your assets at the time of your death, outside your Will.** You can arrange for your assets to pass directly to someone else at the time of your death. The advantages of this strategy are that administering the estate is simplified and transfer costs are reduced, primarily through reducing probate fees.

What is probate? Probate is a process through which a court establishes the validity of a Will. In Saskatchewan, probate fees are \$7 on every \$1,000<sup>2</sup> of assets that flow through the Will. This means that in some cases it might not be worth your while to worry too much about paying, or avoiding paying, the probate fees. While you may reduce probate fees by transferring a property into joint ownership, you might trigger an income consequence, which could be much higher than the probate fees.

<sup>1</sup> "Intestacy" means to die without a will.

<sup>2</sup> As of April 2014

Here are some examples of assets that pass outside your Will:

a) **Joint Tenancy** is any property you own jointly with another person as joint tenants with right of survivorship. Each of the two or more tenants has an equal, undivided interest in the whole account or asset. At the moment of your death, your share automatically shifts to the surviving tenant(s). The transfer of ownership is complete at that point. Nothing in the Will makes any difference whatsoever as to who gets this asset. Examples of property that is often held in joint ownership are family home or cottage, the farm, and bank accounts.

There are advantages to joint ownership. The size of the estate governed by the Will is reduced which, in turn, reduces probate fees. Also, the surviving owner does not have to wait for the Will to be probated before assuming ownership. It can take several months, a year, or even longer, for the Will to be probated and for property to be legally transferred.

Attempting to reduce the size of the estate governed by the Will through joint ownership is not recommended in every situation and could be risky. Remember that establishing joint ownership means that you no longer have full control of the assets. For example, if you want your home to go to your children, establishing joint ownership with them means that you cannot sell the home without their consent. Another example is if you change your mind about leaving them the home, you will need their consent to change the ownership arrangement. It could also mean that you will be required to pay income tax in the year you transfer the asset to joint ownership (assets can be transferred to your spouse without any immediate tax consequences).

By placing your assets in joint name, you expose yourself to the claims of creditors of the other joint owner. You will also expose yourself to the claims under The Family Property Act made against the other joint owner's spouse. Jointly owned property cannot be held in a trust established in your Will.

You should always consult an accountant, especially when a large sum of money is involved.

Note: **A tenancy-in-common** is different from joint tenancy. A tenancy-in-common arises, for example, when friends, or a husband and wife who wish to make provision in their Will for a child from an earlier relationship, purchase property together. The property is owned by the registered owners, in whatever proportion or share they agree on. If one of the registered owners dies, then his or her share passes to the beneficiary named in his or her Will. It will not pass automatically to the other owner(s), as is the case with joint ownership.

b) **Assets for which you have a specific beneficiary.** You can name a beneficiary for your RRSPs, RRIFs, TFSAs, life insurance policies and pension plans. If you have designated a specific person rather than your estate as your beneficiary, the assets will pass directly to the beneficiary without passing through the estate. This option might have tax consequences, which you should discuss with your financial planner (see also FAQ on RRSP wording on page 117).

c) **Establishing a trust while you are still living (inter vivos trusts).** An inter vivos trust is a fund created by you and administered by one or more trustees, taking effect during your lifetime. You can be the trustee of an inter vivos trust which you set up. The assets held in a trust are independent of your assets, and therefore do not pass through your Will. More information on trusts begins on page 65.

**Distributing assets on your death through your Will.** Your Will distributes your estate either directly or through a testamentary trust, which is a fund created by you and administered by one or more trustees, taking effect after your death. Certain assets distributed through your Will may require your executor to probate your Will. The chapter on Wills begins on page 53.

## IS THERE A 'RIGHT WAY' TO CREATE A PLAN?

There is no 'right way' to create a financial plan. Each family's circumstances are different. A financial plan should be flexible and custom-tailored to your family's needs. You should consult a professional when you

plan your financial future—even when you don't have large financial resources. Financial planning can be complicated and you should make sure that the plan is legally sound.

A winning combination for a successful plan is a team consisting of a financial planner or an accountant, and a lawyer knowledgeable about trusts.

- *My financial planner told me that he sees himself as being the general practitioner. He will go over with you what you have and try to come up with ways of doing what you want. And then when it's all done, you go to the lawyer who will put it into legal language and make sure there are no loopholes.*

Even when your financial resources are limited, there are ways of planning to ensure that the quality of life for your son or daughter is secured after you are gone.

Maybe you don't have a large estate, or you have only a single major asset, such as the family farm, which you want to pass on to your children who want to farm. In such a case, you may wish to build up a fund for your dependent son or daughter by purchasing a life insurance policy. The policy can be on the life of the major wage earner, or on a joint or last-to-die basis.

Please note: if your dependent son or daughter is enrolled in the Saskatchewan Assured Income for Disability Program (SAID) (Details about SAID on page 101), then he or she can have up to \$100,000 in life insurance, inheritance and any interest earned (combined).

If your dependent son or daughter is on social assistance (SAP), it is not recommended to name him or her directly as the beneficiary of the policy, as it may affect their entitlement to social assistance funding. It would be more appropriate to direct that the proceeds be paid into a trust, and name one or more trustees as beneficiaries of the policy to receive and handle the proceeds on behalf of the dependent child. When insurance proceeds are made payable to trustees under a beneficiary designation, the terms of the trust can be included in an insurance declaration contained in the Will of each of the parents. In other words, each parent may have an insurance declaration in his or her

Will. The Will provisions can be made applicable to the insurance proceeds without having them form part of the estate, by making the beneficiary designation as a separate insurance declaration under the *Saskatchewan Insurance Act*<sup>1</sup>. The intention is to avoid or minimize probate fees.

If you have substantial property, proper estate planning will minimize the tax consequences, and ensure that your beneficiaries benefit from your estate. While unlimited resources could mean a variety of possibilities for supporting a person with a disability, the reality for most people is that their options are limited by (a) their financial means and (b) the fact that often there are other beneficiaries who have to be considered (such as your spouse, or your other children). For younger parents, the securing of a financial plan can often be achieved through life insurance policies and through careful long-term investment planning. Such opportunities may not exist for older parents who might have to consider the retirement needs of the other spouse as well as the needs of their dependent adult child.

## IS THERE A 'RIGHT TIME' TO PREPARE?

The 'right time' is now. Some people want to delay planning until their children are older, or until their own financial situation is more settled. Some parents delay making their financial plans because they are not sure how independent their child will be in the future.

However, the reality is that the sooner you prepare your estate plan, the better. It is better to have some plan in place than to have to respond to a crisis, such as a death in family, divorce, accident, sudden incapacity, etc., without any plan. Proper financial planning also offers benefits to you during your lifetime. Careful planning can help you accumulate savings for retirement, and help you take advantage of tax saving opportunities, as well as help you and your family maintain your lifestyle if you become ill or incapacitated.

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<sup>1</sup> The *Act* is available at the Saskatchewan Justice website at <http://www.justice.gov.sk.ca/Saskatchewan-Insurance-Act>

## HELP YOUR FAMILY BY GETTING ORGANIZED

Financial planning isn't just about legal issues. Emotional and practical issues are also involved. After you die, your family will have to cope with many things which are not covered by any of the basic estate planning documents. You will help them enormously if you get organized and sort out your affairs.

There will be practical questions to answer, such as

- Have you prepared a Will, including trust agreements? Where do you keep the originals?
- Do you own a life insurance policy, pension, retirement account or annuity? Where are the documents?
- Where do you have bank accounts? Do you have a safety deposit box?
- Do you have stocks, bonds, or money in mutual funds? Where are the records? Who are the contact persons at the financial institutions?
- Do you own real estate? Where are the titles?

Then there are specific questions, such as those concerning your wishes about the final arrangements. Think about the following questions:

- Who should be notified about your death and funeral?
- Do you want a funeral or memorial ceremony? If so, what type? Who should be the officiant?
- Do you want to be buried or cremated?
- Do you want people to send flowers, or would you prefer that they made donations to charity?
- Do you want to donate your organs?

Many of us carry this information around in our heads, but never discuss it with our family members. The family must do their best to sort it all out later, usually at a time that is already emotionally draining. The more detailed the information you leave is, the easier it will be for those who are left behind.

A failure to organize your affairs could result in costly financial or emotional losses. Stocks, bonds, bank accounts, real estate, and insurance policy benefits might go unnoticed and turn up months later after they have

declined in market value. On a more personal level, relatives or friends might not be promptly informed of your death, which could result in hurt feelings.

Fortunately, losses like these can be avoided with a little planning, sorting, and organizing. Making things easier for your family is not difficult, though it can be time-consuming. It might be best to break the task into manageable sections and take it one step at a time.

Organize this information in a way that will help your family handle your affairs after your death. You can structure the information any way you like. Even some scribbled notes left in an accessible location are better than nothing. But if you have the time and energy, consider a more thorough approach. Create a clear, easily accessible system that will assist your family and friends.

When you've got everything in order, make sure that you store your information in a safe place. Consider keeping everything in a fireproof metal box, file cabinet, home safe or electronically—and be sure to let people, especially your executor, know where the file is stored. Discuss your records and their locations with those closest to you. Your careful work won't help anyone unless they know where to find your important papers when the time comes.

You can use the checklist Getting Organized on page 46 to help you get organized.

## WORKSHEET “PERSONAL AND FAMILY INFORMATION”

INFORMATION ABOUT ME:	
MY NAME:	_____
MY ADDRESS:	_____
PHONE AND/OR EMAIL:	_____
WORK ADDRESS:	_____
PHONE AND/OR EMAIL:	_____
MY DATE OF BIRTH:	_____
MY SOCIAL INSURANCE NUMBER:	_____
MARITAL STATUS:	_____

INFORMATION ABOUT MY SPOUSE:	
NAME:	_____
ADDRESS:	_____
PHONE:	_____
WORK ADDRESS:	_____
PHONE:	_____
DATE OF BIRTH:	_____
SOCIAL INSURANCE NUMBER:	_____

**INFORMATION ABOUT MY CHILDREN:**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

WORK ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ MINOR: YES/NO DEPENDENT ADULT: YES/NO

IS THIS A CHILD FROM A PREVIOUS RELATIONSHIP? \_\_\_\_\_

MARITAL STATUS? \_\_\_\_\_

DOES THIS CHILD HAVE ANY CHILDREN OF HER/ HIS OWN? \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

WORK ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ MINOR: YES/NO DEPENDENT ADULT: YES/NO

IS THIS A CHILD FROM A PREVIOUS RELATIONSHIP? \_\_\_\_\_

MARITAL STATUS? \_\_\_\_\_

DOES THIS CHILD HAVE ANY CHILDREN OF HER/ HIS OWN? \_\_\_\_\_

## WORKSHEET “ESTATE PLANNING OBJECTIVES”

Think about your financial planning objectives. What do you want to achieve? Whom do you want to benefit from your estate? Should you be doing something different from what you are doing now? This worksheet will help you to sort out your ideas before you talk to a financial planner or a lawyer.

Estate Planning Objectives	
<p>WHAT ARE MY MAJOR FINANCIAL OBJECTIVES?</p> <p><b>(For example: Buy a house; pay off mortgage; retire early; save for retirement; provide for my dependent child; pay for my children’s education; minimize taxes, etc.) Rank your goals by priority</b></p>	
<p>WHOM DO I WANT TO BENEFIT FROM MY ESTATE?</p> <p><b>(For example: My spouse; my children; my dependent child particularly; grandchild(ren); a charity; etc. During my life/after my death).</b></p>	
<p>DO I WANT TO DISPOSE OF ALL/SOME/NONE OF MY ASSETS BEFORE I DIE?</p> <p><b>(Gifts, estate freeze, planned giving)</b></p>	
<p>WHAT WOULD I LIKE TO SEE HAPPEN TO MY ESTATE AFTER I AM GONE?</p> <p><b>What do I want to see happen to my business?</b></p> <p><b>(For example: transfer to my spouse; transfer to all/some of my children; offer my existing partner to buy; sell on the open market)</b></p>	
<p>AM I EXPECTING TO ACQUIRE ANY MAJOR ASSETS?</p> <p><b>(For example: inheritance; sale of business; sale of property; joint ownership with aging parent)</b></p>	
<p>AM I EXPECTING TO INCUR ANY NEW MAJOR LIABILITIES?</p> <p><b>(For example, tax on RRIF, marriage breakdown, co-signed loan, lawsuits)</b></p>	
<p>DO I FEEL COMFORTABLE WITH THE LEVEL AND EXTENT OF FINANCIAL PLANNING I HAVE SO FAR?</p>	
<p>WHAT WOULD I LIKE TO DO DIFFERENTLY?</p>	

## WORKSHEET “SUMMARY OF NET WORTH”

This worksheet provides a summary of your net worth; namely, what you own minus what you owe. It should serve as a starting point only. Some of the items listed change regularly and therefore you should review this sheet often. When you meet with a financial planner and a lawyer, they will very likely have forms of their own for you to complete.

MY CURRENT ASSETS: (i.e. What I have now)	Owned by me (\$)	Owned by spouse (\$)	Owned jointly (\$)
SIGNIFICANT CASH ON HAND			
CHEQUING/ SAVINGS ACCOUNTS			
BONDS			
TERM DEPOSITS			
STOCKS AND SHARES			
MUTUAL FUNDS			
PRINCIPAL RESIDENCE			
REAL ESTATE INVESTMENTS			
CASH VALUE OF INSURANCE POLICIES			
PENSIONS			
RRSPs			
RESPs			
RDSPs			
TFSAs			
VEHICLES (automobiles, recreational vehicles)			
HOUSEHOLD FURNITURE			
JEWELLERY, ART/ STAMP/ COIN COLLECTIONS			
OTHER ASSETS (BUSINESS, FARM)			
TOTAL ASSETS			

<b>MY CURRENT LIABILITIES: (i.e. What I owe now)</b>	<b>Owned by me (\$)</b>	<b>Owned by spouse (\$)</b>	<b>Owned jointly (\$)</b>
CREDIT CARD DEBTS			
CAR LOANS			
INVESTMENT LOANS			
BUSINESS LOANS			
OTHER LOANS OR LINES OF CREDIT			
TAXES OWING			
UNPAID BILLS			
HOME MORTGAGE			
OTHER PROPERTY MORTGAGE			
TOTAL LIABILITIES			

<b>MY NET WORTH (ASSETS MINUS LIABILITIES)</b>			

## **WORKSHEET “INSURANCE POLICIES”**

<b>POLICIES YOU AND YOUR SPOUSE OWN ON YOUR LIVES:</b>	
COMPANY:	
NAME OF AGENT:	
POLICY NUMBER:	
NAME OF LIFE INSURED:	
FACE AMOUNT (DEATH BENEFIT):	
BENEFICIARY:	
COMPANY:	
NAME OF AGENT:	
POLICY NUMBER:	
NAME OF LIFE INSURED:	
FACE AMOUNT (DEATH BENEFIT):	
BENEFICIARY:	

### **POLICIES YOU OWN ON LIFE OF OTHERS:**

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF LIFE INSURED:

FACE AMOUNT (DEATH BENEFIT):

BENEFICIARY:

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF LIFE INSURED:

FACE AMOUNT (DEATH BENEFIT):

BENEFICIARY:

### **DISABILITY INSURANCE:**

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF INSURED:

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF INSURED:

### **HOSPITAL AND MEDICAL INSURANCE:**

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF INSURED:

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF INSURED:

**OTHER INSURANCE POLICIES (Professional liability, house, etc.):**

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF INSURED:

COMPANY:

NAME OF AGENT:

POLICY NUMBER:

NAME OF INSURED:

**CHECKLIST “GETTING ORGANIZED”**

**FAMILY AND FRIENDS TO BE CONTACTED IN THE EVENT OF MY DEATH:**

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

**OTHER PEOPLE TO BE CONTACTED:**

EXECUTOR OF MY WILL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

PERSON I GAVE POWER OF ATTORNEY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

MY LAWYER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

FINANCIAL PLANNER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

MY EMPLOYER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

**OTHERS TO BE CONTACTED IN THE EVENT OF MY DEATH:**

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP TO ME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE AND/OR EMAIL: \_\_\_\_\_

## LAST WILL AND TESTAMENT

DO I HAVE A WILL? YES/NO

WHERE IS THE ORIGINAL?

---

## TRUST AGREEMENTS

DO I HAVE ANY TRUST DEEDS? YES/NO

WHERE IS THE ORIGINAL?

---

## HEALTH CARE DIRECTIVE (LIVING WILL)

DO I HAVE A HEALTH CARE DIRECTIVE (LIVING WILL)? YES/NO

WHERE IS THE ORIGINAL?

---

## LIFE INSURANCE, PENSION, ANNUITY

WHAT LIFE INSURANCE POLICIES, PENSIONS, AND ANNUITIES DO I HAVE?

---

---

WHERE ARE THE ORIGINAL DOCUMENTS KEPT?

---

## BANK ACCOUNTS

(It is important to list all your bank accounts, so that your Executor can locate all the money you have in the bank, and so that he or she can close all your accounts.)

BANK: _____	
ADDRESS: _____	
TELEPHONE: _____	
ACCOUNT: CHEQUING/SAVINGS/JOINT/OTHER	ACCOUNT NUMBER: _____

BANK: _____	
ADDRESS: _____	
TELEPHONE: _____	
ACCOUNT: CHEQUING/SAVINGS/JOINT/OTHER	ACCOUNT NUMBER: _____

BANK: _____	
ADDRESS: _____	
TELEPHONE: _____	
ACCOUNT: CHEQUING/SAVINGS/JOINT/OTHER	ACCOUNT NUMBER: _____
PASSWORDS TO ONLINE ACCOUNTS: _____	

## CREDIT CARDS

FINANCIAL INSTITUTION: _____	CARD NUMBER: _____
FINANCIAL INSTITUTION: _____	CARD NUMBER: _____
FINANCIAL INSTITUTION: _____	CARD NUMBER: _____

## SAFETY DEPOSIT BOX

DO I HAVE A SAFETY DEPOSIT BOX?      YES/NO
LOCATION: _____
WHO ELSE HAS ACCESS TO IT? _____
WHERE ARE THE KEYS? _____

## STOCKS, BONDS, MUTUAL FUNDS

DO I HAVE ANY SHARES, STOCKS, BONDS, MUTUAL FUNDS? YES/NO
WHERE ARE THE RECORDS? _____

## YOUR RESIDENCE AND OTHER REAL ESTATE

TYPE OF REAL ESTATE (e.g. house, cottage, farm, condominium, land) _____
ADDRESS OR LOCATION _____
TITLE IS HELD BY: ME/ MY SPOUSE/ JOINTLY _____
ASSESSED VALUE _____ MORTGAGE _____
NAME OF MORTGAGE COMPANY _____
ADDRESS _____
LOCATION OF ALL THE DOCUMENTS TO THIS REAL ESTATE _____

TYPE OF REAL ESTATE (e.g. house, cottage, farm, condominium, land) _____
ADDRESS OR LOCATION _____
TITLE IS HELD BY: ME/ MY SPOUSE/ JOINTLY _____
ASSESSED VALUE _____ MORTGAGE _____
NAME OF MORTGAGE COMPANY _____
ADDRESS _____
LOCATION OF ALL THE DOCUMENTS TO THIS REAL ESTATE _____

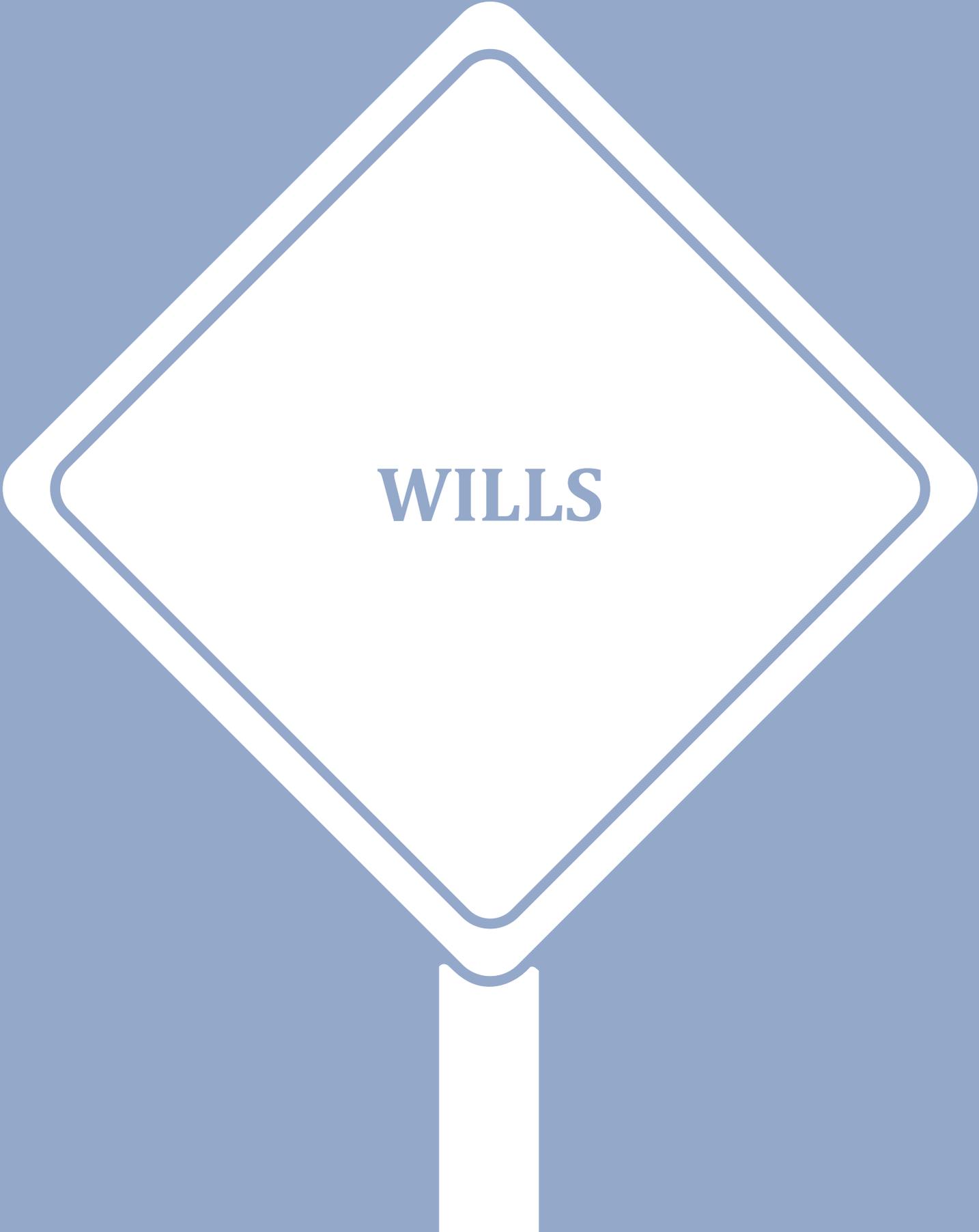
## FUNERAL ARRANGEMENTS

HAVE I MADE FUNERAL ARRANGEMENTS?	YES/NO
DO I HAVE A PRE-PAID FUNERAL ACCOUNT?	YES/NO
WITH WHICH FUNERAL HOME? _____	
ADDRESS OF FUNERAL HOME: _____	
TELEPHONE: _____	
DO I WANT TO BURIED BE OR CREMATED: _____	
DO I WANT A FUNERAL; MEMORIAL CEREMONY? _____	
WHO SHOULD CONDUCT THE SERVICE? _____	
HIS/HER ADDRESS: _____	
TELEPHONE: _____	
OTHER DETAILS: _____ _____	

## ORGAN DONATION

DO I WANT TO DONATE MY ORGANS OR BODY:	YES/NO
FOR TRANSPLANT	YES/NO
FOR MEDICAL RESEARCH	YES/NO
EDUCATION	YES/NO
ANY OF THE ABOVE	YES/NO
HAVE I EXPRESSED MY WISHES TO MY NEXT-OF-KIN OR MY DOCTOR?	YES/NO
DO I HAVE AN ORGAN DONOR CARD?	YES/NO
WHERE IS IT? _____ _____	





**WILLS**



# WILLS

*Preparing and executing the “imperfect” Will is not the least you can do; it is the best you can do.*

*Al Etmanski in “A Good Life” (2000)*

## WHAT IS A WILL?

A Will is a legal document prepared by you during your lifetime that comes into effect at the time of your death. You can change your Will or write a different one as many times as you wish, as long as you retain your mental capacity. The last version will be the legal and valid document. That is why it is called the Last Will and Testament. When you lose your mental capacity, you cannot sign a new Will.

In Saskatchewan, the requirements for a valid Will are outlined in *The Wills Act, 1996*. For more details on the Act, see page 138.

In your Will, you effectively do two things:

- (1) Appoint an executor to take care of your assets after your death, and
- (2) Tell your executor what to do with your assets after your death.

As the person making the Will, you are called the *testator*. The person you appoint in your Will to carry out your wishes after your death is called the *executor*. You can appoint several people, and also a trust company, as your executors. A person or an entity that receives money or property under the Will is called a *beneficiary*.

Making a Will is an important way to ensure that your assets will be distributed in the way you want after you die.

## WHO CAN MAKE A WILL?

In order to be valid, the person making the Will must be over the age of 18 years, unless he or she is married or cohabitating in a spousal relationship, or is a member of the armed forces in actual service. (In those cases, the testator can be younger than 18.) The Will

must be in writing and signed by the person making it or by someone else at the person's request. The signature of the person making the Will must be witnessed by two people who also sign the Will. However, if the Will is entirely in the person's handwriting (a holographic Will), witnesses are not necessary.

A witness should be someone who is not receiving anything under the Will. If the witness or the witness's spouse is a beneficiary, they must prove to the court that they did not pressure the testator to make the Will or their gift will be void.

Under the law, the testator (the person making the Will) must have a sound mind and memory. Over the years, court decisions have helped clarify what exactly this means. In general terms, a testator must

- understand the nature and effect of their Will,
- possess knowledge about the nature and extent of their property,
- understand the extent of property disposed of under their Will,
- have knowledge of individuals that might expect to benefit under their Will, and
- understand the nature of potential claims by individuals excluded from the Will.

When a Will is prepared by a lawyer, that lawyer has a duty to make inquiries about the testator's “legal” capacity and should keep a record of any misgivings or concerns, as well as note potential challenges and how they were addressed. However, there are no rules for lawyers specifying how legal capacity should be determined. Establishing legal capacity is a legal determination, not a clinical assessment.

Lawyers should ensure that all clients are given the opportunity to use the supports they need to enhance their ability to make their own decisions. A person who initially appears to be incapable of making a decision may be able to make his or her own decisions with the help of others, such as family members and friends. These supporters may assist the person by using words that he or she is familiar with, explaining information, and helping him or her understand the consequences of making a decision.

A Will is no longer valid and will be revoked

- if the person makes another Will;
- if the person writes another document which states that the Will is revoked;
- if the person destroys the Will; or
- by marriage or cohabitation in a spousal relationship for two years, unless the Will says it was made in contemplation of the marriage or spousal relationship.

## WHEN SHOULD I WRITE A WILL?

All people age 18 and over should make a Will. People often wait for the perfect situation or the perfect time to write a Will. You might hear them say,

- *I am still too young and don't have enough assets to warrant making a Will.*
- *It will make more sense to make a Will after we sell the house.*
- *I am not going to die yet.*

The truth is that the perfect time may never come. Circumstances will keep changing and you never know when something is going to happen. The time to write a Will is now, even if you think it is imperfect.

One parent summed it up:

- *Lots of people want to make the perfect Will and that holds them up forever. But I say, "Better to have a half-baked Will than none at all!"*

## DO I HAVE TO REVISE OR REWRITE MY WILL? HOW OFTEN?

Every time circumstances in your life change, you should revisit your Will. In some cases, you will need to make a new Will. If the change in circumstances is only minor, you can write a codicil to your Will. A codicil is a legal document that amends an existing Will. We recommend you consult a lawyer to see if a new Will is needed.

Here are some examples of changed circumstances:

- If you marry or enter a common law relationship after the date of your last Will, you have to make a new Will. A marriage, a two-year common law relationship, or a common law relationship which involves the birth of a child, revokes any previous Will unless you made it clear in your Will that you intend to get married to a specified person.
- If you change your name and/or anyone else mentioned in the Will changes their name.
- If your named Executor dies, becomes unsuitable or doesn't want to act in the role, perhaps due to his or her age, ill health, or any other reason.
- If a beneficiary dies.
- If you have property, which you subsequently sell, or which changes its nature.
- If you separate, divorce, live common-law, or become widowed.
- If you have additional children.
- If your children have turned 18 since your Will was prepared and you wish to make them executors.
- If your child acquires or is diagnosed with a disability.

You should review your Will at least once every five years. You will be surprised at how many things have changed!

Parents often recognize that a Will does not last forever, especially when their children are still young.

- *How do you make a Will that would cover all possibilities? What we want to say to [potential guardians], is, "Take this money, educate the kids, feed them, keep them out of trouble and here is the rest of the money for yourself. Until they are around sixteen or eighteen and then they could receive the house and all the goods that come with it." So it is kind of like a two-part Will – part for now and part for the future. But I guess that's why they say to update your Will at least every five years.*

## WHAT HAPPENS IF I DIE WITHOUT A WILL?

Dying without a Will is called dying *intestate*.

If you die without a Will, the administration and distribution of your estate will be governed by the laws of Saskatchewan; namely, The Intestate Succession Act. This Act sets out the rules for determining the beneficiaries of a person who dies without a Will. For a summary of the Act, see page 137.

If you die intestate, the court will choose the person responsible for winding down your affairs. This person is called an administrator, and might not be the person you would have wanted. Each judicial centre has a provision for appointing an official administrator. This person will be paid from your estate.

To ensure that your assets are distributed according to your wishes, you must make a Will. If you don't make a Will, your assets may pass to some people that you did not wish to benefit.

On the other hand, there may be some people or an organization that you do want to benefit. Without a Will they may not be eligible.

If you die without a Will and there is no spouse or any other blood relative, your estate will go to the provincial government.

## WHERE DO I FIND INFORMATION ABOUT WILLS?

The Public Legal Education Association (PLEA) provides a booklet on Wills and Estates. PLEA also has other information on legal issues, which may be of interest to you. For more information on PLEA, please visit their website at [www.plea.org](http://www.plea.org).

Your local library may also have information available on Wills.

It is recommended that you consult a lawyer to provide you with the necessary information about making a Will.

## CAN I MAKE A WILL WITHOUT GOING TO A LAWYER?

You can draft a legal Will without the assistance of a lawyer. In some cases, it is quite simple to draft a valid and legal Will. However, Ron Kruzeniski, in his book *Wills for Manitoba and Saskatchewan* (1996), suggests that there are certain categories of people who should always consult a lawyer when drafting their Will:

1. People with substantial estates. You might want to consult financial professionals and lawyers to obtain advice on the best distribution of your assets as well as the various tax benefits that can be obtained.
2. People who have dependants (either minor children or adult children with disabilities) should always seek legal advice on setting up trusts.

Other categories include people who are about to get married, people who are living with a partner in a spousal relationship, people who are separated from their spouse, people who own property outside Saskatchewan, people who don't have the necessary skills to express themselves clearly in writing, and elderly people who might be subject to undue influence from other members of their family.

## What is considered "undue influence"?

In the context of Wills, it is not unusual for the issue of undue influence to come up at the same time as the issue of sound mind. However, these issues are not the same thing. While some individuals may be of sound mind they might still be vulnerable to undue influence.

Courts can set aside an entire Will, or portions of it, if they find that there was undue influence — meaning that someone pressured the testator into disposing of their property in a way that they would not have done otherwise. Undue influence is something more than offering advice or suggestions. The pressure must be so great that the testator feels unable to resist or refuse the pressure. Older or infirm individuals, or those largely dependent on others, may be particularly susceptible to undue influence.

If you have a family member with a disability, there are

at least two good reasons why you should see a lawyer with expertise in estate planning:

1. Lawyers have done this before and usually have a good idea of what should be included in a Will.
2. They know how to write a Will that is legal and meets the requirements of provincial laws.

If you decide to make a Will yourself, do some background research and read the appropriate literature. Make sure that what you decide to say in your Will is consistent with Saskatchewan laws and covers every eventuality. This Guide has a list of resources that might help you. (See page 125).

It is definitely worth spending a few hundred dollars in fees to avoid tens of thousands of dollars in problems.

## WHAT ABOUT WILL KITS, GUIDES, AND PREPARATION SOFTWARE?

Will kits or guides provide an opportunity to draft a simple Will, but because a Will has to cover all situations, these materials can only be generic. The guides can produce adequate results in truly simple situations. However, they do not deal with the particular details, contingencies, and very specific issues which may be critically important to your family.

If you are considering using one of these kits for writing your Will, check how much information is in the Will guides or Will kits about the following:

- Setting up a trust
- Understanding discretionary and inter vivos trusts
- Alternatives to Wills
- Guidance on selecting a suitable trustee for the trust
- Tax considerations

In many of the Will kits and guides you will find there is no information included about the above topics.

In our opinion, Will kits or Will guides generally do not provide adequate information about issues associ-

ated with providing for a child with a disability.

As one person put it,

- *You get what you pay for.*

Although the kits might appear to be complete, you are not a lawyer, and you don't know what is not covered and what might be challenged in court after your death. You should always consult professionals for advice in areas with which you are not familiar.

## IS THERE SOMETHING I SHOULD OR COULD DO BEFORE GOING TO A LAWYER?

Before you go to a lawyer to have your Will written, there are some topics you should think about. These will make the lawyer's job easier and potentially save you some money.

- *A good lawyer will help you look beyond the grave to see some possible consequences of your wishes, good and bad. And although you're somewhat governed by legalities, you can be pretty explicit in what you want to happen.*

To achieve the best results possible when you are looking for a lawyer, you should know what you want and have some idea of how best to achieve it. It is important to have some background information, and we hope that this Guide is providing you with that.

*If you go in pretty much prepared, like "this is what I want to do," or "I thought about doing this," and so on, and if this is a lawyer who knows about the disability world, he or she will be able to answer your questions and be able to maybe make suggestions. But the idea is, be prepared.*

To receive the best results in any situation, it is important you are prepared not only with questions to ask, but also possible answers.

Your lawyer will make sure that your wishes are legally expressed if he or she knows what your intentions are. Therefore, you have to let your lawyer know what you want to achieve.

Here are some things you can do ahead of time:

## Make an inventory of your assets.

This includes property, such as your house, summer cottage, rental property, bank accounts, stocks, bonds, securities, RRSPs, pension benefits, life insurance, and so on, and such things as antique furniture, art, valuables, etc., as well as your debts (mortgage, loans, etc.) Note the ownership of each of these assets. Are you the sole owner? Do you own them jointly with another person, such as your spouse or your children? Is it a partnership property? Use the worksheet Summary of Net Worth on page 43.

## Decide how you want to leave your estate.

Your lawyer will work out details, but you should think about the general direction you want your Will to take before you go to a lawyer. If you have dependants, you should be aware of the provisions of *The Dependants' Relief Act*. (See page 136 for more information on the Act.) There might be some bequests you want to make to specific people or organizations. These could be items of sentimental value that you want to leave to specific people, or bequests to charities. If there are special circumstances in your family, such as children from another marriage, you should make your lawyer aware of them as well.

You should also think about what you would want to have happen to your estate if your entire immediate family died together. If this provision is missing from your Will, and a total disaster happens to the family, your estate will be divided amongst your closest living relatives as if you had no Will. If this is not what you would want, it is important to have your Will specify what you do want.

There are other issues to consider. If you have a business, how do you want your business to be handled upon your death? Do you have partners, or is it a corporation with other shareholders? If you outlive your children and other close family members, would you rather your estate go to a charity than to a distant relative or the government?

## Choose an executor (or executors)

An executor is a person you appoint in your Will to settle your estate after your death. The executor has

a duty to you and your beneficiaries to carry out the terms of your Will.

After you die, the executor's first duty is to initiate probate, and to notify all beneficiaries that he or she has applied to the court to probate the Will (probate is the formal process of proving the authenticity of your Will). The job of the probate court is to decide the validity of the Will, which is generally a routine matter. However, parties may challenge or contest the Will at this time. A person who challenges a Will, or part of a Will, must file an objection with the court within a specified period of time. Challenges to Wills can be time-consuming and costly to the estate.

Once the Will is determined to be valid by the probate court, the executor pays your outstanding debts and funeral expenses, distributes your property according to your Will, and files your final income tax return.

Other duties of the executor involve notifying any agencies or institutions you have dealt with of your death, and filing appropriate claims for insurance and pension benefits. If there are minor beneficiaries, or dependent adult beneficiaries, the executor has to give notice to the Office of the Public Guardian and Trustee for the Province of Saskatchewan.

The final duty of the executor is to wrap up the estate by filing papers with the probate court. This usually involves providing the court with copies of notices to concerned parties, tax returns and bills paid. The executor must also provide proof of distribution of the remaining assets, such as signed receipts from the beneficiaries. When the court recognizes the completion of the probate process, the executor is released from further responsibility.

If the Will is deemed to be invalid, an administrator will be appointed by the appropriate court to handle the estate. Creditors and taxes will be paid, after which the remainder of the estate, if any, will be distributed in accordance with provincial law.

There is no prescribed way of appointing the executor, but the easiest and most common way is to simply state in your Will: "I appoint [John Smith] to be the executor of this my Will."

It is usual for husband and wife to appoint the surviving spouse to be executor of each other's Will, but the executor may be any competent adult or a financial company. The law requires from the executor the highest degree of honesty, impartiality, and diligence. This is called fiduciary duty – the duty to act with scrupulous good faith and candour on behalf of someone else.

Sometimes it is difficult for people to decide on who the executor should be:

- *We are having trouble deciding on who should be the executor of our Wills. We have my sister here, but should we have family members looking after the money, because she will also get our kids if anything happens to us?*

You should always ask the person you wish to name as executor to determine whether or not they are prepared to accept the responsibility. You may name more than one person as executor. If you choose one person, it is a good idea to choose an alternate executor in case your designated executor dies, declines, or fails to act on your behalf. Also, for practical reasons, it is a good idea to appoint an executor who is the same age as yourself or younger, and who lives nearby.

- *I have an executor who is older than me. And perhaps, as I am getting older, it is time for me to start looking at my nephews or someone younger than me.*

Before you choose an executor, you should ask yourself the following questions:

- Will this person be available to handle the duties of an executor?
- Is this person capable of handling financial matters?
- Will this person act in the best interests of my family and beneficiaries?

Executors are entitled to fees for their services, but it is OK for them to refuse these fees, or to accept reimbursement for out-of-pocket expense only.

## Decide on a guardian for minor children.

In your Will you may also suggest the name of someone to have custody of your minor children if both parents die. In Saskatchewan, this is a suggestion only (If one of the parents dies, the other usually becomes the sole guardian of the children). If both parents die, someone must apply to the court for a custody order to obtain permanent custody of the children. However, expression of your wishes in your Will carries a strong message about who you want to look after your children if neither you nor your spouse is alive. This topic is also discussed in a separate chapter on Guardianship of Minor Children on page 91.

## Funeral and burial instructions.

In your Will you can include your wishes about how you would like your body disposed of. However, you should also write your wishes down in another document that can be read immediately after your death. In many cases, the contents of the Will are learned only after death, and burial or cremation, and your wishes may not be discovered soon enough if they are outlined only in your Will. This other document should be kept in a safe place and you should tell your executor where it is. If you make your wishes about final arrangements known and discuss them with your family and/or friends, you might prevent some difficult decisions or arguments after your death.

## HOW DO I FIND THE RIGHT LAWYER?

Most families the SACL consulted with told us that they were unsure how to go about finding the right lawyer; a lawyer familiar with financial planning for individuals with disabilities. Often it is difficult to determine whether or not the lawyer is experienced in the area of Wills and estate planning. See page 62 for questions you should ask lawyers before you decide to work with them.

- *I think that a lot of the problem lies in finding a lawyer who is knowledgeable, because many lawyers are not. That is one thing we discovered over the years. So probably your first question going in the door should be, "Do you have knowledge of what a discretionary trust is, and how to set it up in a Will?"*

An important element in deciding on a particular lawyer is your level of comfort with that particular person. One lawyer suggested that going with your “gut feeling” about a person is important. Another lawyer called it “passing the smell test.” You have to feel comfortable and confident that the lawyer is meeting your needs. If you don’t feel comfortable, it is perfectly OK to go somewhere else and get another opinion.

The lawyer’s sensitivity to your needs is another important part of the decision. Often, it is a good idea to select a lawyer who has personal experience with an individual with a disability, understands your needs, and may know the specifics involved in writing a Will that includes a child with a disability.

- *The lawyer we chose sits on the local board for the [agency] here in town. He also has a brother with a disability. So he is very knowledgeable and very helpful. We were in his office for about an hour and felt very comfortable in discussing our fears and what we thought we needed to have done. He made us look at some things we never thought of, asked us a few questions and told us to go home and think about them. Then we went back two weeks later and everything was finalized.*

Ask yourself:

- Is the lawyer asking me what I want? (That is a good thing!)
- Is the lawyer answering my questions? (There is no such thing as a stupid question. It is the lawyer’s professional obligation to explain things to you so that you understand).

One lawyer put it this way:

It is your right as a parent to understand what is going on. It is my obligation as a lawyer to make sure you do.

Parents commented on how they had appreciated the lawyer giving them questions to think about prior to finalizing their Wills. They also observed that the lawyer gave them time to think about various issues before the Will was completed.

- *When I phoned the lawyer, I told him what I was looking for. And he said, “I am going to send you a list of questions to answer and to think about before you come to talk to me, so that I don’t waste your time.” Actually, I think he was being nice and meant “so we don’t waste his time”. But anyway, that was very helpful, because I hadn’t really thought of some of the questions that were on the list. So I wrote down the answers, then sent them back to him. He took a look at it to judge how much time we would need and what’s involved, and then he called me and made an appointment. I thought that all was very organized. And it was a good exercise for me to get ready for what was going to be involved. There sure was a lot more than I thought about. In the end I was very happy that I got to talk to him.*
- *What would have made things easier or what would have helped us a little, I think, would be a sheet of questions. Questions like: If you and your husband were both to die, what would you want to happen to your children? Who do you want to be the executor of your Will? Do you want the executor to be the same person that you are suggesting as guardian of your kids? What happens when you have more than one child and the first one reaches the age of majority or is an adult already – do you want them to take over responsibility of the [minor] child? Or all the different scenarios that could happen, because each scenario has a different outcome.*

So, where do you look for the right lawyer? You have several options:

### Word of mouth

Word of mouth is another excellent way of finding a lawyer. If you know other families who are in a similar situation to yours, talk to them.

- *One question I had was, “How can I trust a lawyer?” I think a lot of it is word of mouth. We have several lawyers in town and their reputation gets around. So go and ask around. Ask people you know, or professional people like your doctor or a teacher, or people who are well known in the community. I think they would be able to tell you about the lawyers’ reputations.*

If you live in a remote area or in a smaller community, there might be only one lawyer available. You can still ask the lawyer the same questions. If he or she doesn't have the experience, ask if they are willing to find things out for you. Often a lawyer from a smaller community works with another lawyer in a larger centre who has the needed expertise. Alternatively, it might be worth your while to travel to a larger centre to find a lawyer who is knowledgeable in the area.

- *It's very difficult for us because we are rural. We only have one lawyer who comes to town one day a week and so that tends to be who we go to because it's the easiest. I found that he didn't know a whole bunch. But he was quite willing to oblige and try and find stuff if we knew what to ask him.*
- *I guess it is a bit more challenging in rural Saskatchewan because we don't have access to the same things as we would if we lived in Regina. But don't go to a lawyer just because he is the only one in your town. Sometimes that's not the best way.*

### Look in the telephone directory or online

Most lawyers list their preferred areas of practice in the Yellow Pages. You can also check the law firm's website, if they have one. Bigger firms usually have at least one lawyer who specializes in Wills and estate planning.

### Contact the lawyer and ask questions

See the next section for questions you could ask to help you decide whether he or she is the right lawyer for what you need.

- *One of the things that we have learned is, open your mouth and ask. That is sometimes hard to do, but you have to ask. If they don't know the answer, they will tell you.*

### WHAT QUESTIONS SHOULD WE BE ASKING SO THAT WE KNOW THIS IS THE LAWYER WE NEED?

- *How can we tell that this person knows the answers to what we need? I think that having a name is not as important as knowing the right questions to ask.*

Here are some questions you could ask a lawyer before you ask them to write your Will:

- Has the lawyer had some experience in drafting Wills where there is someone with a disability involved?
- Has the lawyer dealt with testamentary trusts?
- Has the lawyer taken courses to upgrade himself or herself in the area of trusts, or done some research on their own in this area?
- Has the lawyer worked with the Public Trustee?

It is perfectly OK to ask these questions over the phone before committing to a lawyer. You should be confident that the lawyer you select is the right person for what you need. And, as preparing a Will involving a person with a disability is a specialized job, it is really important that you are comfortable with the person you choose.

One lawyer put it this way:

- *It's like going to your general practitioner and asking them to perform an eye surgery. You wouldn't do that. You would go to a specialist. It is the same with your Will. Go to a lawyer who specializes in an area.*

One parent suggested having two sets of questions ready:

- *There could be a two-tiered list of questions. The first list is when you phone up the receptionist of the law firm and you ask, "Do you have a lawyer who deals in such and such?" There would maybe be two or three questions that you would ask them. And then when you are actually talking to the lawyer you would have another list.*

### HOW MUCH WILL IT COST TO MAKE A WILL?

Making a Will is one of the most important things you will ever do to provide for your children, as well as for your own peace of mind. Once you realize that, the costs will not seem so high.

In one lawyer's words:

- *You have to look at the big picture. You can include a lot of planning through the Will, and it is something that affects the future of your children.*

Another person pointed out that we have to put things into perspective and think about how much we often spend on other things:

- *You don't mind spending two hundred dollars on having your car fixed, but you are hesitant to spend the same amount of money on having a Will prepared.*

Our consultations with lawyers and parents from around the province indicated that while fees vary, there are also some consistent facts:

- The cost depends on the complexity of each individual situation, as well as on whether you live in a small town or larger centre.
- When you are selecting a lawyer, it is perfectly OK to ask in advance how much he or she will charge to draft the Will. Some lawyers charge a flat fee, but if there is a more complicated situation, they might charge per hour. So you should ask, "Is there a flat fee?" or "Do you charge per hour, and if so, how much?"
- Some lawyers provide the first half hour or hour of consultation free of charge. Again, it is OK to ask about a free consultation.

So, all that said, how much will it cost?<sup>1</sup>

A basic Will could cost somewhere in the range of \$300–500. More complicated Wills, which include trust agreements, might cost \$1000–2000, depending on the amount of work involved.

If you have a lot of assets and/or special circumstances, the lawyer may want to consult with you more often. This takes time and the lawyer may decide to charge an hourly rate. The cost to draft a complex Will that would include consultations with financial planners and cover specific issues, may range from one to several thousand dollars. While there can be a cost involved in creating a Will, the cost of not having a Will can be significant – both emotionally and financially.

## THE IMPORTANCE OF THE DEPENDANTS' RELIEF ACT

If you have a child with a disability, you must keep in mind the provisions of *The Dependants' Relief Act*<sup>2</sup>, when preparing your Will. A dependant under this Act includes, among others,

- the spouse of the deceased;
- a child of the deceased who is under the age of 18 years at the time of the deceased's death;
- a child of the deceased who is 18 years or older at the time of the deceased's death and who alleges or on whose behalf it is alleged that:
  - (a) by reason of mental or physical disability, he or she is unable to earn a livelihood;
  - or
  - (b) by reason of need or other circumstances, he or she ought to receive a greater share of the deceased's estate than he or she is entitled to without an order;
- a person with whom the deceased cohabited as spouse:
  - (a) continuously for a period of not less than two years ago; or
  - (b) in a relationship of some permanence, if the two are the parents of a child.

At death, it is common for the estate to pass from the deceased to the surviving spouse. *The Dependants' Relief Act* does not present a problem in that situation. However, when the surviving spouse dies, *The Dependants' Relief Act* becomes important. Provision must be made for your dependent child, regardless of his or her age.

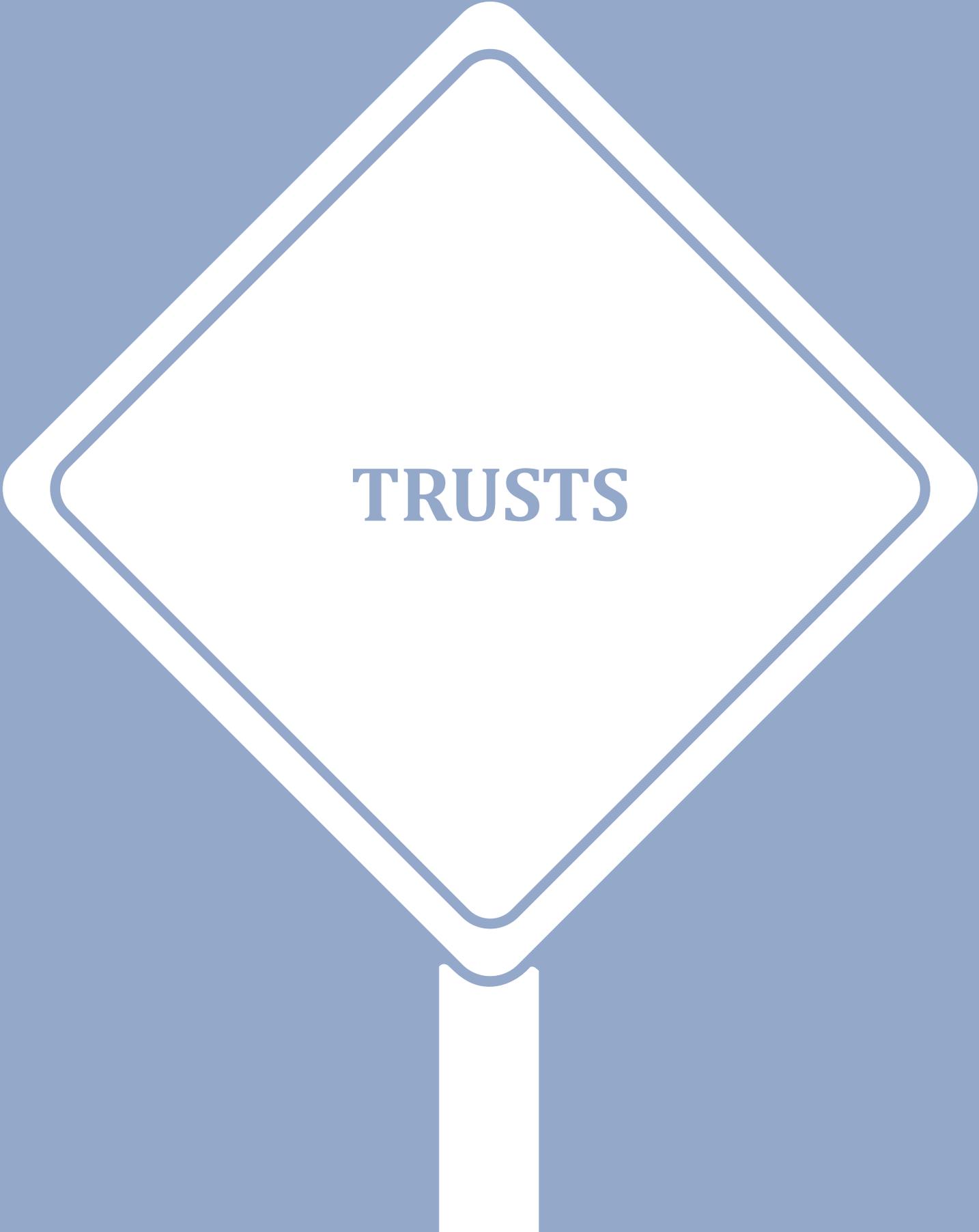
*The Dependants' Relief Act* requires you make "reasonable and adequate provision" for your dependants. "Adequate" does not mean that everything has to be divided equally. But if you don't provide adequately and reasonably for your dependants in your Will, they – or someone on their behalf – could contest your Will and apply to the Court of Queen's Bench for an order making reasonable provision for the dependant's maintenance from your estate. The person acting on behalf

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<sup>1</sup>Note of caution: These figures were obtained in 2014, when this document was being revised. Each lawyer has his or her own fee schedule. The Saskatchewan Association for Community Living cannot take any responsibility for situations where the actual costs are different.

<sup>2</sup>See page 136 of this Guide for information about *The Dependants' Relief Act*.





**TRUSTS**



# TRUSTS

## WHAT ARE TRUSTS?<sup>1</sup>

Trusts have been a viable option for hundreds of years. A trust is created when the original owner of the property (the settlor) decides to transfer ownership of the property to one or more persons (the trustee or trustees) on specified terms (the trusts).

Essentially, a trust is an obligation that binds the trustee to deal with property, over which they have control (the trust property) for the benefit of one or more other persons (the beneficiary or beneficiaries) named in the trust document.

In order for a trust to be legitimate, it must satisfy three criteria:

### 1. The trust must spell out its intention.

It must be clear that the settlor intended that the property be held by the trustees for the benefit of one or more designated individuals (beneficiaries).

### 2. The trust must identify the property that is subject to the trust.

The trust must clearly identify the exact property which is subject to the trust, and the property must be described in the trust document. There must also be a mechanism which determines the amount each beneficiary will receive from the trust property.

### 3. The trust must identify its beneficiaries.

It must be clear who is to benefit from the trust. The trust agreement can either nominate specific individuals or the beneficiaries can be described by class description. For example, “all children of the settlor” is acceptable as a class description rather than having to name each child separately.

The most important characteristic of a trust is that it is a fiduciary relationship, meaning that it is a relationship based on confidence and trust. The fiduciary relationship exists between the trustee (who holds title to, and administers the trust property) on one hand, and

the beneficiaries (for whose benefit the trust property is held), on the other. The trustee is subject to strict obligations, including the obligation to act with scrupulous good faith and candour only in the best interests of the beneficiaries. This is called fiduciary duty.

Trustees hold the trust property separate from their own assets and administer them on behalf of the beneficiaries, not for their own benefit. It is important to note that beneficiaries do not have direct ownership of the trust property, nor may they deal with the trust property.

There are two major categories of trusts: “Inter vivos trust,” a trust you establish during your lifetime and “Testamentary trust,” a trust that is established on death, usually in your Last Will and Testament.

Generally, once a trust is created, it cannot be changed, terminated or revoked. In some cases, when creating an inter vivos trust, the settlor may retain power to revoke the trust at any time, but this must be explicitly declared in the trust document. The irrevocability of a trust protects the settlor from undesirable tax consequences.

In Canada, a trust is deemed to be a separate individual. Under The Income Tax Act, all trusts must file an annual income tax return, and pay tax on income and capital gains that are unpaid or payable to a beneficiary during the year.

## Inter Vivos Trust

An *inter vivos* trust begins to have effect immediately after it has been settled, i.e. when any assets are put into the trust fund. Unlike a Will, which takes effect only when its maker dies, and which can be changed any time before death, an inter vivos trust can only be amended if the document creating it allows for amendments, or by the consent of the court. You can become a trustee of your own inter vivos trust. If you have substantial assets, you might want to establish such a trust to ensure proper administration of the trust from its inception. Tax planning issues are critical when you think about establishing an inter vivos trust.

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<sup>1</sup>Information on this question has partly been adapted with permission from the article “The Rise and Fall of the Family Trust” by Randall B. Reynolds, CAIFA in Focus, Volume 2, January 2000; and from Tax Planning Using Family Trusts, published by the Canadian Institute of Chartered Accountants in 1999.

All income of an inter vivos trust is taxed at the highest marginal tax bracket (currently 44% in Saskatchewan). Every 21 years, these trusts are deemed to sell and reacquire their capital assets at fair market value. This “twenty-one-year rule” could trigger a capital gain (or loss). A large capital gain could result in a significant tax bill for the trust every 21 years.

## Testamentary Trust

A testamentary trust is established by your Will and comes into effect at the time of your death.

Testamentary trusts are taxed at the same graduated marginal rates that apply to individuals. In estate planning it is often tax-efficient to establish separate testamentary trusts for individual beneficiaries, thereby creating a separate “taxpayer” for each bequest. This presents considerable planning opportunities for reducing taxes, by allowing greater access to lower marginal tax rates.

A word of caution: Always seek advice from a financial planner or accountant before setting up a trust so that you fully understand all the different issues associated with trusts. Also, because the trust agreement is a legal document, it should be drawn up by a lawyer.

## DISCRETIONARY TRUSTS

Any trusts, whether inter vivos or testamentary, may be set up as a discretionary trust. Most modern day trusts provide trustee discretion.

A discretionary trust gives the trustee or trustees full discretion as to how and when to provide for the beneficiary. It means that the trustee cannot be compelled to pay any income or capital to the beneficiary, and any payment is completely within the discretion of the trustee. This assures that the beneficiary will continue to be entitled to receive SAID or social assistance, because he or she will have no determinable or vested interest in the assets of the trust.

It has become a common practice in Saskatchewan to set up a discretionary trust under a Will as a means for providing for a dependent child.

*The one thing I learned is that it doesn't cost a lot of money to set up a trust. The lawyer I have now here in Saskatoon is wonderful. It cost next to nothing. Just put it in the Will. It is just a little bit of extra time, you just dictate as to what has to be in the Will and whose discretion it is at. You know, the word trust scares people, but it really shouldn't. It is a lot simpler than you think.*

It is important, however, that you and/or the trustees review government rules and regulations periodically, as these can – and often do – change.

Lawyers point out that setting up a discretionary trust could theoretically be challenged. If the money is left in a trust for the beneficiary (and therefore the beneficiary does not own that money), it could be argued that, according to The Dependants' Relief Act, the dependant was not adequately provided for. At present, the Saskatchewan Government does not object to dependants being provided for through a discretionary trust, and so far there has not been a court challenge to such arrangement. The Public Trustee's primary concern has been that a dependant be provided for. The provisions of the trust fund for a dependant under The Dependants' Relief Act show the Saskatchewan Government's preference is to provide for a person with a disability without making that person ineligible to government assistance.

At the present time, the idea of setting up a discretionary trust as a means for providing for your dependent child is acceptable to the government, but this may not always be the case in the future. Rules and regulations have to be followed closely.

There are several samples of discretionary trust agreements in the Appendices, beginning on page 139. They will give you some ideas about what to include in a trust agreement, as well as the appropriate wording to make the trust discretionary.

## WHAT IS THE DIFFERENCE BETWEEN “NON-DISCRETIONARY OR MANDATORY” TRUSTS AND “DISCRETIONARY” TRUSTS?

Any trust can be either mandatory or discretionary. In a mandatory trust, you, as the settlor, decide how you

want the trustees to administer the funds and you leave specific instructions, which the trustees are required to follow.

On the other hand, a discretionary trust is a special trust, in which the trustees of the trust have complete discretion over distribution of capital and income of the trust. The trustees have complete discretion to spend as little or as much on a beneficiary as they deem appropriate, and you, as the settlor, cannot dictate what the trustees should do with the money. You may only suggest your wishes on how you would like the money to be spent.

## ARE THERE LIMITS ON HOW MUCH I CAN PUT INTO A TRUST FUND FOR MY CHILD WITH A DISABILITY?

If parents, other family members or friends set up a fund, there are no maximum and/or minimum limits to the amount that may be put into a trust fund. The lower limit will probably be guided by consideration of whether the amount put into the trust fund is sufficient to be sustained for years to come. Financial planners can provide relevant advice. For example, anything less than \$20,000 dollars might not generate enough income to cover annual accounting and trustee fees.

If you don't have sufficient assets to fund a testamentary trust after you die, consider buying life insurance on a joint last-to-die basis (which will provide payment after the last of the joint owners of the insurance policy have died) in order to provide sufficient cash to fund a testamentary trust.

## WHO SHOULD I NAME AS THE TRUSTEE(S) OF THE TRUST?

In Saskatchewan, the role, rights and responsibilities of trustees are governed by The Trustee Act. Before you select someone to be a trustee, make sure that they are aware of their obligations. Trustees have four fiduciary duties and obligations, which are loyalty, concern, impartiality, and responsibility not to delegate the trustee power.

### 1. Loyalty

The trustee's first loyalty is to the beneficiary and he or she must always act in the best interest of the beneficiary.

### 2. Concern

The duty of concern means that the trustee must be honest and careful in discharging his or her duties, and he or she must act with utmost integrity and prudence.

### 3. Impartiality

Impartiality means that the trustee is not allowed to show favour to any one of the beneficiaries (if there are more than one), unless authorized by the trust agreement.

### 4. Responsibility not to delegate the trustee power

The trustee has the responsibility not to delegate the trustee power to somebody else. The trustee must carry out the duties personally, even though the courts recognize that some tasks, such as investing money or filling income tax returns, can be delegated to a professional, such as an accountant or a lawyer. There are some decisions, however, that have to be performed only by the trustee. These include decisions about distributions from the trust, or encroachment on capital of the trust.

Often the most difficult decision one has to make is who should have control of the funds in the trust. It is important to have this conversation.

- *If you want to name someone as a trustee, how do you start that conversation? Part of the problem is that with people you know well, it's hard to talk about certain things.*

Despite the fact that this is challenging, you need to decide on will be the trustees. Here are some factors to consider when selecting a trustee:

## 1. The relationship of the trustee and your child

- *The trustee you select should be someone who you know, who would do what's best for your child and who you have selected because they are on the same wavelength as you are.*
- *Choose someone who knows your wishes.*

The personal relationship of the trustee and your child is extremely important. Trustees should be people who know and care about your child. You should have confidence that they will act in your child's best interests.

## 2. The age of trustee

Depending on the age of your dependent child, the trust may be in operation for many years. The trustee has to be of full legal age, which is 18 in Saskatchewan. When your child is a minor, the trustee will probably be closer to you in age, but once your child is older, the trustee should probably be closer in age to the beneficiary than to you.

## 3. The ability of trustee to manage finances

The trustee should have some expertise in filing annual income tax returns, and should have experience in investing funds. Alternatively, the trustee could hire someone, for example an accountant, to manage the financial side of things and pay for the services from the trust.

## 4. The trustee's knowledge of the government benefits

The trustee should be knowledgeable of the government benefits available to the beneficiary, and should be committed to keeping up with any changes of government rules and regulations.

## 5. Avoiding a potential conflict of interest

It is a good idea to select an impartial trustee. For example, don't select someone who will benefit from

the trust when the primary beneficiary (for whom the trust is being set up) dies. When the trustees of the discretionary trust are also named as contingent (or secondary) beneficiaries of the monies after the death of your child for whom the trust was set up, there could be a potential conflict of interest. The trustees might, even unintentionally, spend less on the primary beneficiary so that there would be more left for them after the death of the primary beneficiary.

A solution to this conflict of interest is to make sure that the trustees are not secondary beneficiaries. For example, you can name your other children to be the trustees and stipulate that any residual money after the death of your dependent child will go to a charity. Or, if you want your other children to be the secondary beneficiaries of the trust, you could name someone else as a trustee.

*I set up a trust in my Will, which my brother and my sister control. They are both money people and they control the money part of it. My son, if I were to pass away, would become the legal guardian for my daughter [with a disability] but he wouldn't have control over that estate or that trust; my brother and sister would. If my son felt that there was an enhancement needed for my daughter, he could go to them and say, "I need this much money to get a new TV or to get new clothes or to go on this trip or whatever to make her life better." I think that this is an important point, to keep anybody with vested interest outside the loop ... Not that I don't trust my son. He is a wonderful young man and I know he will do OK by her, but I think this is the safest thing to do.*

## 6. The appointment of several trustees

It is important to recognize that trustees might predecease the beneficiary and their replacement could be less than ideal. It is therefore a good idea to select more than one trustee. You can name two or more trustees. These can be co-trustees (they will act together), a corporate trustee (such as a trust company), or alternate trustees (who begin to act only when the first trustee dies, or cannot or will not act as a trustee). Sometimes a person you named as one of the trustees might be in a difficult situation, become ill, or for any other rea-







**REGISTERED DISABILITY  
SAVINGS PLAN  
(RDSP)**



# REGISTERED DISABILITY SAVINGS PLAN (RDSP)

Until recently, the most common way of planning for the financial future of people with disabilities has been to set up a discretionary trust through a Will. Now there is also the option of setting up a Registered Disability Savings Plan (RDSP) for a person with a disability.

The RDSP is a federally registered savings plan designed specifically to ensure long-term financial security for people with disabilities. It came into effect on December 1, 2008. The RDSP is an attractive tool in financial planning because the federal government provides grants and bonds which contribute to the savings; these are the Canada Disability Savings Grant and the Canada Disability Savings Bond. The government bonds and grants mean that the funding of an RDSP could, in large part, be as a result of these government contributions and the accumulated interest from the contributions. In order to be eligible to benefit from a RDSP, the beneficiary of the plan has to qualify for the Disability Tax Credit. To maximize the benefits of government contributions, the plan should be used as a retirement savings plan and the withdrawals begin at the age of 60.

## WHO IS ELIGIBLE TO OPEN AN RDSP?

To be eligible for the RDSP, a person has to be has to be

- under the age of 60;
- a Canadian resident with a social insurance number;
- eligible for the Disability Tax Credit; and
- filing tax returns each year.

**Social Insurance Number (SIN):** Every Canadian resident can get a Social Insurance Number (SIN). For children under the age of 12, parents apply for their child's SIN; children older than 12 can apply for a SIN themselves. For anyone under the age of majority (18 in Saskatchewan), parents or legal guardians can apply. A legal guardian can apply for a SIN for an adult. The SACL recommends that everyone apply for a SIN.

**Disability Tax Credit (DTC):** This is a tax credit designed to reduce the amount of income tax that people with disabilities have to pay. To qualify for the disability tax credit, a doctor or another specially qualified person<sup>1</sup> must certify on prescribed form T2201 (also called the Disability Tax Credit Certificate), that the person “has a severe and prolonged impairment by reason of which the person is markedly restricted in his or her activities of daily living” and “the impairment has lasted or can be reasonably be expected to last for a continuous period of 12 months.” Please note that eligibility is not based on the medical impairment itself, but rather on the effects that the impairment has on a person.

The federal government has adopted the Disability Tax Credit as a basis for determining whether a person is eligible for the RDSP. The Disability Tax Credit acts as a “gateway” to the RDSP.

Some people with disabilities have no problems receiving the Disability Tax Credit easily; other people have a harder time. If a person applies for the Disability Tax Credit and is rejected, it is strongly encouraged that the individual re-applies. Sometimes all that is needed is for the individual to send in the T2201 form signed by a different medical practitioner. In other situations, a formal appeal of the decision may be necessary. The Canadian Revenue Agency does not charge fees to process the application for the Disability Tax Credit. The medical practitioner, however, may charge a fee to complete the form. The Disability Tax Credit Promoters Restrictions Act received Royal Assent on May 29, 2014<sup>2</sup>. The Act limits fees that can be charged for helping to complete a disability tax credit request, and ensure that more money stays in the pockets of persons with disabilities and their caregivers who need it most.

*For more information on the Disability Tax Credit, to find out about the eligibility for the Disability Tax Credit or to get the T2201 form, visit [www.cra.gc.ca/disability](http://www.cra.gc.ca/disability), or call 1-866-204-0357 TTY 1-866-260-7723.*

<sup>1</sup>Who can sign the form depends on the type of impairment. It can be medical doctor, optometrist, speechlanguage pathologist, audiologist, occupational therapist or psychologist.

<sup>2</sup>See [http://lois-laws.justice.gc.ca/eng/AnnualStatutes/2014\\_7/FullText.html](http://lois-laws.justice.gc.ca/eng/AnnualStatutes/2014_7/FullText.html)

If you have a minor child with a disability, you also need to apply for the **Canada Child Tax Benefit (CCTB)** on top of the Disability Tax Credit. The Canada Child Tax Benefit allows the government to calculate how much your child is eligible to receive in grants and bonds. Many people apply for the Canada Child Tax Benefit when they file their income tax return. If you did not apply for the CCTB, you can fill out the CCTB form and submit it to your nearest tax centre.

**Filing Income Tax Returns:** In order to be eligible for the RDSP, taxes have to be filed for two previous years. The information on the income tax return establishes how much in RDSP grants and bonds the government will contribute to the individual RDSP. Taxes have to be filed in every year in order to continue to receive the government's grants and bonds. In the case of minor children, the tax return filed is that of the parent. If the holder of the RDSP is an adult, his or her income tax return is used to determine grant and bond eligibility.

### WHO IS THE HOLDER OF RDSP?

The holder of the RDSP is the legally authorized person or organization that opens and manages the RDSP on behalf of the beneficiary. A holder can be any of the following:

- Legal parent, legal representative or public department (in the case of minor children)
- If the beneficiary is over the age of majority and has the capacity<sup>1</sup> to enter into a legal contract with a financial institution, then he or she is the holder
- A representative who is legally authorized to act on behalf of the beneficiary, when the beneficiary is not competent to enter into legal contracts
- In cases where there are concerns about the ability of a person to enter into a contract and he or she does not have a legal representative, certain family members, such as the beneficiary's spouse, common-law partner, or parent, can become the plan holder. This measure is in place until 2016 and is intended to provide time for provinces and territo-

ries to develop long-term solutions to address legal representation issues

- A public department agency or institution that is legally authorized to act for the beneficiary.

The holder is responsible for managing the account. The person with the disability is the beneficiary of the RDSP. The beneficiary, or his or her legal representative, has the authority to withdraw funds. A beneficiary may have only one RDSP at a time.

### WHO CAN CONTRIBUTE TO THE RDSP?

The contributions to the RDSPs are twofold — private contributions and government contributions. Each is explained below.

#### Personal contributions:

Once an RDSP is opened, anyone can contribute to the RDSP with the written permission of the holder:

- The beneficiary can contribute
- Parents can put money into the RDSP for their child
- Others can also contribute – grandparents, other relatives, etc.
- If a parent dies, proceeds of the parent's Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RIFF), or Registered Pension Plan (RPP) can be transferred to the RDSP of a child or grandchild who was financially dependent on the deceased. These rollover contributions will be subject to the life-time private contribution limit of \$200,000, and are tax-free. The government will not match the transferred money with the Canada Disability Savings Grants.

There is no limit on how much can be added to the RDSP each year through private contributions, but there is currently a life-time maximum limit of \$200,000 in private contributions. Private contributions are permitted until the end of the year in which the beneficiary turns 59. They must be used for the beneficiary, or go to the beneficiary's estate, on his or her death. Earnings of the plan are not limited and depend on the length of investment and type of investment. Private contributions to the RDSP are not tax-deductible. However, income earned in the plan will not be taxed while in the plan. This is called tax-

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<sup>1</sup> For more information on "capacity" please see page 55 in the chapter about Wills.

deferred income, which means that it will be taxed when the money is withdrawn from the plan. Note that it will be taxed at the beneficiary's rate per that fiscal year.

**Government contributions:** This is what makes the RDSPs attractive. The federal government contributes to the RDSP in the form of government grants and bonds. Once the RDSP is opened, the grants and bonds can continue up to the end of the year in which the beneficiary reaches the age of 49. Both grants and bonds are income-tested, meaning that they depend on the family income.

Canada Disability Savings Grant (CDSG) is a “matching” grant. It means that, depending on the net family income and the amount contributed, the federal government will match individual contributions by 300%, 200%, or 100%, depending on the beneficiary's family income and the amount of annual contribution. An annual maximum of \$3,500 may be paid by this grant, up to a life-time maximum of \$70,000.

Example of Grant amount (2014 levels)

Beneficiary family income 2014	Personal contribution	Grant amount	Maximum grant	Total (personal contribution and grant)
\$0 – \$87,907	On the first \$500 contributed	\$3 for every \$1 contributed	\$1500	\$2,000
	On the next \$1,000 contributed	\$2 for every \$1 contributed	\$2,000	\$3,000
\$87,908 or no income tax filed	On the first \$1,000 contributed	\$1 for every \$1 contributed	\$1,000	\$2,000

**Canada Disability Savings Bond (CDSB):**

Depending on the beneficiary's family income, the government will also contribute up to \$1000 annually, with a life-time limit of \$20,000. If the beneficiary's family income exceeds certain prescribed amounts, the entitlement to the Canada Disability Savings Bond will be reduced or eliminated. You do not have to make any contributions to the plan in order to receive the Bond.

Example of Bond amount (2014 levels)

Beneficiary's 2014 family Income	Annual Bond amount
\$0 – \$25, 584	\$1,000
\$25,585 – \$43,953	Bond reduced on a prorated basis
More than \$43, 954 or no income taxes filed	None

**HOW IS BENEFICIARY'S FAMILY INCOME DETERMINED?**

The amount of the government grant and bond which will be contributed to the RDSP is dependent on the beneficiary's family income. Until the beneficiary turns 18, family income is based on the income information which was used to determine the Canada Child Tax Benefit for that beneficiary.

Beginning the year when the beneficiary turns 19, family income is based on the beneficiary's own income (with that of his or her spouse, if applicable), based on the beneficiary's income tax return.

**OPENING THE RDSP**

The RDSPs are typically set up with major financial institutions. Most major banks offer these plans. In Saskatchewan, some Credit Unions also offer them. Check with your bank, Credit Union, or financial advisor for more information.

In its 2010 budget, the federal government announced that when you are opening an RDSP, you may claim unused grant and bond entitlements from the past 10 years, beginning in 2008 when the RDSPs were introduced. (This means, for example, that if you open an RDSP in 2014, you can claim unused grants and bonds only for the previous six years. But if you open an RDSP in 2018, you may claim grants and bonds for the previous ten years.)

The Checklist at the end of this chapter is adapted from information prepared by the South Saskatchewan Independent Living Centre. You can use it when you are ready to open an RDSP.

## HOW MUCH CAN THE RDSP BE WORTH?

Planned Lifetime Advocacy Network (PLAN) (a family-led organization founded to secure the future for people with disabilities) has an RDSP Calculator on their website ([www.rdsp.com/calculator](http://www.rdsp.com/calculator)). This calculator can help you project the estimated value of an RDSP based on your family income, length of time you will be contributing, your investment strategy, and age of the beneficiary when he or she plans to start withdrawing funds. The calculator determines the amount of grant and bond for which a person is eligible, and the approximate value of future payments.

### A scenario

Jane is 30 years old and has just learned about the RDSPs in 2014. Her family income is \$24,910 in 2014, and she opens an RDSP. She can claim bonds and grants for 2014, as well as for 2013, 2012, 2011, 2010, 2009 and 2008 (these are the six years since the program was instituted that she is entitled to claim).

Jane's mother contributes \$1,500 into Jane's RDSP this year, and another \$1,500 for each of the six years she missed out on — \$10,500 in total.

The government puts \$3,500 of grant money into Jane's RDSP (\$1,500 for the first \$500 Jane's mother contributed and \$2,000 for the next \$1,000 Jane's mother contributed) for each of the seven years — \$24,500.

Jane can also claim \$7,000 in Bonds from the government (\$1,000 x 7 years).

So Jane now has \$42,000 in her RDSP, of which \$10,500 was contributed by her mother.

## WITHDRAWAL FROM THE RDSP

Under Saskatchewan Law, any funds held in an RDSP, or any money withdrawn from an RDSP, do not affect that person's eligibility to benefits received from the Saskatchewan Assured Income for Disabilities Program (SAID), or social assistance.

The RDSPs are meant as a long-term savings plan. The government contributions (the grant and the bond) are intended to encourage savings and must remain in the RDSP for at least ten years. If the beneficiary withdraws any funds from the plan, dies, or loses eligibility for the disability tax credit, any government bond or grant received in the past 10 years must be repaid.

Whenever money is withdrawn from an RDSP, all or part of the grants and the bonds that have been in the RDSP for fewer than 10 years must be repaid to the Government. You must repay \$3 for every \$1 that is taken out, up to the total amount of grants and bonds paid into the RDSP in the last 10 years. Repayments to the Government of Canada will be applied starting with the oldest grants and bonds paid into the plan first, and then toward the newest.

This is called the **10-Year Assistance Hold-back**. The government did this to encourage long-term savings and growth through compound interest. The RDSP is like a pension plan, to be used later in life. It is not meant to be a short-term income opportunity.

Private contributions and interest earned on the private contributions are not affected by the ten-year rule. If the government does not add any money to your RDSP (i.e. if you refuse all grants and bonds), you can basically withdraw from your RDSP any time you want. The only limitations would be if your bank has any withdrawal restrictions, or after you turn 60, there is a minimum annual withdrawal you must make.

The government contributions will be maximized if the RDSP is used to provide funds in retirement and withdrawals begin at the age of 60. By definition, the government grants and bonds are contributed only to the RDSP up to the beneficiary's age of 49. So if you begin withdrawing at the age of 60, ten years will have passed and no portion of the grants or bonds will have to be returned.

## To sum up:

Any government contributions older than ten years always belong to the beneficiary. In all cases and at all times, the beneficiary gets to keep all of the money from private contributions, as well as any and all interest earned.

The worst case scenario with an RDSP is that you might have to pay back some of what the government put in your plan—money that was not yours in the first place.

## Are there any exceptions to the ten-year assistance holdback?

In some cases, beneficiaries of the RDSPs have a shortened life expectancy (i.e. a life expectancy of five years or less). In such cases, the Government of Canada offers some flexibility when making withdrawals from the RDSPs.

Beneficiaries with a life expectancy of five years or less are able to withdraw up to \$10,000 per year in taxable savings, subject to certain conditions. The amount includes grants, bonds, and earnings. In addition, beneficiaries can withdraw a pro-rated amount of their plan contributions. Repayment of any remaining grants and bonds paid into the plan within the preceding ten years is not required until the death of the beneficiary.

To take advantage of this measure, the plan holder(s) must submit a request to the financial organization, along with a medical report. The financial organization will then notify Human Resources and Skills Development Canada of the change to the plan.

## Types of payments:

Withdrawals from RDSPs are called payments. There are two types of payments:

### Disability Assistance Payment (DAP):

DAPs are one-time withdrawals that can be paid any time after the RDSP is established.

### Lifetime Disability Assistance Payment (LDAP):

Once the beneficiary reaches the age 60,

regular withdrawals from the plan must begin. Once started, LDAPs must continue to be paid at least once annually until the beneficiary dies or their plan is closed.

Beneficiaries can withdraw from their RDSP at any time. However it is important to be aware of the Assistance Holdback Amount (discussed above). If you decide to withdraw before the ten year waiting period is up, you will have to pay back any grant or bond that has been received during the last ten years.

## WHO CAN RECEIVE PAYMENTS FROM THE RDSP?

Only the beneficiary is permitted to receive payments from the plan.

## WHAT HAPPENS TO THE RDSP WHEN THE BENEFICIARY DIES?

The beneficiary of the RDSP owns the RDSP and its property. The RDSP is terminated at the end of the year following the year in which the beneficiary died. Proceeds of the RDSP will pass to the estate of the beneficiary. If the beneficiary has made a Will, the RDSP property will be distributed according to the terms of that Will. However, if the beneficiary did not have legal capacity to make a Will, or for any reason has not made a legal Will, then the RDSP will be distributed according to the rules of dying intestate (for more information on dying intestate please see chapter on Wills, page 57). Any grant and bond amounts which have been received within ten years prior to the death of the beneficiary must be repaid to the government. As for taxes, personal contributions to the RDSP are not taxable, but the remainder (federal contributions – grants and bonds – as well as growth and interest) will count as income and will be taxed as part of the beneficiary's estate.

The government considers every dollar withdrawn from an RDSP to be made of three parts: private contributions, government contributions, and income/growth. When you withdraw money from an RDSP, private contributions are not subject to tax. Both federal contributions (grant and bond) and income/growth count as income. You will have to pay tax on them.

## WHY ARE MORE PEOPLE NOT OPENING AN RDSP?

### Awareness

The general public, including parents of children with disabilities, are not well informed of this program. Neither are many lawyers and financial planners who work with families. For the federal government, organizations working with people with disabilities, lawyers, and financial planners, the challenge is to ensure that all people who are eligible for the RDSP become aware of it, and have the financial literacy to understand how it works and how they can use it. The 2014 Senate's banking committee report suggests that only 15% of eligible Canadians have opened an RDSP so far.

### Disability Tax Credit as a condition of being eligible for the RDSPs

The Disability Tax Credit (DTC) is the “gateway” to the program. This means that in order to be able to open a RDSP the individual has to be eligible for the DTC. This stipulation deters some people from applying for the RDSP because they think that the DTC, like other tax credits, is only for people who work and who have income. However, this is not the case. The federal government has chosen the DTC as the tool to determine whether or not a person has a disability.

### Challenges securing the medical form needed to qualify for the DTC

To qualify for the disability tax credit, a doctor or another specially qualified person must certify on a prescribed form, T2201, that the person “has a severe and prolonged impairment by reason of which the person is markedly restricted in his or her activities of daily living, and that the impairment has lasted or can reasonably be expected to last for a continuous period of 12 months.” A large number of people with disabilities do not have a regular general practitioner (GP). When they need medical attention they use a walk-in clinic. It is therefore difficult for them to find a doctor who knows them well enough to sign the form. In addition, some doctors charge a fee for filling the form, which may be a barrier for some people.

## The application is rejected for the DTC

Sometimes people get rejected when they apply for the DTC. But as one person told us,

*You need patience. There is no limit as to how many times you can apply for it. The people on the other end – the adjudicators – they are only people. So apply more than once. If you apply and get rejected, apply again. I know many people who have been rejected and then apply again and then they get accepted simply because it is a different adjudicator at the other end.*

## Advice from independent financial planners is not readily available

At present, the cost of administering the RDSPs is huge so you can only open an RDSP at most major Canadian banks and financial institutions. Independent financial planners and advisors may not be aware of the RDSPs, or may not be interested in providing advice if they are not administering the RDSPs.

## Legislation

The rules vary in provincial and territorial jurisdictions across Canada. Different legislation across Canada means that sometimes adults with disabilities who have no one to legally help them, have been unable to open an RDSP.

*My child is an adult, but we don't have property guardianship. The bank won't open an RDSP unless it is in [my child's] name, but he doesn't have full legal capacity to enter into a contract. We don't want to spend all that money on legal fees to obtain property guardianship in order to get control on behalf of [our child], but the bank insists that it has to be in his name..., so it is a “Catch-22” for us.*

## Perceived lack of control over the RDSP once the beneficiary turns 18 or after the beneficiary dies

When parents open an RDSP for a minor child, they are the holders of the RDSP. However, once their child turns 18, parents are not sure whose property it becomes and who has control over the funds.

One lawyer observes:

*Some of my clients have been advised, by financial advisors or banks, that [the RDSP] becomes the property of that person when he or she turns 18, with their authority to control. So you may have a case where parents are contributing to an RDSP prior to this person turning 18, thinking they have control and then all of a sudden the person who is the beneficiary of this RDSP is now turning 18 and has control of it and is freezing out the parents who were actually the ones who contributed to this RDSP.*

According to Employment and Social Development Canada, if the plan was opened while the beneficiary was a minor, at the age of majority the beneficiary will become the holder if he or she has the capacity to enter into legal contracts. If he or she does not have that capacity, their parents, or legal guardian may remain the holder, or one of the holders. If the beneficiary has a legal representative other than the parent(s) such as a guardian or Public Guardian, then that legal representative may become the holder.

This may be one of the reasons why parents see the need for applying for a property guardianship order once their child turns 18.

Some parents are also concerned about what will happen to the money in the RDSP if their child, the RDSP beneficiary, dies. If the beneficiary has not made a Will, or did not have the legal capacity to make a Will, the money will be distributed according to the Intestacy rules. If the parents are no longer alive and the beneficiary is living with someone else, that married or common law partner could receive a share of it. If there are siblings, they could also receive a share of it.

### **Can the account holder of an RDSP be changed?**

Yes. Over the lifetime of a plan, the account holder can change. For example, if the mother of the beneficiary establishes the plan and is a holder, after her death, her beneficiary or the beneficiary's subsequent legal guardian can become the plan holder. If at any time the plan holder (other than a legal parent) ceases to be an eligible holder, they must be replaced with someone who is eligible to be a holder of the plan.

## **RDSP FREQUENTLY ASKED QUESTIONS**

### **Can we use the funds in the RDSP to repay the government grants and bonds if we withdraw the money before the ten years are up?**

Yes, you can.

### **Can a person on SAID or social assistance still withdraw payments from the RDSPs?**

Yes. On September 4, 2008, the Saskatchewan Minister of Social Services announced that the assets and income of an RDSP, including funds withdrawn from an RDSP for payment to a beneficiary, are exempt when determining eligibility for the Saskatchewan Assured Income for Disability Program (SAID), or the Saskatchewan Assistance Program (SAP).

Money paid out of an RDSP will also not affect eligibility for federal benefits such as the Canada Child Tax Benefit, the Goods and Services Tax Credit, Old Age Security, and Employment Insurance Benefits.

Please visit [www.disabilitysavings.gc.ca](http://www.disabilitysavings.gc.ca) for up-to-date information.

### **Why should I use an RDSP rather than a discretionary trust when planning the financial future of my child?**

The major advantage of an RDSP over a discretionary trust is the ability to collect the Canada Disability Savings Grants and the Canada Disability Savings Bonds. In addition, the costs of setting up and maintaining a trust may reduce the received benefit of the trust, unless there is a significant amount of money used to set up the trust.

*One financial planner put it this way:*

*It's a no brainer. Any person with a disability or any parent of a child under 49 with a disability should be opening an RDSP, and especially if [the person with disability] is between 18 and 49. It's like free money! People should be opening it and just let the money go in. If the child is an adult and has a low income, they are almost guaranteed to get the bond and the full matching grant.*

### **If I open an RDSP for my minor child, what happens when my child turns 18? Will I continue to be the holder of the RDSP or will my child become the holder?**

If the beneficiary, in this case your child, has the capacity to enter into legal contracts, she or he will become the holder when they reach the age of majority. If your child does not have the capacity to enter into legal contracts at the age of majority, and you were the holder or one of the holders before, then you may remain the holder. A legal representative, such as a guardian, or the Office of the Public Trustee and Guardian can also become the holder.

### **RDSP GLOSSARY**

**Annual Income:** This is the beneficiary's net family income as defined by the Canada Revenue Agency that takes into account any credits and deductions received.

**Beneficiary:** The person eligible for the Disability Tax Credit; the person who owns the RDSP.

**Canada Disability Savings Bond:** A federal government contribution to the RDSP of up to \$1,000 a year to a maximum of \$20,000.

**Canada Disability Savings Grant:** This is matching federal money that can be received if the beneficiary, family or friends contribute into the RDSP.

**Contributors:** Parents, grandparents, other family, friends, associations, charities, foundations. Anyone authorized by the holder can contribute to the RDSP.

**Disability Tax Credit:** A non-refundable tax credit which is used to reduce the income tax the beneficiaries pay on their tax returns. It can be claimed by anyone with a "severe and prolonged" disability. It can also be transferred to unpaid caregivers. Application for the Disability Tax Credit is done on the Income Tax Form T2201.

**Holder of the RDSP:** A person who is legally authorized to manage and make decisions regarding an RDSP. In some cases, the holder and beneficiary will be the same person, while in other cases the beneficiary and holder will be different people.

**Payments:** Monetary withdrawals from the RDSP are called payments. There are two types of payments:

**Disability Assistance Payment (DAP):** DAPs are one-time withdrawals that can be paid any time after the RDSP is established.

**Lifetime Disability Assistance Payment (LDAP):** These are regular withdrawals that must begin by age 60 (but may begin earlier). Once begun, LDAPs must continue to be paid at least once annually until the beneficiary dies or the plan is closed.

**Private contributions:** This is any money contributed into an RDSP by the individual, family or friends.

**Tax-deferred income:** The growth of money in an RDSP will not be taxed until the money leaves the plan. When it is taken out of the plan, the growth is subject to tax.

**Tax-free growth:** The growth of money invested in a registered savings plan which will not be taxed. RDSPs do not have tax-free growth.

## WHERE TO GET MORE INFORMATION ABOUT RDSPs

Employment and Social Development Canada – for information about the Bonds and Grants:

- Call: 1-866-204-0357
- TTY: 1-866-260-7723
- Email: [rdsp-reei@hrsdc-rhdcc.gc.ca](mailto:rdsp-reei@hrsdc-rhdcc.gc.ca)
- Website: <http://www.esdc.gc.ca/eng/disability/savings/index.shtml>

Government of Canada website: Here you will find information about assessing eligibility for provincial and territorial programs and services, and Information about the Grants and Bonds:

- Call: 1 800 O-Canada (1-800-622-6232);
- TTY: 1-800-926-9105;
- Email: [rdsp-reei@hrsdc-rhdsc.gc.ca](mailto:rdsp-reei@hrsdc-rhdsc.gc.ca);
- Website: [www.disabilitysavings.gc.ca](http://www.disabilitysavings.gc.ca)

Canada Revenue Agency - Information about RDSP:

- Call: 1-800-959-8281;
- TTY: 1-800-665-0354;
- Web site: [www.cra.gc.ca/disability](http://www.cra.gc.ca/disability)

Planned Lifetime Advocacy Network (PLAN):

[www.plan.ca](http://www.plan.ca) and [www.rdsp.com](http://www.rdsp.com)

RDSPs and Adults With Mental Disabilities, Saskatchewan Ministry of Justice and Attorney General, March 2011

<http://www.justice.gov.sk.ca/RDSPs-and-Adults-with-Mental-Disabilities.pdf>

## OPENING THE RDSP: A QUICK CHECKLIST<sup>1</sup>

This is a simple step-by-step guide to help you along the path of opening an RDSP. As you complete each step, check off the box next to it. Once you have completed all steps, you will be on your way to ensuring better long-term financial security through a RDSP.

### To open an RDSP, you must first make sure you meet the following eligibility requirements:

- You are under 60 years of age,
- You are a Canadian resident,
- You are eligible for the Disability Tax Credit (DTC),
- You have a social insurance number.

If you meet these requirements, then you can start the simple step-by-step process of opening an RDSP.

### **STEP 1: Identify the Beneficiary** (The beneficiary is the person who meets the above requirements and will receive the money in the future.)

- Name of Beneficiary:  
\_\_\_\_\_
- Fill out the DTC forms with your doctor or other qualified person. Mail the forms to one of the Canada Revenue Agency addresses provided in the DTC application.

### **STEP 2: Identify the Holder** (The holder of the RDSP is the person or organization that opens and manages the RDSP, if required).

- Name of Holder:  
\_\_\_\_\_

<sup>1</sup>This checklist was adapted from the South Saskatchewan Independent Living Centre's Checklist.





**POWER OF  
ATTORNEY,  
ENDURING POWER  
OF ATTORNEY, HEALTH  
CARE DIRECTIVE  
(LIVING WILL)**



# POWER OF ATTORNEY, ENDURING POWER OF ATTORNEY, HEALTH CARE DIRECTIVE (LIVING WILL)

In addition to writing a Will and preparing a financial plan to secure your son's or daughter's future, there are two other documents that often form part of an estate plan and can contribute to your peace of mind. They are (a) Power of Attorney, or Enduring Power of Attorney, and (b) Health Care Directive.

## POWER OF ATTORNEY

In 2002, the province of Saskatchewan enacted The Powers of Attorney Act. For detailed information about the Act see page 137.

The term power of attorney refers to the written authority granted by you (the grantor) to another party (the attorney) to make financial decisions on your behalf.

A power of attorney is a tool which is available to you while you are alive. Think of situations in which you might not be able to act on your own behalf, either because of incapacity or for other reasons (such as being out of the country for an extended period of time). The power of attorney gives another person the power to represent you, and to act on your behalf in various situations. You might decide to give someone power of attorney when you feel that your mental capacity is weakening because of age or illness, when you feel that you are no longer capable of managing your financial affairs adequately, or simply when you are planning to leave the country for a while and need someone to take care of your financial arrangements while you are away.

Authority can be limited to very specific decisions (such as decisions with respect to a specific property or bank transactions, such as paying bills), or to a specified length of time (for example while you are on a holiday abroad).

This Act was amended in 2013 by The Powers of Attorney Amendment Act. The amended Act will allow individuals who hold power of attorney over an estate to make gifts from that estate. Attorneys will be allowed to make a gift out of the estate when the power of attorney document specifically permits it, or when the attorney has reason to believe the property owner

would have made the gift, subject to certain limits. The Act also contains new rules for attorneys when reporting on the finances of an estate.

Your attorney should be someone you know and trust completely and who is very capable of handling your affairs. You should consider very carefully whether you wish to impose any restrictions on the powers of your attorney, especially your property attorney. Your property attorney could seriously deplete or eliminate your financial assets.

Unfortunately, there have been instances where people did not let the individual know that he or she was appointed as their attorney. Please inform your attorney about his or her appointment, and ask to make sure that he or she accepts the responsibility.

There are certain conditions that the person who you name as your attorney must meet. At the time he or she begins acting as your attorney, he or she must be 18 years of age or older and have legal capacity. He or she must not be in the business of providing personal or health care services to you, such as home care or nursing home services. In the case of your property attorney, he or she must not be an undischarged bankrupt.

Another important condition that your attorney must meet, at the time he or she begins acting as your attorney is that he or she must not have been convicted within the last ten years of a criminal offence relating to an act of violence, theft or fraud.

The power of attorney can be springing. "Springing" means that you specify in the document when the power of attorney comes into effect. Until the new legislation was enacted, the power of attorney came into effect at the time you signed it. With the new legislation, you may delay the time at which it comes into effect. You can indicate some specific time, or you can specify an event upon which the power will become effective. Springing power of attorney is also sometimes called contingent power of attorney.

Unless it is “enduring,” the power of attorney becomes ineffective, or invalid, at the date that you, the person giving the power of attorney, lose your mental capacity.

## ENDURING POWER OF ATTORNEY

All provinces and territories of Canada, except the Northwest Territories, have introduced enduring or continuing powers of attorney legislation.

You may use an enduring power of attorney to appoint a personal attorney, a property attorney, or both personal and property attorney. You may appoint the same person to be both your personal and property attorney, or you may appoint different people to fulfil each role.

You, as the grantor, can cancel a power of attorney or enduring power at any time assuming that you have mental capacity. If you become incapacitated, and somebody has a concern about the actions of your attorney, they can demand an accounting. This means that they can ask the person appointed as your attorney to provide details of the actions they have taken on your behalf, such as any financial transactions. They can even apply to court to have the power of attorney revoked. If you regain your mental capacity at some later time, you may revoke the power of attorney then, if you wish to do so.

An enduring power of attorney continues during your lifetime until death, meaning that it is valid until your death as the grantor, even after you lose the capacity to make and understand financial decisions.

An enduring power of attorney must be in writing, dated and signed by you, the grantor. It has to be witnessed either by a lawyer, or by two adults who are mentally sound, and who are not the attorney or family members of either the attorney or the grantor. It also has to be accompanied by a witness certificate in the prescribed form. All the necessary forms are available in the Powers of Attorney Regulations, and you can download them for free at the Saskatchewan Justice website<sup>1</sup>.

If you have a child with a disability, your enduring power of attorney can give the person you appoint as your attorney the power to use your funds for the benefit of your dependent child even after you become incapacitated.

Your personal attorney may not make health care decisions on your behalf. See below on how to set out your health care decisions in a health care directive or how to appoint a proxy to make health care decisions on your behalf.

## HEALTH CARE DIRECTIVE

A Health Care Directive, sometimes referred to as Living Will, gives directions about your wishes on medical treatment to your treatment providers, including consent to treatment, refusal of treatment and withdrawal of treatment. It comes into effect when you are no longer able to make your own health care decisions and communicate your wishes, and it remains in effect until you recover your capacity.

In Saskatchewan, *The Health Care Directives and Substitute Health Care Decision Makers Act*<sup>2</sup>, proclaimed in 1997, allows you to write your own health care directive. A health care directive may be made by any person 16 years of age or older who has the capacity to make a health care decision. Capacity to make a health care decision means that you have the ability to understand relevant information about a proposed treatment and to appreciate the reasonably foreseeable consequences of making or not making a health care decision.

The health care directive has two complementary parts, and you should include both of them. They are instruction directive and proxy directive. In the instruction directive you specify instructions about medical treatment you would or would not want when you are no longer able to make or communicate your own health care decisions. You can also indicate specific health care choices you would want your proxy to make in particular situations.

<sup>1</sup>The website address is: [www.gp.gov.sk.ca/documents/english/Regulations/Regulations/p20-3r1.pdf](http://www.gp.gov.sk.ca/documents/english/Regulations/Regulations/p20-3r1.pdf)

<sup>2</sup>The Act is available from the Saskatchewan Justice website as [http://www.justice.gov.sk.ca/Health-Care-Directives-and-Substitute-Health-Care-Decision\\_Makers\\_act](http://www.justice.gov.sk.ca/Health-Care-Directives-and-Substitute-Health-Care-Decision_Makers_act)







**GUARDIANSHIP  
OF MINOR CHILDREN**



# GUARDIANSHIP OF MINOR CHILDREN

People with minor children often make a provision in their Will to appoint a guardian if both parents die (if one parent dies, the other parent usually becomes the sole guardian automatically). In Saskatchewan, minor children are children under the age of 18.

When both parents die, other family members usually step in and take care of the children, even without a court order. They can then apply to the courts to become guardians of minor children. In some cases, this could lead to a court battle if, for example, grandparents on both sides apply for guardianship. If you do appoint a guardian in your Will, the court will take your recommendation into consideration when making the decision.

Under Saskatchewan law, parental appointment of a guardian is not binding on the courts. If a minor child is left without parents, the courts will decide who shall be the guardian. A deceased parent's appointment can be disregarded and another person can be appointed as guardian. This doesn't, however, mean that a clause in your Will appointing a guardian is useless. On the contrary, the wishes of parents are always an important factor when the court is deciding who should act as guardian for minor children.

You should also provide alternative guardians in case the person you have appointed is unwilling or unable to act. Also, if you plan to name a married couple, you should think about who should continue as guardian in the event they separate or divorce.

A judge will decide what he or she deems to be in the best interest of the minor children. In most cases, the judge will consider what you have expressed in your Will. If you do not name anyone in your Will, then you will have no influence over who will take care of your children.

If no family member or anyone else steps forward to become a guardian, the Public Guardian and Trustee may apply to the court to become the guardian of the child's property.

When we discussed with families the issues of selecting a guardian for their minor children, three major concerns emerged:

1. What to look for when selecting a guardian.
2. How to initiate discussion with the potential guardian.
3. Talking about the financial implications of becoming a guardian.

## WHAT SHOULD WE LOOK FOR WHEN SELECTING A GUARDIAN?

Most parents felt that the potential guardians should understand their intent and have a similar approach to parenting.

- *Two of the things that we looked at were things like their parenting style and their lifestyle. They were big factors. Their qualities as human beings. Then there was also the practical side. In the worst-case scenario if we were to die today, and there was no money for our child, could this family take care of her? But the most important thing is that we put trust in the proposed guardian.*

Some parents were very concerned with making sure that the person they asked to be guardian of their child would respect the wishes of the child, just as the parents do now and as they would wish for their child in the future.

- *Supported decision-making – that is crucial for me. How much will they allow my child to be involved in his own decisions? As the potential guardian, are you going to be supportive and allow him to make choices or are you going to say, “Do as I tell you”?*
- *I would like to communicate to someone who will be in the position to support my daughter that I expect not only my wishes be honoured, but also that they continue to explore options for my daughter. I need to know that they will support her in discovering her place in the world and that they will accept her wishes as part of that process. That is an important issue too.*

Then there are also more practical concerns – such as the age of the potential guardian. On the one hand, an older guardian may be in a better financial situation and have more time to be hands on while raising your children. On the other hand, an older guardian might become ill or die before the children become adults. The same applies to an older sibling who might be in college or beginning their career and not in a position to raise their younger sibling.

Another question to think about is where does the potential guardian live? It is unreasonable to think that if you die and the guardian lives in another town or province, they would relocate. It is more likely that your children will move in with them. So think about how comfortable you are about your children being raised elsewhere.

Some people linked the issue of guardian to the idea of developing a personal support network, and having a group of people involved, rather than just one individual.

Information on how to develop a support network was already discussed in the chapter on creating a vision (page 23) and various models that can be an inspiration to you are listed in Appendix 1 on page 135. Please note that a support network does not have the legal status that a guardian does.

Selecting a person or persons who should take over the care of your minor children in case both parents die, can be a difficult process. We hope that the experiences and comments of parents to whom we spoke will help you along the way.

## HOW DO WE INITIATE DISCUSSION WITH THE POTENTIAL GUARDIAN OF OUR CHILDREN?

Before finalizing the appointment of a guardian in your Will, you should discuss any such decision with the person(s) you want to appoint, to make sure that they are willing to assume that responsibility.

*I think an important question is how families sit down with the relatives and ask them if they would be willing [to become a guardian]. That was one of*

*the toughest things for me. Which one of my siblings was I going to ask to take over this huge, huge responsibility? And would they be willing to do that? These are serious questions to think about. It is a big job, and an honour, too. And there's that trust. You really have to trust them.*

*Sometimes I wonder, when people consent to being guardian, whether they don't do it just from a sense of obligation. I mean, it's an honour to be asked, right? But I wouldn't want someone to say yes without fully understanding what they are getting themselves into. Because the concerns are very different from being a guardian to [children without disabilities]. It's not like you are going to have a fourteen year old who is going to be with you for a few years and then be off doing her own thing. You are going to have other concerns for a long time because of my daughter's needs. I'm not saying that the people we named wouldn't do that and that they aren't aware of that, but I would want them to think about how much they are willing to give up.*

Several families talked about how difficult it is to initiate such conversation:

*I think part of the problem is that with people you know well, it is really hard to talk about certain things. But, for example, if you had this Guide and you said, "Look, SACL has proposed that these are good questions to ask, we could explore them," it would maybe make it easier to ask questions.*

One parent shared with us the experience of talking to her brother and his wife, and how difficult it was at first, but how well it worked out.

*It was so difficult to ask my brother and sister-in-law if they would take our kids if something happened to us! We were afraid to ask. Who wants to ask somebody else to help with your son or daughter's most personal things? You know, that's the reality for our son. Who am I going to ask to do that? Who is my son going to feel comfortable with?*

*When we finally asked them, they knew how much work it was already and that is why they asked for*

*time to think about it. I said to my sister-in-law, "Please don't say yes immediately; think about it first." And she said, "You know, my first thought was to say 'yes, I can do this.' Then you started saying stuff and we started thinking. But we never changed our minds." They asked for time to think about it and then they called us two weeks later and said, "OK, but we have a lot of questions." I would say we talked with them for a good two hours.*

*I find that our relationship has changed a little. It's better because they are interested in our kids and they ask more questions and they want to know about them. I guess, at first it was kind of awkward. They didn't know how far they should push or how deep they should go in asking these questions, but now they are quite comfortable asking us. If something happens, they are very interested and want to know.*

Other parents brought up the question of talking to their other children about their sibling. It is important that parents ensure their other children fully understand the implications of becoming a guardian to their sibling with a disability. For some, that was easy and natural.

*My son is 22 and my daughter [with a disability] is 24. So he is younger than her. I didn't have any trouble with talking to him or asking him to [become a guardian] and he didn't have any trouble with it either. He loves his sister very much and when I asked him he had no problem about agreeing.*

For others, it was not.

*We have to have a discussion with our older daughter, now that she is an adult. What does she see as her role, what are her wishes? If we are not here, does she want [her sister] to be with her? We have never actually asked her that. So there is that whole bit about having a discussion with your other children about what their hopes and dreams are for their sibling who has a disability.*

If talking about guardianship with potential guardians

of your minor children is difficult, use this Guide and the experiences of others to begin the discussion. As others have said, you will find that it takes a load off your mind, even if difficult and awkward at the beginning. You will probably find that those people you have chosen to be potential guardians will welcome the opportunity to participate in the discussions about your child with you.

## ADDRESSING FINANCIAL IMPLICATIONS OF BECOMING A GUARDIAN

It is important to talk about financial arrangements and provisions which would be available to potential guardians of your children. People might be concerned about the financial commitment that comes with the responsibility of becoming a guardian. Discussing the financial situation with them usually makes it easier for them to take on the responsibility.

Here are some things to consider when discussing guardianship:

- Does the potential guardian understand and support the opportunities I want for my child?
- Does the potential guardian have a similar approach to parenting?
- Will the potential guardian support my child's wishes?

## NOTES

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**ADULT GUARDIANSHIP  
AND ALTERNATIVES**



# ADULT GUARDIANSHIP AND ALTERNATIVES

If their son or daughter has a disability, parents sometimes (wrongly) assume that they, as parents, retain full legal authority even after their child reaches the age of majority, particularly if they have played a direct and significant role in their child's life up to this point.

However, this is not so. Once a child reaches the age of majority, which in Saskatchewan is 18 years of age, he or she is legally considered to be an adult, regardless of capacity. And in some situations, parents have no more right to make binding decisions for their adult son or daughter than they would for any other adult.

Most agencies, service providers, health professionals and others who are involved in the lives of individuals with intellectual disabilities respect the parents' *de facto* authority as parents<sup>1</sup>. But such activities as accessing medical information or applying for adult benefits may not be possible for parents without their son or daughter's consent.

In some cases, parents or others may want to consider obtaining a guardianship order for their adult family member.

Adult guardianship is a legal relationship which gives one adult legal authority over another adult. It gives one person the right to make decisions on behalf of another person, either in personal or financial matters, or both.

Applying for a guardianship order may go against what parents feel they have been striving for all their child's life – building, fostering and encouraging their independence. Why then would they take that independence away with a guardianship order? While it is true that from a legal perspective, the individual with a disability loses his or her right to self-determination, the guardians do not have to exercise their rights all the time – it may depend on the degree of the individual's capacity and ability to function independently.

In Saskatchewan, *The Adult Guardianship and Co-decision-making Act* provides a means of protection for adults who are unable to make decisions independently, and as a result, may be vulnerable to personal or financial harm.

The basic principle of the *Act* is that the best interests of the dependent adult must always be given primary consideration. Adults are considered to be able to make decisions for themselves unless it is proven otherwise. Adults also have the right to live as they please and make their own decisions, as long as they have the capacity to make those decisions and there is no apparent danger that they may harm themselves or others. Under the provisions of this *Act*, an adult is someone who is 16 or older.

The *Act* sets out the procedures for the appointment of

- a personal or property guardian for individuals who are incapable of managing their own personal or financial affairs;
- a personal or property co-decision-maker for adults who require assistance in decision-making but who do not require guardians; and
- a temporary personal or property guardian in emergency situations.

When an adult needs assistance with making decisions, the assistance must be given in the least intrusive way possible, and the adult must be involved in the decision-making process as much as possible.

In some cases, the inability to make a decision can be temporary (for example, as a result of an accident). Also, only certain types of decision-making might be affected, such as specific decisions about property, health care or living arrangements. In some cases, an adult might be able to participate in decision-making, but cannot decide totally independently. In such a case, a co-decision-maker can be appointed to assist the adult, and decisions are made jointly. Effective co-decision-making preserves the individual's right to self-determination.

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<sup>1</sup> De facto authority accepts that parents have the authority to decide based on the fact of that they are parents. De facto is different from de jure authority, in which the authority exists because the law says so.

In the past, substitute decision making mechanisms have been used for individuals with disabilities. The 2006 *UN Convention on the Rights of Persons with Disabilities* implies a shift from the substitute decision-making paradigm to one that is based on supported decision-making. Supported decision-making is a process of acting with an individual to discover their values, interests, talents and gifts in order to support them to choose the way they want to live their life. Supported decision-making is a very good tool for involving people with disabilities in making decisions about their life.<sup>1</sup>

Even if you feel that obtaining a guardianship order for your adult son or daughter is the way to go, you can still use supported decision-making to involve them as much as possible in making decisions about themselves.

The Saskatchewan *Adult Guardianship and Co-decision-making Act*<sup>2</sup> is considered the most progressive among all Canadian jurisdictions, in that it provides options and various levels of involvement of others in the life of a person with a disability.

One Saskatchewan lawyer observed:

*The legislation in this province allows guardianship and co-decision-making to be done in a way that is respectful of the rights of the person with disability and also allows to ensure they are safe and not being taken advantage of, and that they get access to all the services that are available to them, be it financial help, housing or otherwise. In my opinion, the legislation in Saskatchewan is a very progressive piece of legislation. As a lawyer, I get calls from parents of children with disabilities who are about to become 18 or who have turned 18 and I routinely encourage them to seek a co-decision-making order and if necessary in certain circumstances, guardianship order, because I think that at the end of the day it can best serve the needs of the person with a disability. There are always exceptions, there are going to be people who are looking for the orders for the wrong reasons and it is the responsibility of the advocates and the courts to weed those people out, but I think we should be encouraging the use of the legislation in appropriate circumstances.*

*The guardianship legislation is a positive step available for those who need it and there are some safeguards built in to the legislation to avoid exploitation or taking advantage of people with weaknesses or challenges.*

If you decide to apply for guardianship of your adult child, we recommend that you acquaint yourself with *The Adult Guardianship and Co-decision Act* and read the Application Manual of Adult Guardianship in Saskatchewan, published in 2002 by the Office of the Public Guardian and Trustee. The information in the Application Manual will help you in deciding whether an application should be made, how to make the application and what to do after you have been appointed guardian. The Manual also contains a simplified version of the Act and the Regulations, as well as the required forms and instructions on how to complete them.

You can download the forms at [www.justice.gov.sk.ca/Guardianship-Forms](http://www.justice.gov.sk.ca/Guardianship-Forms).

As the Act states, you can apply for the guardianship of your child when he or she turns 16. However, there is no need for you as a parent to apply until your child reaches age of majority (which is 18 in Saskatchewan) because you are legally able to make all the decision for your children until then.

If you are thinking about applying for the guardianship order, please know that it takes approximately six months to complete the application. There is a cost associated with applying for the guardianship order, and it could be anywhere between \$3,000 and \$5,000<sup>3</sup>, depending on legal fees.

If you need more information about adult guardianship, contact the Public Guardian and Trustee's office at <http://www.justice.gov.sk.ca/pgt>

<sup>1</sup>To learn more about supported decision making please see [http://www.dhs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0011/690680/dsd\\_cis\\_supporting\\_decision\\_making\\_0212.pdf](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0011/690680/dsd_cis_supporting_decision_making_0212.pdf)

<sup>2</sup>Available at [www.qp.gov.sk.ca/documents/English/Statutes/Statutes/A5-3.pdf](http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/A5-3.pdf)

<sup>3</sup>This information is based on information obtained in early 2014.



**THE SASKATCHEWAN  
ASSURED INCOME FOR  
DISABILITY PROGRAM  
(SAID)**



# THE SASKATCHEWAN ASSURED INCOME FOR DISABILITY PROGRAM (SAID)

When your child becomes an adult, it is likely that he or she will be accessing government programs. One of them is the Saskatchewan Assured Income for Disability Program (SAID).

## WHAT IS SAID?

SAID is an income support program for Saskatchewan residents who have significant and enduring disabilities. It was introduced in December 2009 and it is a separate program from the Saskatchewan Assistance Program (SAP). SAID is authorized by *The Saskatchewan Assistance Act and The Saskatchewan Income Assistance for Disability Regulations, 2012*<sup>1</sup>.

## WHY SAID?

The SAID program was established as the result of continued collaboration between the Saskatchewan provincial government and groups advocating on behalf of people with disabilities, including the SACL. With SAID, Saskatchewan citizens with significant and enduring disabilities have access to an assured income program based on the impact of their disability on their lives. The program offers more dignity to people with disabilities, as it provides greater choice of services and increases a person's participation in the community. SAID has its own name and requires less intrusive reporting. People are not required to reconfirm their disability each year. Over time, the provincial government will consider other changes which will address the unique needs of people with disabilities.

*It's like I earn my own money now because of my disability. I didn't do anything wrong; I shouldn't feel ashamed. SAID gives me respect - I can take care of myself.*

## WHO IS ELIGIBLE FOR SAID?

To be eligible for SAID an applicant must be a Saskatchewan resident who

- is 18 years of age or older,
- doesn't have the financial resources to provide for basic needs, and
- has a significant and enduring disability that
  - is likely to be of a permanent or indefinite nature, either continuously or periodically for extended periods;
  - substantially impacts daily living activities; and
  - requires the person to use an assistive device, the assistance of another person or service animal, or other accommodations.

Initially, SAID benefits were only available to individuals living in a residential care setting, approved home, group home, or family home, and having an assessed level-of-care of 2 or higher. However, the Living Income Benefit was introduced effective June 1, 2012, and SAID was expanded to include individuals in independent living arrangements. This includes renters, homeowners, and persons living in room-and-board arrangements.

Eligibility for the SAID program for those who live in semi-independent or independent arrangements is determined by assessing financial, residency, and age requirements; verifying the anticipated duration of underlying health conditions; and assessing the impact of the disability (Disability Impact Assessment). Disability Impact Assessments are conducted by a contracted assessor who is not an employee of the Ministry.

Eligibility for SAID for those in a residential care setting continues to be based on having an assessed level-of-care of 2 or higher as noted above.

People who receive SAID are supported by Assured Income Specialists who are available in 20 service centres across the province and who provide the following services:

<sup>1</sup>The Regulations are available on the Government of Saskatchewan website at [www.socialservices.gov.sk.ca/SAID](http://www.socialservices.gov.sk.ca/SAID).

- Help with applications
- Case planning support
- Referrals to other organizations who provide services
- Identifying other Ministry programs for which the person may be eligible.

## WHO CAN APPLY FOR SAID AND HOW?

Any person who is 18 or older and is eligible for SAID according to the criteria in the section above, may apply for SAID. If your adult child is not receiving benefits from SAP and you think he or she may be eligible for SAID, call 1-888-567-SAID (7243) or TTY 1-866-995-0099 or contact your local service office by phone or in person.<sup>1</sup>

People who are already receiving benefits from SAP and who meet the eligibility criteria above, should contact their SAP worker to make an application for SAID.

If you are a parent of a child with disability who has recently turned 18, it is important to remember that, according to the law, once a person is over 18 he or she is presumed autonomous and capable. Your child can complete the application for SAID or you can make an application on behalf of your child. You can also be appointed as a trustee (refer to the Trust section on page 67) to handle your child's funds if they are incapable of managing their own benefits. You should know that the SAID specialist must meet the applicant within 60 days of the application being made if they do not attend the initial appointment. The worker can accomplish this by coming to the applicant's home, or you can bring your son or daughter to the office.

If your son or daughter lives in a residential setting, including living at home, you will need to provide a medical form that shows that their level of care is 2 or higher.

## APPEALS

If your adult son or daughter was told that he or she does not qualify for SAID, it is possible to ask for that decision to be reviewed and decision can be appealed. You need to find out if the application was denied because they did not meet the financial requirements

(they may earn too much money or they may have too much money in the bank), or because their disability impact was assessed to be below the level established for eligibility for SAID.

The request for the appeal must be made in writing within 30 days of the decision. Contact the Social Services office in your area.

## WHAT IS THE DIFFERENCE BETWEEN SAID AND SOCIAL ASSISTANCE (SAP)?

Some of the key differences between SAID and SAP include the following:

- Benefits for SAID are higher than for SAP.
  - Effective June 2014, SAID benefits, on average, are over \$250 more per month than SAP for individuals living in comparable independent or in semi-independent living arrangements.
  - Those in level-of-care arrangements, including family homes, receive a personal living benefit through SAID that is \$130 per month more than provided in the Saskatchewan Assistance Program.
- Benefit Structure – as recommended by the Task Team on Income Support for People with Disabilities, SAID benefits include three main components:
  - The Living Income is a fixed amount of monthly income that gives beneficiaries the opportunity to make decisions and have more control over how to spend their income. Participants make decisions on how much to spend on shelter, food, and other items.
  - The Disability Income is intended to assist with costs related to the impact of disability.
  - The Exceptional Need Income is to assist with a number of special circumstances. For example, additional income is available for clothing recommended by a health professional, special food items, food and grooming costs associated with service animals, and homecare.
- The mandatory review period for SAID is three years, as opposed to the SAP review, which happens every year.

<sup>1</sup> Income Assistance Officers - <http://gtids.gov.sk.ca/Pages/Search.aspx?typ=simp&searchterm=income%20assistance>

## WHAT ASSETS ARE EXEMPT WHEN CALCULATING SAID ENTITLEMENT?

The following table notes financial resources that are not included in calculating SAID entitlement. Please note this list was accurate at the date of publication. For a more detailed list of income and asset exemptions please refer to The Saskatchewan Assured Income for Disability Regulations, 2012 at [www.socialservices.gov.sk.ca/SAID](http://www.socialservices.gov.sk.ca/SAID).

Liquid Assets — Partially Exempt	
New applicants are permitted to retain \$1,500 for each of the first two people in the family and \$500 for each additional family member	\$ 1,500
Money held in trust pursuant to The Dependant's Relief Act to a maximum of \$100,000	\$ 100,000
Compensation (other than for lost income) for pain and suffering related to a personal injury — \$10,000 (e.g., insurance company, Human Rights violation, domestic violence, victim of crime)	\$ 10,000
Treaty Land Entitlement claim or other claim of an Indian band — \$1,500 for each of the first two people in the family and \$500 for each additional family member	\$ 1,500
Inheritance, life insurance, and any interest earned (combined) — \$100,000	\$ 100,000
Amount saved from SAID benefit — \$1,500 for each of the first two people in the family and \$500 for each additional family member	\$ 1,500

Liquid Assets – Fully Exempt	
Registered Disability Savings Plans (RDSP)	No limit
Registered Education Savings Plans (RESP) No limit	No limit
Saskatchewan Pension Plan (SPP) – contributions of \$2,500 per adult in a family per year to the SPP are exempt. As well, the balance held in the SPP is fully exempt until age 65 (as of 2014).	No limit
Discretionary Trust Funds – no limit when used to purchase a RDSP, used for expenses related to a disability and used for an expense other than basic needs. If established through a Will, the first \$100,000 is also considered exempt as an inheritance and can be used for any purpose.	No limit
Compensation ordered pursuant to The Residential Tenancies Act, 2006, Residential school payments and claims with respect to child abuse. Please note that the exemption is for compensation other than payments for rent or a security deposit.	No limit





**ARE WE THERE YET?**









**FREQUENTLY ASKED  
QUESTIONS**



# FREQUENTLY ASKED QUESTIONS

## How can we ensure that my child can inherit money and still stay on SAID?

If your child receives benefits from the SAID program they can inherit up to \$100,000 before their SAID payments will be impacted! This \$100,000 exemption also includes money received from a life insurance policy where they are the beneficiary of the policy. For example, a grandparent could leave your child \$40,000 from their estate and \$60,000 from a life insurance policy. The total of \$100,000 will not impact SAID payments.<sup>1</sup> Be aware if your child inherits money before they apply for SAID it is possible that the inheritance will impact their eligibility for SAID.

Just a note - The government does not “take” an inheritance from a dependent person. Rather, if a dependant receives a bequest or inheritance above a certain amount<sup>2</sup>, the benefits which that person receives through SAID will be suspended until that bequest is depleted.

To avoid a claw back of benefits, you should create a discretionary trust for your dependent son or daughter in your Will. According to the Provincial Ministry of Social Services, when an inheritance has been received as a discretionary trust, the funds may be considered exempt. It depends on the terms of the trust. The Ministry of Social Services will probably ask for a copy of the Will and may ask a lawyer for an opinion about the terms of the trust.

Payments from a discretionary trust established as a result of a Will are exempt up to a maximum of \$100,000. When payments from a discretionary trust established as a result of a will exceed a total of \$100,000 the payments are not assessed as income where:

- the payment is contributed within six months to a Registered Disability Savings Plan. The time period may be extended in exceptional circumstances with the approval of the Service Manager;
- the payment is used for an expense that is related to the beneficiary’s disability (e.g., assistive tech-

- nology) with the approval of the Service Manager;
- the payment is used for an expense other than those provided for through Regulations.

The \$100,000 inheritance exemption does not apply to discretionary trusts set up outside of a will. Payments from a discretionary trust established outside of a will are assessed as noted above, without the initial \$100,000 exemption.

In order to create a discretionary trust, you appoint a trustee (or trustees) for the dependent child. The trustee is then given unfettered discretion to spend as much or as little of the income and capital of the trust fund for the benefit of the dependent child as he or she deems appropriate. The only stipulation is that the trust monies be spent only on things that “enhance the quality of life” of the beneficiary and not on the basic types of goods or services that are provided under the Social Assistance Program. The trustees are instructed to use their discretion in such a way as to “maximize the benefits” the beneficiary receives from other sources of income, such as Social Assistance.

The Will or the trust agreement should state that the trust is to be used for the benefit of the person named, and you should be careful not to say that it may be used for the beneficiary’s maintenance.

## WHERE DO I FIND ADDITIONAL INFORMATION?

The chapter on Resources (which begins on page 125) lists many books that have information on estate planning.

The Internet is also a useful tool. However, be aware that there is no guarantee that the information on the Internet is correct. Some of the information might not be correct. Always make sure that the information pertains to Canadian, and more specifically Saskatchewan, circumstances.

## WHAT KIND OF HELP CAN WE EXPECT FROM A FINANCIAL PLANNER?

Financial planners can play a significant role in Will

<sup>1</sup>The Saskatchewan Assured Income for Disability Regulations <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/S8R11.pdf>

<sup>2</sup>The SAID inheritance exemption for inheritances received after January 31, 2011 is \$100,000.

preparation and review. Specifically, they can help you to identify

- Your estate planning goals and objectives;
- The size of a trust fund that might be needed to meet particular objectives;
- Appropriate methods of bequeathing property outside of a Will, and ways to evaluate advantages and disadvantages of each;
- Methods of minimizing income tax and probate fees (or estate administration taxes) upon your death.

**NOTE:** It is not the financial planner's role to provide you with legal advice, or to help you to write a Will.

## WHAT SHOULD WE LOOK FOR IN A FINANCIAL PLANNER?

When you are looking for a financial planner, look for a “balanced perspective”:

Finding the right financial planner is a task similar to finding the right lawyer. Ask around. Check the phone book. Ask your lawyer, bank, friends or family if they recommend any particular financial planners. Check one of the two organizations whose websites are provided in the Resources section on page 125 One is the *Financial Planning Standards Council*, an organization whose goal is to establish and enforce professional standards in the field of financial planning; the other is the *Financial Advisors Association of Canada (Advocis)*, the professional organization of financial planners.

Before you select a particular planner, you should ask them questions to make sure that they understand your particular situation.

**Ask about their experience and expertise** in dealing with people who might be in a similar situation to yours. Ask for references. The planner should be able to provide you with names of clients whose situations and objectives are similar to yours. The planner should also be able to show you a sample financial plan of someone in circumstances similar to yours, and provide you with references.

**Check their credentials.** Does the planner belong to a professional organization of financial planners? Professional organizations have codes of professional conduct and continuing education requirements. The most common professional designations require courses directly related to personal financial planning. Below is an explanation of some of the letters (designations) which you might see behind a financial planner's name.<sup>1</sup>

**CPA (Certified Professional Accountant):** is a professional accounting designation that is designed to replace those granted by the three main accounting bodies in Canada:

- Canadian Institute of Chartered Accountants (CA),
- Certified General Accountants Association of Canada (CGA) and
- Certified Management Accountants of Canada (CMA)

Legislation to create the Institute of Chartered Professional Accountants of Saskatchewan (CPA Saskatchewan) was proclaimed November 10, 2014.

**CFP (Certified Financial Planner):** The CFP designation assures that the planner adheres to internationally recognized professional standards of competence and ethical practice as set in Canada by the not-for-profit Financial Planning Standards Council (FPSC). CFP professionals must renew their right to use the designation annually.

**CLU (Chartered Life Underwriter):** an advanced designation that expands on the knowledge gained in the CFP education program with a focus on estate planning and wealth transfer.

**R.F.P. (Registered Financial Planner):** Designation awarded annually by the Institute of Advanced Financial Planners (IAFP) to its members who have met and maintained the highest professional standards as established by the Institute.

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<sup>1</sup>These definitions come from the website of Advocis, the Financial Advisors Association of Canada, at [www.advocis.ca/forPublic/designations.html](http://www.advocis.ca/forPublic/designations.html)

**RHU (Registered Health Underwriter):** A person who specializes in disability income and the health insurance business. Individuals have to successfully complete course requirements to be granted this title and designation by the Canadian Association of Insurance and Financial Advisors.

**SFC (Specialist in Financial Counselling):** A designation granted by the Institute of Canadian Bankers (ICB) to individuals with knowledge and skills in matching services and products to a client's financial goals. It is earned upon successful completion of the Personal Financial Counselling Program and the Institute's Designation Qualification Process.

**TEP (Trust and Estate Practitioner):** A qualification recognized worldwide. Not many people have this qualification. These people have specialized experience in the area of trusts and estates.

Ask about the planner's independence and impartiality. Are the planner's recommendations limited to his or her company's own products and services? Ask about other products and services in the financial marketplace.

Ask about fees. Does the planner charge a fee, a fee and commission, or commission only? Can the planner estimate the cost of ongoing service?

## **DO I HAVE TO GO THROUGH A LAWYER IF I WANT TO SET UP A TRUST FOR MY CHILDREN?**

No, but the trust agreement is a legal document and should be drawn up by a lawyer. It is not a good idea to just copy a paragraph from someone else's Will or a trust agreement because nobody's circumstances are the same. Lawyers also carry a mandatory errors and omission insurance, which provides some protection in case mistakes are made in preparing the documents.

## **WHAT HAPPENS TO THE REMAINDER OF THE TRUST AFTER MY CHILD, WHO IS THE BENEFICIARY, DIES?**

When you set up a discretionary trust, you have to name a secondary (contingent) beneficiary or benefi-

ciaries, to whom the residual monies are to be distributed upon the death of the primary beneficiary. For instance, a Will can provide that upon the death of the dependent child, any monies remaining in trust will be divided equally among the surviving siblings of the dependent child. Another alternative, upon the death of the dependent child, is to leave the remaining funds in trust to a charity, such as the SACL.

## **CAN A DISCRETIONARY TRUST BE SET UP AFTER I DIE AND AFTER THE BENEFICIARY HAS ALREADY RECEIVED THE MONEY?**

As a general rule, the answer is "No". In Canadian common law, for a trust to exist for legal purposes, three criteria must be satisfied.

1. A trust must spell out its intention. It must be clear that the settlor intended that the property be held by the trustees for the benefit of one or more designated individuals (beneficiaries).
2. It must identify the property which is subject to the trust. The trust must clearly identify the exact property which is subject to the trust, and the property must be described in the trust document. There must also be a mechanism determining the interest of each beneficiary in the trust property.
3. The trust must identify its beneficiaries. It must be clear who is to benefit from the trust. The trust agreement can either nominate specific individuals, or the beneficiaries can be described by class description. For example, "all children of the settlor" is acceptable as a class description rather than having to naming each child separately.

It would be very difficult to prove, after someone's death that they did intend to set up a trust and to change the Will by putting that money into a discretionary trust.

## **CAN A PERSON WITH A DISABILITY MAKE A WILL?**

In order to make a legally binding Will, the person making the Will (testator) must have testamentary capacity and must be the full age of majority, which, in Saskatchewan, is 18 years of age. The criteria for deter-

mining whether a person has testamentary capacity to make a Will are that:

- The testator must understand what his or her property is.
- The testator must understand to whom he or she is giving the property in the Will and whom he or she is excluding. He or she must also understand the concepts of “next of kin” and “beneficiary”.
- The testator must understand the nature of potential claims on him or her by both those whom he or she is including and those he or she is excluding in his or her Will.
- The testator must understand that he or she is signing a Will.

When preparing a Will, lawyers must determine for themselves whether they believe a person has testamentary capacity. They do this by asking questions to satisfy the criteria outlined above. In some cases, a person with an intellectual disability will not be considered competent to write a legally enforceable Will. However, if it can be shown that a person meets the criteria set out above, the Will is valid.

### **WHAT DOES IT MEAN TO BE A “WARD OF THE GOVERNMENT”?**

“Ward of the government” is not a term used in current legislation. It was a term formerly used to describe a situation where there was no suitable person to become a guardian for a dependent child. In that case, if the Public Guardian and Trustee consented to be appointed, the child became a “ward.”

### **CAN A PERSON WITH A DISABILITY OWN PROPERTY (HOUSE, FOR EXAMPLE)? ARE THERE CONDITIONS ATTACHED?**

People who are receiving SAID or social assistance (SAP) benefits can own property. A home lived in by the individual, whether owned directly or by a trust, does not disqualify the individual from receiving support from the government. As long as the property is used as their principal residence, its value is not included in the calculation of financial resources determining their eligibility for social assistance. The costs of mortgages, taxes and insurance are limited to the approved shelter rates. Shelter rates vary according to

location, family size and whether there are any mobility limitations.

There is no restriction as to what property may be owned by an individual, but the question is: What might be reasonable for a dependent adult with a disability to own? In many cases, families choose to purchase a house for their son or daughter and place it in a trust. Or they establish a trust which is then instructed to pay out part of the capital to buy a home for their son or daughter. The trust then owns the home and remains eligible for principal residence exemption under *The Income Tax Act*.

Sections 14 and 15 of the SAID Regulations address the financial details of resources which are not included in the calculation of eligibility for social assistance - namely resources that one can own without the claw back of government benefits. See page 138 for more details or contact the Saskatchewan Ministry of Social Services.

### **WHAT HOUSING/RESIDENTIAL OPTIONS ARE OPEN TO MY SON OR DAUGHTER?**

Independent living is something that most people take for granted. People with disabilities often have a hard time finding a place that meets their needs and provides them with a place they can call home.

In most communities there are a number of living options for people with disabilities ranging from minimally supported living arrangements to options offering intensive medical and other services.

More and more apartment buildings are being built with adaptations for people with physical disabilities. More people with severe disabilities are looking to the community rather than nursing homes for opportunities to live independently or semi-independently. There are group homes and apartments for adults who need supervised living arrangements. Some people live with their parents, or with a sibling, grandparents or another relatives.

Some specific options that are funded by the Community Living Service Delivery are listed below<sup>1</sup>. These options are licensed and funded by the Community

Living Division (CLD) of the Ministry of Social Services.

- Group homes - homes which are staffed to provide personal care, supervision and support for usually three to six adults with intellectual disabilities. They are located in residential neighbourhoods throughout Saskatchewan.
- Group living homes - individuals who share a group living home are responsible for paying their basic shelter costs. Community Living Service Delivery provides funds for the support staff that may be required.
- Supportive living programs - provide adults living in their own apartments with the limited support and supervision they might require to live as independently as possible.
- Approved Private-service Homes are licensed private homes which provide a family atmosphere for people with intellectual and/or physical disabilities.

Sometimes, you might want to arrange for respite – i.e. a temporary care arrangement.

Respite provides temporary care for individuals of any age who are usually, but not always, living with their families. Respite can be arranged either in approved or non-approved family homes or in a staffed respite home. For more information about the possibilities and availability of respite care in your community, contact the local Community Living Division (CLD) office or the SACL. Most communities offer some respite options.

### **IF MY BROTHER BECOMES GUARDIAN OF OUR CHILDREN, WILL HE QUALIFY FOR THE SAME TAX BREAKS AS WE DO?**

Other relatives, such as a grandparent, step-parent, uncle or aunt, who have the full-time care of a dependent adult child, will qualify for the same personal tax credits as the parent. They should also claim the disability tax credit. Consult your accountant or tax expert for further details. More information is also available in the *Information Concerning People with Disabilities* and

the *General Income Tax and Benefit Guide* from the Canada Customs and Revenue Agency and from their website [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca).

### **SHOULD I LEAVE RRSPs DIRECTLY TO MY DEPENDENT SON OR DAUGHTER, OR IN A TRUST?**

The question parents often ask is, “If I roll over my RRSPs to my dependent child, will he or she lose the government assistance benefits?”

If you name your dependent son or daughter as the beneficiary of your RRSPs, then the RRSPs can be transferred without any immediate tax implications. But, if your dependent child has more than \$1,500 in liquid assets, his or her social assistance benefits will be cut off. (A liquid asset is anything that can be easily converted into cash.)

If the beneficiary of your RRSPs is your estate, then the RRSP can go into trust, which you would establish in your Will. Then, if your dependent son or daughter is the beneficiary of the trust, they will not lose the government assistance benefits. Making your estate the beneficiary of your RRSPs will mean that your estate will incur additional probate fees but, as mentioned earlier, probate fees are \$7 on each \$1,000 of your estate, and therefore are not a significant amount.

It is important to consult with a professional who has experience in the area of tax planning as well as an understanding of the issues connected with the social assistance benefits. Such professional can help you decide which strategy is beneficial to your dependent child.

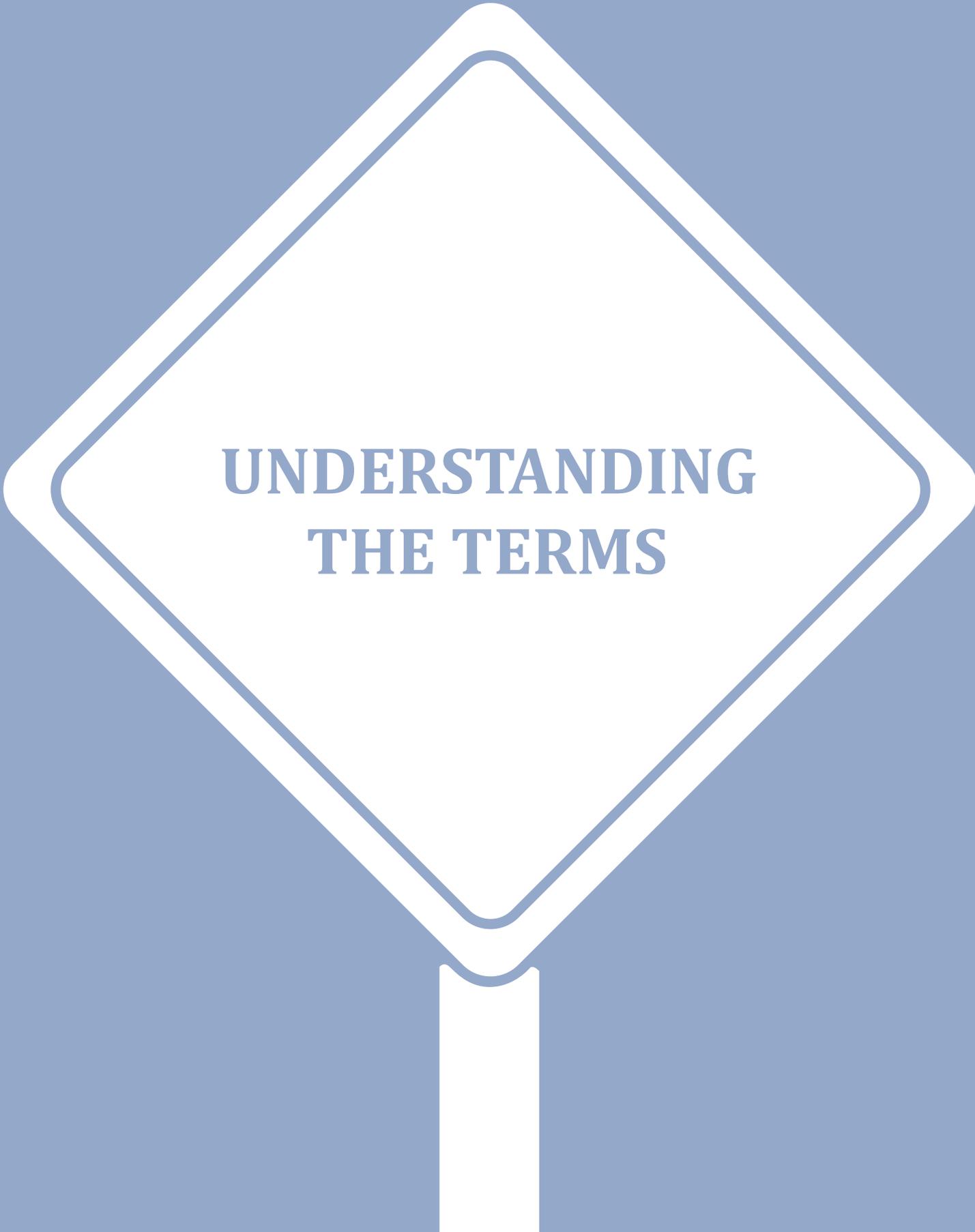
### **WHAT IS THE CORRECT WORDING IN LIFE INSURANCE, RRSP AND PENSION PLANS TO ENSURE THAT THE PROCEEDS WILL GO TO A TRUST AND NOT DIRECTLY TO MY SON OR DAUGHTER WITH A DISABILITY?**

The beneficiary of your retirement plans should generally be your “estate”, not your son or daughter directly.

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<sup>1</sup>Community Living Service Delivery (CLDS) is a division of the Ministry of Social Services, Government of Saskatchewan. For more information, see [socialservices.gov.sk.ca/community-living](http://socialservices.gov.sk.ca/community-living)





**UNDERSTANDING  
THE TERMS**



# UNDERSTANDING THE TERMS

*One of things I struggled with the most was the terminology and understanding the difference between a beneficiary and a trustee and a guardian; and the difference between a discretionary and a regular trust...*

Below is a glossary of some of the most frequently used terms in this Guide. Some include the page number where the concept is explained in more detail.

## **Adult Guardianship and Co-decision-**

**making Act:** This Act provides a means of protection and assistance for adults who are unable to make decisions for themselves and who, as a result, might be vulnerable to personal or financial harm. The Act was passed by the Saskatchewan legislature in July 2001, and the Act Regulations amended in 2011. (See also page 136.)

**Age of Majority:** In Saskatchewan, this is 18 years of age. At the age of majority, a person is entitled by law to manage his or her own affairs. Once a person reaches this age, regardless of whether or not he or she has a disability, parents or other legal guardians cease to have any legal control over him or her.

**Asset:** Any possession or property that has value, such as house, a car or an RDSP.

**Exempt Asset:** A liquid asset that will not impact the determination of eligibility for government benefits.

**Liquid Asset:** Cash, or anything that can easily and quickly be converted into cash. For example, Canada Savings Bonds or savings accounts are liquid assets; a house is not.

**Real Asset:** A physical or tangible asset. These include precious metals, real estate, and agricultural land.

**Attorney:** A person you authorize to manage financial affairs on your behalf while you are still alive. See also Power of Attorney.

**Beneficiary:** A person who receives all or part of an estate, insurance policy, RRSP, or trust; also, the person who benefits from an RDSP.

**Contingent beneficiary:** A contingent beneficiary, sometimes also called “secondary” or “ultimate” beneficiary is the person who is designated to receive the remainder of the funds after the primary beneficiary dies.

**Bequest:** A gift of personal property made through a Will.

**Canada Disability Savings Bond:** A federal government contribution to the RDSP of up to \$1,000 a year to a maximum of \$20,000.

**Canada Disability Savings Grant:** This is matching federal money that can be received if the beneficiary, family or friends contribute into the RDSP.

**Codicil:** A modification to a Will that adds or deletes provisions to, or clarifies portions of, the Will. A codicil may explain, modify, add to, subtract from or revoke existing provisions in a Will. Because a codicil changes a Will, it must, just like a Will, be signed in the presence of two witnesses.

**Decision Maker:** Someone who has been given the authority by court to make or to assist in making decisions for an adult.

**Co-Decision Maker:** Someone who has the authority to assist an adult in making decisions and to make joint decisions with the adult.

**Personal Co-decision Maker:** Makes decisions with the adult about personal matters only.

**Property Co-decision Maker:** Makes decisions with the adult about finances and property only.

**De jure/De facto:** De jure is a Latin phrase meaning “by right” or “legally.” De facto means “in fact, but not in law.”

**Dependant:** A person who is entitled to be provided for by you. Dependents include your spouse (including common-law and same-sex partners after cohabiting for two years), minor children, and adult children who for various reasons are unable to provide for themselves.

**Disability Tax Credit:** A non-refundable tax credit which is used to reduce the income tax the beneficiaries pay on their tax returns. It can be claimed by anyone with a “severe and prolonged” disability. It can also be transferred to unpaid caregivers. Application for the Disability Tax Credit is done on the Income Tax Form T2201.

**Estate:** A person’s estate consists of all property, both real (land) and personal (such as shares, bank deposits, jewellery, clothes, stamp collections, etc.), owned at the time of death and which can be disposed of through a Will. A person’s “net estate” is the total value of that property, minus funeral expenses and any debts and taxes owed at death.

**Estate Planning:** The process by which you arrange how your cash, bank accounts, stocks, bonds, real estate and personal property will be disposed of after your death. The process must take into account the laws governing wills, taxes, insurance, property and trusts, while carrying out your wishes about how to dispose of your estate.

**Executor/Executrix:** A person you appoint in your Will to look after the distribution of your estate according to the instructions in your Will.

**Alternate executor:** A second choice of executor if the first choice cannot or does not choose to serve as executor.

**Co-executor:** A person who will execute your Will jointly with another person or persons.

**Grantor:** A person who gives an attorney the power to act for him or her under the terms of a power of attorney.

**Guaranteed Income Supplement:** A benefit that provides additional money for seniors who have a low income and who are also receiving the Old Age Security Benefit.

**Guardian:** Someone who has the authority to make decisions for a minor child or a dependent adult.

**Personal Guardian:** Someone who makes decisions about a person’s personal welfare.

**Property Guardian:** Someone who makes decisions about a person’s finances and property.

**Health Care Directive:** Health Care Directive, also called a Living Will, gives directions about your wishes on medical treatment to your treatment providers, and also provides the opportunity for you to nominate a person who will make health care decisions on your behalf (called a proxy), when you can no longer make your own health care decisions and communicate them.

**Intestate:** If you die without a Will, you are said to have died “intestate.” Your assets will be divided in accordance with the rules of intestate succession, which are set out by law in each province of Canada. In Saskatchewan, the distribution is set out in The Intestate Succession Act, which provides firm rules as to how an estate will be divided. The formula depends upon whether there is a surviving spouse, children or other blood relatives. See also page 137 for more information about this Act and page 57 about dying without a Will. If you die intestate there will be no provisions for setting up a trust.

**Living Will:** See Health Care Directive.

**Power of Attorney:** A legal document in which you (the **grantor**) authorize another person (the **attorney**) to manage your financial affairs on your behalf while you are still alive. A power of attorney may be general, covering all of your property and business and financial affairs, or specific, limiting the attorney’s authority to a specific purpose such as the sale of property on your behalf.

**Enduring power of attorney** remains in effect even if you become incapacitated.

**Springing power of attorney** comes into effect at a time specified by you, or on the occurrence of a specified event. Springing power of attorney is also sometimes called contingent power of attorney.

**Probate:** A court review or testing of the Will to ensure that it is authentic. It declares the Will to be valid and effective. It is also the process by which an executor (if there is a Will), or a court-appointed administrator (if there is no Will), obtains the necessary authority to manage and distribute the deceased's property.

**Probate Fees:** Basically, probate fees are a tax on a person's estate. In Saskatchewan, the fees are \$7 for every \$1,000 of the estate, or a part thereof.

**Proxy:** A person you nominate to make health care decisions on your behalf. (See Health Care Directive)

**Public Trustee:** The Public Guardian and Trustee is an office established by the Government of Saskatchewan that has the responsibility to protect the property of people who do not have the capacity to manage their own financial affairs.

### Registered Disability Savings Plan

**(RDSP):** a federally registered savings plan designed specifically to ensure long-term financial security for people with disabilities.

Saskatchewan Assured Income for Disability (SAID): an income support program for Saskatchewan residents who have significant and enduring disabilities. It was introduced in December 2009 and it is a separate program from the Saskatchewan Assistance Program (SAP).

**Settlor:** A person who creates a trust.

**Testator/Testatrix:** A person who makes a Will.

**Trust:** To "hold in trust" means to look after another person's money, possessions or real estate for the benefit of the beneficiary. A trust is a legal document in which one person (the settlor) transfers legal title to a trustee.

**Inter Vivos Trust:** *Inter vivos* trust is a trust that takes effect during your lifetime. Although the taxable income of an *inter vivos* trust is taxed at the highest marginal tax bracket, the assets it holds are independent of your assets, and therefore do not pass through your Will. You can be the trustee of an *inter vivos* trust that you set up.

**Discretionary Trust:** A type of trust in which the trustee has sole authority to distribute or not to distribute income and capital to the beneficiary. It is often used in Wills in order to provide for dependent children, either minors or adult children with a disability.

**Testamentary Trust:** A trust established by someone's Will.

**Trustee:** A person or persons appointed by the settlor to manage assets, which are held in trust for the benefit of the beneficiary. The trustee's responsibility is to manage the property for the beneficiary's benefit.

**To vest:** Give as a firm or legal right.

**To have a vested interest in something** means to be likely to gain or lose from it, or be affected in some way by it.

**Will:** A Will is a legal document that sets out who will receive part or all of your estate after your death. In Saskatchewan, the requirements for a valid Will are set out in *The Wills Act, 1996*.<sup>1</sup>

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<sup>1</sup>Available at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/W14-1.pdf>





**RESOURCES**



## RESOURCES

In this chapter, resources are divided into two sections.

The first section lists books (with short descriptions) which are either available at the Saskatchewan Teachers' Federation (STF) in the John Dolan Collection located in the Stewart Resource Centre, or from other sources.<sup>1</sup> Some of these other sources are available through public libraries, or by contacting the organizations that published them.

The second section of resources lists various websites which contain useful information. These websites addresses were accurate at the time of revising this Guide (2014) but information on the Internet changes quickly and some of the websites might not be functional at some future time. On the other hand, searching on the Internet brings ever-expanding opportunities for up-to-date information.

Note of caution: No one regulates the contents on the Internet and we cannot guarantee the accuracy of information provided by websites.

### MATERIALS AVAILABLE AT THE SASKATCHEWAN TEACHERS FEDERATION, JOHN DOLAN COLLECTION

*All My Life's A Circle, Using the Tools: Circles, MAPS, and PATHS.* Falvey, M.A., Forest, M., Pearpoint, J. and Rosenberg, R.L., Inclusion Press, Toronto, ON, 2000.

A collection of stories and essays which illustrate why we need to conduct MAPS, PATHS and Circles sessions, and which tells of the many successes which come out of these exchanges.

*A Good Life – For You and Your Relative with a Disability.* Etmanski, A., PLAN, Burnaby BC. 2000.

A practical seven-step approach to the securing a good life for people with disabilities and their families. The chapters outlining the seven steps are: Sharing your vision; Building relationships; Creating a home; Making a contribution; Ensuring

choices; Developing your Will and estate plan; Securing your plan.

*A Little Book about Person Centered Planning.* O'Brien, J. and O'Brien C.L., Inclusion Press, Toronto ON, 1998.

Topics include: Person-centered planning; Individualized program planning; Quality of life; Friendship; McGill Action Planning System (MAPS); Personal planning; Planning Alternative Tomorrows with Hope (PATH).

*Adult Guardianship in Saskatchewan: Application Manual.* Office of Public Guardian and Trustee, 2002.

A manual containing all information necessary in order to apply to become a legal adult guardian, as well as the forms needed for the application. Available online at <http://www.justice.gov.sk.ca/adx/asp/adxGetMedia.aspx?DocID=128,117,113,81,1,Documents&MediaID=83&Filename=Applicationpkg.pdf>

*Laying Community Foundations for Your Child With a Disability: How to Establish Relationships That Will Support Your Child After You're Gone* by Linda J. Stengle. 1996.

*On Our Own ... Together: Trust Funds for Families with Financially Dependent Loved Ones and Endowment Funds for Small Not-for-Profit and Charitable Organizations.* Van Bommel, H., Resources Supporting Family and Community Legacies Inc. Scarborough, Ontario, 2002.

Authors describe the book thus: "This book is about methods to secure some financial comfort, or even independence, for (a) your financially dependent loved one or (b) your non-for-profit charitable organization." This book is easy to read, with lots of examples.

Chapters: General Information; Trusts; Endowment Funds; Making It Work For You; Appendices.

<sup>1</sup>The resources at the Stewart Resource Center can be requested for delivery by mail to destinations in Saskatchewan. For information on how to access this library, see <https://www.stf.sk.ca/portal.jsp?Sy3uQUnbK9L2RmSZs02CjV/LfyjbyjsxisYv52gIVdo=F>

*Planning for the Future: Providing a Meaningful Life for a Child with a Disability after Your Death.* Russell, L.M., Grant, A.E., Joseph, S.M., Fee, R.W., American Publishing Company, Evanston, IL, 5th Edition, 2005.

Topics covered: Wills and estate planning; Guardianship; Advocacy; Social services and programs in the United States; Personal planning.

*Safe and Secure – Six Steps to Creating a Personal Future Plan for People with Disabilities.* Etmanski, A., PLAN, Burnaby BC, 1996.

A very easy-to-use workbook explaining a six-step process which includes: Clarifying your vision; Building relationships; Controlling the home environment; Preparing for decision-making; Developing your Will and estate planning; Securing your plan.

*Seeking Security – Now and In The Future: Guidelines for Estate Planning and Wills for Parents of Persons with Psychiatric Disabilities.* Dafoe, R., Schizophrenia Society of Saskatchewan. Regina, SK: 1993.

Chapters: Introduction; Saskatchewan Assistance Plan; The Family Maintenance Act; The Dependents' Relief Act; Trusteeship and Guardianship; Wills; Trusts and Trustees; Appendices; Glossary.

*School to Life Transition Handbook: Five Steps to Successful Planning.* SACL, Saskatoon, SK, 1999, 2012.

The Handbook is designed to help young people who are in the process of transition from school to adult life. Focus of the Handbook is on the person in transition, reinforcing the basic principle of person-centered planning. It concentrates on issues such as when to begin transition planning, what to plan for, who to include on the transition planning team, and how to carry through with the plan.

*Taking Care of Tomorrow, Planning with Senior Parents.* Taylor, N., Family and Friends of the Mentally Handicapped, Windsor, Ontario, 2000.

This book is about preparations to help an older

adult with a disability to become as ready as possible for getting older. Individual chapters of Part One discuss decision-making skills, housing issues, inclusion in the community, natural support circles, long-term arrangements, financial planning, inclusion and planning for retirement. Part Two discusses the process of aging and how it affects people with various disabilities. The book includes bibliographic references. The STF John Dolan Collection also has a video under the same title.

*The Guide Book: Helping Others to Prepare Representation Agreements.* Community Coalition for the Implementation of Adult Guardianship Legislation, Vancouver, BC, 1996.

This guide provides background and information to people throughout British Columbia who will be helping other make representation agreements. Topics cover: Guardianship; Law and legislation; Mental health; Caregiving and the elderly.

*Wills and Estates: Making a Will and Administering an Estate.* Public Legal Education Association of Saskatchewan revised 2013.

The booklet provides introductory information about the making a Will and the settling of an estate.

Chapters include: Introduction; Planning your Will; Cancelling or changing your Will; Administering the estate; Responsibilities of the executor or administrator; Ensuring dependants are properly looked after; Children and dependent adults; Income tax clearance certificates; Distributing the estate; Common problems; Costs related to administering an estate; Glossary.

*Wills and Estates: A Parental Guide to Planning for Persons with Developmental Disabilities.* Alberta Association for Community Living. 1995

This concise booklet provides information on provisions which parents can make when writing a Will in order to ensure that their son or daugh-

ter with a developmental disability has the best chance of financial security.

Chapters include: Introduction; Making a Will in Alberta; Guardianships and trusteeship; AISH and Personal Support Services; Setting up a trust fund; Appointing a trustee; Letter of intent; Enduring power of attorney; Where do I start?; Definitions.

*Wills and Estates: A Plain Language Guide.* Alberta Association for Community Living, 1995.

Same information as in the previous material, written in simplified language.

## MATERIALS AVAILABLE FROM OTHER SOURCES

*Clarity of Vision: A Compass for the Journey.* Wendy Stroeve, 2007

[www.resourcingfamilies.org.au/resourcingfamilies/wp-content/uploads/2013/09/wendy-stroeve-clarity-of-vision.pdf](http://www.resourcingfamilies.org.au/resourcingfamilies/wp-content/uploads/2013/09/wendy-stroeve-clarity-of-vision.pdf)

*Estate Planning: For What You Value Most In Life.* Investors Group, 2009.

Several booklets providing general information about an estate plan, information for the executor, estate planning review and a personal record organizer. Information is not limited to providing for people with disabilities, but it is a useful overview.

*Executor/Liquidator Kit for Settling an Estate.* RBC Financial Group, Royal Bank, 2012

A reference guide providing information about the steps which are necessary in settling an estate. Download guide at [https://estateandtrust.rbc-wealthmanagement.com/download/outsideQuebec\\_en.pdf](https://estateandtrust.rbc-wealthmanagement.com/download/outsideQuebec_en.pdf)

*Just in Case.* Harold Empey

A special *Just on Case* binder was developed by Harold Empey to help people put together plans

and information in the event of a serious illness or death. The *Just in Case* binder is available from the Saskatoon Community Foundation at 306-665-1766 for \$30. A lower priced package with the same material but without the binder is available for \$20.00 from Harold Empey at 306-244-4954. All net proceeds go to charity.

*Sharing the Care: Financial and Legal Obligations in Planning for People with Mental Disabilities in Quebec.* Marilyn Piccini Roy, Borden Ladner Gervais LLP, October 2010.

Available for free download at [http://amiquebec.org/wp-content/uploads/2013/02/Care\\_En.pdf](http://amiquebec.org/wp-content/uploads/2013/02/Care_En.pdf)

*Tax Planning Using Family Trusts.* G. Benjamin, Nancy J. Bullis, Brian J. Wilson. Chartered Professional Accountants of Canada, 3rd Edition, 2011.

The material explains the basic concept of trusts and their common uses, and it deals with tax issues and how to deal with them. Although designed for chartered accountants and other professionals involved with trusts, it is easy to read. It is also a comprehensive reference source.

*Understanding Trusts.* BDO Canada, March 2013. Download guide at <http://www.bdo.ca/en/Library/Services/Tax/Documents/Tax-Bulletins/Understanding-Trusts.pdf>

*Wills and Children with Mental Disabilities.* Saskatchewan Ministry of Justice, March 2011. Download at <http://www.justice.gov.sk.ca/Wills-and-Children-with-Mental-Disabilities.pdf>

A brief and plain language guide to Wills. Contains material on SAID and RDSPs.

*Wills and Estates: Making a Will and Administering an Estate.* Public Legal Education Association of Saskatchewan (PLEA), 2001.

Available to order online from PLEA at [plea.org](http://plea.org)

*You Can't Take it With You: the Common-Sense Guide*

*to Estate Planning for Canadians*. 5th Edition. Sandra E. Foster, John Wiley & Sons, Toronto, 2006.

*Your Virtual Shoebox Guide*. Canadian Life and Health Insurance Association, available online at <http://www.clhia.ca/vShoebox>.

An interactive tool to help you to keep track of your important personal and family documents – everything from insurance policies, bank accounts, investments and mortgages to health records and will and estate information, within a fillable PDF form.

## USEFUL WEBSITES

### Canada Revenue Agency

[www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)

This website provides an easy access to publications and forms dealing with tax credits, benefits, and services for people with disabilities. Two documents which are of particular interest in the connection with Wills and estate planning are:

- Information Concerning People With Disabilities ([www.cra-arc.gc.ca/disability/](http://www.cra-arc.gc.ca/disability/))
- General Income Tax and Benefit Guide ([www.cra-arc.gc.ca/E/pub/tg/5000-g/ README.html](http://www.cra-arc.gc.ca/E/pub/tg/5000-g/README.html))

### The Financial Advisors Association of Canada (Advocis)

[www.advocis.ca](http://www.advocis.ca)

Advocis is Canada's largest association of professional financial advisors, with members in fifty chapters across the country. Advocis was formed in September 2002, by merging of the Canadian Association of Insurance and Financial Advisors (CAIFA) and the Canadian Association of Financial Planners (CAFP).

Advocis represents thousands of professional advisors from coast to coast. Its members advise their clients on the short- and long-term financial needs of individuals, families, and owners of small and medium-sized businesses. Advocis members provide financial services which include financial planning, estate planning, tax preparation, tax planning, and consultation on employee group benefits, pensions and retirement plans.

You will be able to find a qualified planner to suit your needs through the above website.

### The Financial Planners Standards Council (FPSC)

[www.cfp-ca.org](http://www.cfp-ca.org)

The Financial Planners Standards Council (FPSC) is a not-for-profit organization, whose goal is to benefit the public and the financial planning profession by establishing and enforcing uniform professional standards for financial planners who choose to earn the internationally recognized Certified Financial Planner (CFP™) designation. These standards include requirements in areas of education, examination, experience and ethics.

This website will also help you to find a certified financial planner in your area.

### Inclusion Press International

[www.inclusionpress.com](http://www.inclusionpress.com)

Inclusion Press International creates person centered resource materials for training events, public schools, high schools, community colleges, universities, human service agencies, health organizations, government agencies, families, First Nations organizations - nationally and internationally

Phone: 416-658-5363,

Email: [inclusionpress@inclusion.com](mailto:inclusionpress@inclusion.com)

### Office of the Public Guardian and Trustee of Saskatchewan

[www.justice.gov.sk.ca/pgt](http://www.justice.gov.sk.ca/pgt)

Address: 100-1871 Smith Street, Regina SK S4P 3V7.

Phone: (306) 787-5424, Fax: (306) 787-5065,

Email: [pgt@gov.sk.ca](mailto:pgt@gov.sk.ca)

Office hours: Monday through Friday, 8 a.m. to 5 p.m., closed noon hours and holidays.

*The Public Guardian and Trustee Act* gives the Public Guardian and Trustee the responsibility to protect the property of people who do not have the capacity to manage their own financial affairs. The Public Guardian and Trustee Amendment Act, 2013 moves the pro-

cess of declaring someone unable to manage their own financial affairs into The Public Guardian and Trustee Act. Additionally, the Amendment Act also allows the Public Guardian and Trustee to revoke their existing authority over an estate if someone else can act as a property guardian.

To protect people in vulnerable circumstances, the Public Guardian and Trustee:

- protects the interests of children under 18 and dependent adults;
- administers the estate of people who are mentally incompetent;
- administers the affairs of deceased people, as a last resort if no family is around;
- holds and administers unclaimed property.

The current (2014) Public Guardian and Trustee in Saskatchewan is Ronald J. Kruzeniski, Q.C.

## Planned Lifetime Advocacy Network (PLAN)

[www.plan.ca](http://www.plan.ca)

Address: Planned Lifetime Advocacy Network, Suite 260 – 3665 Kingsway, Vancouver, B.C. V5R 5W2.  
Phone: (604) 439-9566, Fax: (604) 439-7001,  
Email: [inquiries@plan.ca](mailto:inquiries@plan.ca)  
See page 135 for more information on PLAN.

## Public Legal Education Association of Saskatchewan (PLEA)

[www.plea.org](http://www.plea.org)

Public Legal Education Association of Saskatchewan (PLEA) is a non-profit, non-governmental organization which provides free services for the people of Saskatchewan. PLEA can help members of the public by providing general legal information, suggesting resources and informing people about different options for obtaining legal advice.

Address is: 500-333 25th Street East, Saskatoon, SK, S7K 0L4. Phone: (306) 653-1868, Fax (306) 653-1869, Email [plea@plea.org](mailto:plea@plea.org)

## Saskatchewan Association for Community Living

The Saskatchewan Association for Community Living's (SACL) mission is to ensure that citizens of Saskatchewan who have intellectual disabilities are valued, supported and included members of society, and have opportunities and choices in all aspects of life.

Address: 3031 Louise Street, Saskatoon, S7J 3L1 Phone: (306) 955-3344, Fax: (306) 373-3070,  
Email: [sacl@sacl.org](mailto:sacl@sacl.org)

## Saskatchewan Ministry of Justice

[www.saskjustice.gov.sk.ca](http://www.saskjustice.gov.sk.ca)

Among other things, the website of the Justice Department of the Government of Saskatchewan provides: an alphabetical list of all Acts administered by Saskatchewan Justice and summaries, consolidations and regulations of these Acts.

## Saskatchewan Ministry of Social Services

<http://socialservices.gov.sk.ca/>

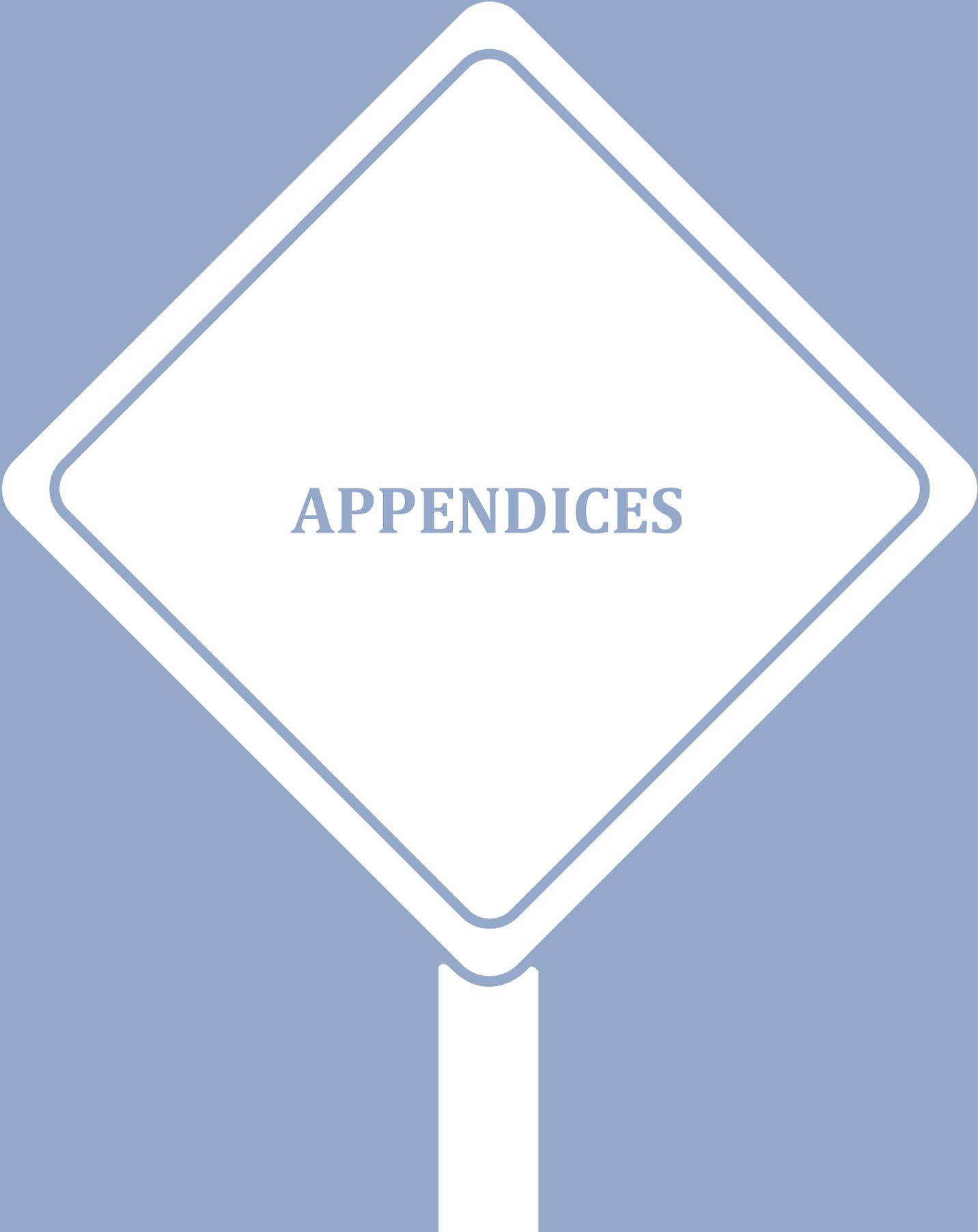
This important website provides information on all major supports for people with intellectual disabilities that are provided by the provincial government, including Community Living Service Delivery, SAID, and housing. See <http://www.socialservices.gov.sk.ca/disabilities>

## University of Toronto Joint Centre for Bioethics

[www.jointcentreforbioethics.ca/](http://www.jointcentreforbioethics.ca/)

The University of Toronto Joint Centre for Bioethics (JCB) is a partnership between the University of Toronto and affiliated healthcare organizations. The JCB studies important ethical, health-related topics through research and clinical activities. Detailed information about Living Wills, Health Care Decisions and Personal Care Decisions is available on the website. A Living Will document is available for free download from the website. Please note it should be used as a guide only, to help you think about, and express your wishes about, future health and personal care decisions.





**APPENDICES**



# APPENDICES

## APPENDIX 1

### PLAN (Planned Lifetime Advocacy Network)<sup>1</sup>

PLAN is an organization of parents who provide advice and assistance on future planning for people with disabilities. It began its work in British Columbia and has since expanded to other provinces, including Saskatchewan. The primary goal is to build networks of support around people with disabilities.

PLAN's vision is a future where people with disabilities

- Have financial security;
- Live in a place of their own choice;
- Participate in a caring and hospitable community
- Are supported by family and friends;
- Have their wishes and choices respected;
- Are protected from abuse and exploitation;
- Are encouraged to make a contribution; and
- Where families have peace of mind about the future of their relatives with a disability.

PLAN believes that

- Individuals with disabilities are kept safe when surrounded by caring, committed friends and families.
- PLAN as an organization must be independent from direct government funding if it is to monitor and advocate for people with disabilities when their parents or relatives are no longer able to provide support.
- A focus on the gifts and capacities of our relatives with disabilities, their families and neighbours, encourages participation, discourages victimization and reduces costs to government.
- A system of checks and balances is the best guarantee of safety and security in uncertain times.
- Other families who have relatives with disabilities are the best custodians of our vision for the future of our relatives with disabilities.

PLAN has developed a unique future-planning process for people with disabilities. It is a seven-step process

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<sup>1</sup>Information in this segment is adapted with permission from the PLAN's website at [www.plan.ca](http://www.plan.ca).

that families can follow in order to create a safe and secure future for their loved ones. Each plan for the future is tailor-made to meet individual families' needs. It begins with your wishes and dreams for the future and addresses any issues or concerns that you may have.

Each plan covers the following key areas:

- Will, Estate and Financial Planning
- Long Term Housing Security
- Maintaining Government Benefits
- Personal Relationships
- Making a Contribution
- Alternatives to Guardianship
- Monitoring Quality of Life

You should read the two books by Al Etmanski, co-founder of PLAN: *Safe and Secure* (1996) and *A Good Life* (2000). Both of these books are available in the John Dolan Collection at the Stewart Resource Centre at the Saskatchewan Teachers' Federation. A chapter of PLAN is also active in Regina. It is associated with the Regina and District Association for Community Living.

For more information about PLAN, contact

#### PLANNED LIFETIME ADVOCACY NETWORK

Suite 260 – 3665 Kings Way, Vancouver BC V5R 5W2  
Phone: (604) 439-9566, Fax: (604) 439-7001  
Email: [inquiries@plan.ca](mailto:inquiries@plan.ca); [www.plan.ca](http://www.plan.ca)

Or contact

#### REGINA AND DISTRICT ASSOCIATION FOR COMMUNITY LIVING

2216 Smith Street, Regina SK S4P 2P4  
Phone: (306) 790-5680, Fax: (306) 586-7899  
Email: [mainrdacl@sasktel.net](mailto:mainrdacl@sasktel.net); [www.rdacl.ca/plan](http://www.rdacl.ca/plan)

#### PATH (PLANNING ALTERNATIVE TOMORROWS WITH HOPE)

PATH is an integral part of a toolbox based on person-centered planning, which also includes Circles and MAPS (Making Action Plans). It is designed to help

people with differing abilities and their families to plan and work towards turning aspirations and dreams into real and possible futures. The Circles tool is based on the ancient concept of community building and relationships. Sometimes it is called the Circle of Friends, sometimes Circle of Support. This tool helps to find and establish a group of people who gather around a person and help include him or her in the community. MAPS is a way of gathering real information about a person or family.

PATH and MAPS are conducted by a skilled facilitator. If you would like to learn more PATH and MAPS and perhaps arrange for a facilitator to work with you and your family, contact the Inclusion Press at [www.inclusionpress.com](http://www.inclusionpress.com).

To learn more about these tools, you can also check out the John Dolan Collection at the STF. There are several books available on this topic. Two of them are: *A Little Book About Person Centered Planning* by John O'Brien and Connie O'Brien, and *All My Life's A Circle* by Mary A. Falvey, Marsha Forest, Jack Pearpoint and Richard L. Rosenberg, both published by Inclusion Press.

## APPENDIX 2: RELEVANT SASKATCHEWAN ACTS AND REGULATIONS

Summaries of relevant Acts in this Appendix are reproduced from the Saskatchewan Justice's website at [www.saskjustice.gov.sk.ca/legislation-list](http://www.saskjustice.gov.sk.ca/legislation-list).<sup>1</sup>

### The Adult Guardianship and Co-decision-making Act

The Act, proclaimed in 2001, sets out the procedures for the appointment of

- a personal or property guardian for individuals who are incapable of managing their own personal or financial affairs;
- a personal or property co-decision-maker for adults requiring assistance in decision-making but who do not require guardians; and
- temporary personal or property guardians in emergency situations.

A capacity assessment must be made in accordance with the Act and an application submitted to the Court of Queen's Bench for Saskatchewan. The court determines whether it is appropriate to appoint a guardian or co-decision-maker and what duties and powers need to be exercised by them.

### The Dependents' Relief Act, 1996

The Dependents' Relief Act, 1996 spells out maintenance obligations to dependents following the death of a person. Dependents include spouses, common-law spouses, same sex spouses and children.

Specifically, a "dependent" means

- the wife or husband of a deceased person;
- a child of a deceased who is under the age of 18 years at the time of the deceased's death;

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- a child of a deceased who is 18 years or older at the time of the deceased's death and who alleges or on whose behalf it is alleged that
  - a) by reason of mental or physical disability, he or she is unable to earn a livelihood; or
  - b) by reason of need or other circumstances, he or she ought to receive a greater share of the deceased's estate than he or she is entitled to without an order; or
- a person with whom a deceased cohabited in a spousal relationship
  - a) continuously for a period of not less than two years; or
  - b) in a relationship of some permanence, if they are parents of a child.

The *Act* applies, whether the person died with or without a Will.

A dependent, or a person acting on behalf of a dependent, can apply to the Court of Queen's Bench, Family Law Division, for an order making reasonable provision for the dependant's maintenance from the deceased person's estate. The court has broad discretionary powers take into consideration all circumstances of the estate and the relationship of the parties.

### The Intestate Succession Act, 1996

*The Intestate Succession Act, 1996* sets out the rules for determining the beneficiaries of a person who dies without a Will.

If you die without a Will, your surviving spouse, including a common law or same sex spouse, will receive the first \$100,000. Any excess is shared equally between the spouse and one child. Where there is more than one child, the spouse receives one-third of the excess and the children share the other two-thirds. If there is no spouse, the children receive the estate in equal shares. If a child dies before his or her parent, the child's children receive his or her share.

If there is no spouse and no children, the next available persons in the following list will receive the estate:

- parents;
- brothers and sisters, and children of a deceased

- brother or sister;
- nephews and nieces;
- next of kin.

### The Powers of Attorney Act, 2002 and The Powers of Attorney Amendment Act, 2014

*The Powers of Attorney Act, 2002* was enacted in April 2003. It provides for the use of enduring or continuing powers of attorney, including contingent enduring powers of attorney.

*The Powers of Attorney Amendment Act, 2014* will allow individuals who hold power of attorney over an estate to make gifts from that estate. Attorneys will be allowed to make a gift out of the estate when the power of attorney document specifically permits it, or when the attorney has reason to believe the property owner would have made the gift, subject to certain limits. The Act also contains new rules for attorneys when reporting on the finances of an estate.

A power of attorney is a document in which a person (the **grantor**) appoints another person (the **attorney**) to act on his or her behalf in connection with his or her financial affairs.

A power of attorney may be **general**, covering all of the grantor's property and business or financial affairs, or **specific**, limiting the attorney's authority to a specific purpose such as the sale of property on the grantor's behalf.

An **enduring power of attorney** (EPA) is a power of attorney which states that it is to continue in effect even if the grantor becomes incapacitated.

There are two types of enduring powers of attorney:

- The first type takes effect immediately. So store the document in a safe place so it can't be used until needed.
- The second type comes into effect on a specified future date or on the occurrence of a specified event (for example, when the grantor becomes mentally incapable, or when the grantor leaves the country

for an extended period). This is a **contingent power of attorney** (sometimes called a **springing power of attorney**).

An enduring power of attorney differs from ordinary power of attorney. In the case of an ordinary power of attorney, if the grantor becomes incapable of managing his or her own affairs, the attorney automatically loses legal authority to act on the grantor's behalf. However, an enduring power of attorney remains in effect even if the grantor becomes incapacitated. It allows the attorney to continue to manage the grantor's financial affairs when the grantor cannot. The Act allows for you, as the grantor, to make directions about accounting. Under the accounting process, the person(s) you have named must provide details of the actions they took on your behalf.

There are limits as to who you may appoint as your attorney. The person has to be over 18 years of age, have legal capacity, and not have been convicted of a criminal offence involving an act of violence, theft or fraud during the previous ten years. If the person you wish to appoint as your attorney has been convicted of such an offence, you have to waive that requirement in writing on a prescribed form.

The Act further specifies

- Requirements for a valid enduring power of attorney;
- Duties of an attorney;
- Terminating an enduring power of attorney; and
- Protection of third parties and attorneys.

For more information, check *The Powers of Attorney Act, 2002* summary on the Saskatchewan Justice website at [www.justice.gov.sk.ca/Powers-of-Attorney-Act-2002](http://www.justice.gov.sk.ca/Powers-of-Attorney-Act-2002).

## The Wills Act, 1996

*The Wills Act, 1996* sets out the rules that must be followed to make a Will.

In order for a Will to be valid, the person making the Will must be 18 years or older, or a member of the armed forces in active service. The Will must be

in writing and signed by the person making it or by someone else at the person's request. The signature of the person making the Will must be witnessed by two people who also sign the Will. However, if the Will is entirely in the person's handwriting (this is called a holograph Will), witnesses are not necessary. A witness should be someone who is not receiving anything under the Will. If the witness or the witness's spouse is a beneficiary, they would be required to prove to the court that they did not pressure the person to make the Will or their gift will become void.

If a Will is not made strictly in accordance with these rules, a court can declare it valid if satisfied that the person meant it to be his or her Will.

A Will is revoked

- If or when the person makes another Will;
- If or when the person writes another document that states that the Will is revoked;
- If or when the person physically destroys the Will; or
- by marriage or cohabitation of a spousal relationship of at least two years, unless the Will says it is made in contemplation of the marriage or spousal relationship.

In case of a divorce (or termination of a spousal relationship of at least two years), a gift made to a spouse in the Will is revoked, unless the Will states otherwise. The Will itself is not revoked.

A gift in a Will to a person's child, grandchild, brother or sister will go to the spouse and/or children of that family member if he or she dies before the person who made the Will. The Act also contains detailed rules about interpreting Wills and discusses the validity of international Wills.

## The Saskatchewan Assured Income for Disability Regulations

The Regulations describe who is eligible to apply for benefits under the Saskatchewan Assured Income for Disability (SAID) program, what kinds of services are covered by the program, and how benefits are calculated.

Sections 14 and 15 of the Regulations address the details of financial resources not included in the calculation of eligibility for SAID, i.e. resources you may own without a clawback of SAID benefits. The following information is excerpted from the Regulations. It is not a complete list of exempt resources, but only the exceptions that apply to the topic of this Guide.

Some resources which are not included in the calculation of entitlement to SAID:

- The home in which the person resides;
- Casual gifts up to \$200 per year in value;
- The capital and income from a trust fund established pursuant to subsection 9(2) of *The Dependents Relief Act, 1996*;
- Prepaid funeral expenses;
- If an applicant has as a principal residence a property acquired by inheritance, the property is not to be considered as an excess asset pursuant to clause 10(3)(d);
- Cash and liquid assets not exceeding the amount of \$1,500 for a single recipient or \$3,000 for a recipient and one dependant, plus \$500 for each additional dependant;
- Funds held in, or money withdrawn from, an RDSP (registered disability savings plan) within the meaning of section 146.4 of the Income Tax Act (Canada);
- Funds held in a discretionary trust for the benefit of the individual;
- Payment from a discretionary trust if, the payment is contributed as soon as is practicable to a registered disability savings plan;
- The portion of all amounts received after January 31, 2011 by the individual as a result of inheritances that does not exceed the combined amount of \$100,000 (“inheritance” includes the proceeds of a life insurance policy);
- Gambling gains, lottery prizes, bingo prizes and all other prizes to a maximum value of \$200 per year

For more detail on Income and Asset Exemptions, please refer to Table 1 in the Appendix at the back of the SAID Regulations.

<http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/S8R11.pdf>

## APPENDIX 3: SAMPLES OF DISCRETIONARY TRUST DOCUMENTS AND WILLS

This section includes samples of trust agreements set up in a Will, and a generic discretionary clause. These samples were modified and excerpted from documents provided by parents and professionals who assisted with this report. Names in the documents have either been removed or changed, to protect the identity of all involved. The samples are included to provide readers with some ideas of how documents can be worded. They are not meant to be copied blindly into other people’s documents. As you will see, some of them are quite wordy and detailed, and some of them are brief and more general.

The documents outline, in more or less detail, wishes of the settlor as to how he or she would hope the trustee will spend the money from the trust on the beneficiary. They are careful not to say that the trustee must spend the money in a certain way, but their wishes are quite clear.

**Use for sample purposes only. Please seek advice when developing any of the following documents.**

**Excerpt from a Will concerning the clause about the discretionary trust set up by a father for his son. In this Will, the Executors are also named as Trustees of the discretionary trust.**

I DIRECT my Executors and Trustees to invest and keep invested the share of my Estate to which my son, THOMAS BROWN, shall be entitled, and to use and apply the income and capital thereof for the support, comfort and benefit of my son, in such amount or amounts and in such manner as my Executors and Trustees in their sole uncontrolled discretion shall think fit, during the lifetime of my said son. If any portion of his share or the income thereof shall remain unexpected at the time of the death of my said son, THOMAS BROWN, I direct my Executors and Trustees to divide the said unexpended residue between my son, GEORGE BROWN, and my daughter, JANET

BROWN, in equal shares, share and share alike, for their sole use and benefit absolutely.

IN THE EVENT that any child or stepchild of mine should predecease me, with the exception of my son, THOMAS BROWN, with children surviving my deceased child or stepchild, then the share of my Estate to which my deceased child or stepchild would have been otherwise entitled shall be delivered to the children or such deceased child to stepchild, in equal shares, share and share alike.

### **Excerpt from a Will that sets up a testamentary trust, outlining in detail father's wishes of what he would like the trustees to do with the funds to benefit his son Joe.**

...

(7) The settlor of this Trust, ROBERT SMITH, wishes that, without in any way binding the discretion of the Trustees, the Trustees may do the follow:

(a) The Trustees shall be entitled to purchase any assets or chattels to be used by JOE SMITH, either alone or with another, wherein the title to such assets will remain owned by the Trust, and not by JOE SMITH, provided that the Trustees shall not be permitted to create potential legal liability for the Trust by making such purchases, and shall not be empowered to license or register any motor vehicle in the name of this Trust.

(b) The Trustees shall be empowered to use the funds available from this Trust for membership, participation fees, program fees, subscriptions, expenses for travel, meals, accommodations, fees to tutors, personal attendants, advocates, companions, or rentals, whether the purposes thereof are educational, athletic, recreational, religious and/or social, so long as the same are the benefit of JOE SMITH.

(c) The Trustees may select, from time to time, appropriate individuals experienced in current philosophies respecting community living, involvement in the community and personal devel-

opment, for the purpose of maintaining such a general service plan and individualized life plan for the enhancement of the quality of life of JOE SMITH as may be recommended from time to time. Reviews of any such plan that is in place are to be conducted by the Trustees at least once annually. JOE SMITH should be viewed not only as a person with a disability, but as a whole human being in need of some support to be an active participant in recreation, leisure, higher education, work and other aspects of a full and varied life. JOE SMITH should be given the opportunity to make friends and to benefit from a variety of community supports and activities, and he should be expected to contribute to the community by his presence.

(d) The Trustees may make available the opportunity for JOE SMITH to be transported to and from excursions, or to participate in leisure activities of his choice and interest, and at his desired timing. These activities shall be chosen in consultation with JOE SMITH.

(e) The Trustees may make available the opportunity, in consultation with JOE SMITH, for him to take trips, including trips to visit with a relative or friend, unless some truly legitimate problems prevent this from occurring.

(f) The Trustees shall be authorized to pay the expenses, including admission charges, for one support person to JOE SMITH to accompany him on any trip or outing, for the purpose of an excursion, entertainment or otherwise, particularly in the event that JOE SMITH would not otherwise be able to attend without a support person.

(g) The Trustees may see that arrangements are entered into so that JOE SMITH is able to obtain and access current technology.

(h) It shall be incumbent upon the Trustees, before arranging any companions, tutors, attendants, or advocates, to determine that such person shall be of suitable character, personality, and disposition so as to be appropriate for association

with JOE SMITH, and such relationships may be reviewed from time to time; and

(i) The Trustees shall be empowered from time to time, to provide JOE SMITH with quantities or money from the Trust, being income that he will manage himself and if, in the sole discretion of the Trustees, JOE SMITH shows an ability to properly manage his funds within reason, such amount may be increased from time to time.

(8) It is the express wish of the Settlor that the Trustees will endeavour to make every possible effort to involve JOE SMITH meaningfully in his community, by making available to him all possible opportunities for full participation in a full and varied life in the community. It is the hope of the Settlor that he will be able to have dignity, and that he will always experience and participate in a full and varied life in the company of friend and acquaintances. It is the hope of the Settlor that JOE SMITH will be viewed and respected, who is in need of some support in order to be an active participant in recreation, leisure, adult and continuing education, work and other aspects of life in the community, which includes having a network of friends and acquaintances. It is also the Settlor's wish that JOE SMITH be given the opportunity to make friends and to benefit from a variety of community supports and activities, and that he be given opportunity to contribute to the community. The settlor hereby directs that this Declaration of Trust shall be interpreted in accordance with the wishes of the Settlor as contained in this paragraph.

### **A sample of a Last Will and Testament, which includes setting up a testamentary discretionary trust.**

THIS IS THE LAST WILL AND TESTAMENT OF ME, VALERIE JOHNSON, of the City of Saskatoon, in the Province of Saskatchewan, made this \_\_\_\_ day of \_\_\_\_\_, 2014.

1) I HEREBY REVOKE all Wills and testamentary dispositions of every nature and kind whatsoever by me heretofore made.

2) I NOMINATE, CONSTITUTE AND APPOINT Patricia Green and Paul Johnson, both of Saskatoon,

to be the joint Executors and Trustees of this my Will. I hereinafter refer to my Executors and Trustees as my "Trustee."

3) I DIRECT THAT all my just debts, funeral and testamentary expenses be paid out of my estate as soon as conveniently may be after my death.

4) I HEREBY GIVE, DEVISE AND BEQUEATH all my net real and personal property of whatever nature and wherever situate, including any property over which I may have a general power of appointment, unto my Trustees upon the following trusts, namely:

a) I give the power to my Trustees to sell and convert into money, my real and personal estate at such time or times as my Trustees in their sole discretion consider advisable, and I empower my Trustees to postpone the sale and conversion of any part of my personal real estate for such time as their discretion shall consider to be the interests of my estate or to distribute any portion of my estate in specie, and I authorize my Trustees to use their absolute discretion in making any elections under The Income Tax Act.

b) To sell or disperse all my personal and household effects including any automobiles that I may own at my death except for these personal items:

i) Any chattel or personal item that Richard Johnson may wish or show an interest in, as well as any item of any kind that my Trustees, in their sole discretion, wish to retain for Richard Johnson.

c) During the lifetime of the trust, my Trustees shall invest the trust fund in whatever investments my Trustees deem advisable pursuant to The Trustee Act. My Trustees are authorized to pay to or spend on behalf of my son, Richard Johnson, from time to time so much of the income or capital or both as my Trustees in the exercise of an absolute unfettered discretion deem it to be advisable in order to provide the extra comforts and amenities of life for the life beneficiary, other than necessary food, care and shelter received from other sources, including but not limited to government sources and without substantially

impairing the benefits which the life beneficiary might receive from other sources including but not limited to governmental sources. In order to maximize such benefits, my Trustees are specifically authorized to make payments varying in the amount and at such time or times or such regular periodic payments, as my Trustees in the exercise of an absolute unfettered discretion deem advisable. Neither the trust funds nor any portion remaining from time to time of the trust funds nor any income shall vest in the beneficiary.

d) My Trustees are specifically relieved from the duty to maintain an even hand as between the life beneficiary ahead of the remainderman and being my intention that my Trustees shall have absolute unfettered discretion as to the entire income and capital of the funds for payment to or on behalf of the life beneficiary.

e) Without in any way binding the discretion of my Trustees, it is my wish that in making major decisions concerning payments towards expenditures on behalf of my son, Richard Johnson, my Trustees consult with \_\_\_\_\_ individual or organization.

f) All accumulated income shall be paid or spent before any encroachments on capital are made.

g) Upon death of my son, Richard Johnson, my Trustees shall pay the funeral expenses of the deceased as soon as it may be convenient after the death and the amount remaining of the trust fund together with any income accumulated thereon shall be distributed as follows:

- i) 80% to be divided equally among my siblings or their estates;
- ii) 20% to the charity of my choice.

h) In the event of the death of my Trustees during the lifetime of the trust, the Executor or Executors or Trustees named in the deceased Trustee's Will shall be substituted for the deceased Trustee and shall retain the discretion granted to the deceased Trustee during the lifetime of the trust. The substi-

tute Trustees are specifically granted the powers of discretion in respect to investment, distribution of income and transfer or income and distribution or transfer of capital that are granted to my Trustees herein.

- i) My Trustees may deduct from the trust funds their reasonable remuneration together with any costs and disbursements that may be properly incurred in the administration of this trust.

5) IT IS MY DESIRE that my Trustees are reasonably compensated for their duties as executors and trustees.

6) I DIRECT that any bequest about herein be intended for the role benefit of the specified beneficiary, and not the spouse of such beneficiary, irrespective of the provisions of The Family Property Act for the Province of Saskatchewan.

IN WITNESS WHEREOF I, the said VALERIE JOHNSON, the Testator, have to this my Last Will and Testament set my hand the day and year first above written.

### GENERIC DISCRETIONARY CLAUSE

1) To set aside \_\_\_\_\_ thousand (\$ \_\_\_\_\_) in trust for my child, if my child \_\_\_\_\_ survives me by thirty days. I authorize my Trustees to pay to my child or spend on my child's behalf from time to time so much of the income or capital or both of this trust as my Trustees in the exercise of an absolute and unfettered discretion deems to be advisable. Neither this \$ \_\_\_\_\_ nor any portion remaining from time to time nor any income therefrom shall vest in my said child and the only interest my child shall have shall be in payments actually made to the child and received by the child or in property purchased for my child.

2) Without binding the discretion of my Trustees, it is my wish that in exercising their discretion in accordance with the provision of this paragraph, my Trustees should provide extra comforts and amenities of life for my said child without substantially impairing the benefits which the child might receive from other sources, including but not limited to governmental sources. In order to maximize such benefits, I specifi-









Rotary Club of  
Saskatoon Meewasin