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- **Choose an insurance policy that meets your needs**
- **Arrange for a living will and power of attorney**
- **Reduce your estate's tax bill**

**Margaret Kerr**

**JoAnn Kurtz**

*Bestselling authors, Canadian  
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***Wills & Estate Planning***  
***For Canadians***  
FOR  
**DUMMIES®**

**by Margaret Kerr  
and JoAnn Kurtz**



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## *About the Authors*

**Margaret Kerr** and **JoAnn Kurtz** first met when they were junior lawyers in a law firm. Because their offices were side by side, they were frequently to be found carrying on entertaining and often risqué conversations, especially whenever the senior partner walked by. When Margaret and JoAnn left the firm to pursue other opportunities (as they say), it looked like the perfect co-authorship was ended before it even started.

During their years apart, JoAnn ran a general law practice and started a family, while Margaret practised in the areas of legal research and civil litigation and honed her equestrian skills. They met again by chance when they were both teaching in the Bar Admission Course, each having discovered a taste for inflicting information about law on innocent minds. JoAnn suggested that Margaret join her in teaching law at a community college and the two were briefly reunited under one roof.

Now co-authorship could not be held off by fate any longer. One day JoAnn's husband said to JoAnn and Margaret, "You two could write a book about buying a home." "Of course we could," they said, tossing their heads, and they immediately did so. *The Complete Guide to Buying, Owning and Selling a Home in Canada* (1997) became a Canadian bestseller.

Margaret and JoAnn made two strange discoveries after writing one book together — first, that they had fun writing as a team; and second, that writing books is addictive. The world just didn't seem quite right without an editor demanding a complete manuscript exactly when JoAnn was experiencing a major family crisis or Margaret was away on business. So they started churning out books, together, alone, and with others: *Make It Legal: What Every Canadian Entrepreneur Needs to Know About the Law*; *Facing a Death in the Family*; *Canadian Tort Law in a Nutshell* (with Larry Olivo); *Legal Research Step by Step* (with Arlene Blatt); *Family Law: Practice and Procedure* (by JoAnn alone); *Residential Real Estate Transactions* (by JoAnn with Joan Emmans and Arlene Blatt); and *Advocacy for Paralegals* (by JoAnn with Arlene Blatt).

The Canadian media couldn't help noticing the deluge of books, and JoAnn and Margaret have happily done numerous radio, TV, and newspaper interviews as well as author appearances.



## *Dedication*

This book is affectionately dedicated to Mary Jane Woods.

## *Authors' Acknowledgements*

We didn't achieve brilliant success with this book all by ourselves. We had help and we're very grateful for it.

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# Introduction

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**N**EW FLASH: The end of the world is coming! Well, not the end of the entire world, just the end of *your* world. It's probably not coming today, and it's probably not coming tomorrow or even next week. But the nasty truth is that we're all going to die some day. We usually can't tell very far ahead what day our world will end. But we can plan ahead against that day.

## *About This Book*

When we go, we can't take anything with us. Our possessions stay behind. They may as well stay with people we choose rather than go to people the provincial government chooses or be spent on government taxes and fees that could (at least in part) be avoided.

This book will tell you how to plan for the end of life by creating an estate plan, making a will, and making a power of attorney and living will.

This book is designed to be used as a reference, and you don't need to read it in any particular order. You can dip into a chapter here and a chapter there if you like. On the whole, though, you'll probably get more out of this book if you start at the beginning, proceed to the middle, and continue on to the end (although not all in one sitting).

We don't expect you to remember anything from one chapter to the next — we always refresh your memory as necessary.

## *What You Don't Have to Read*

You don't have to read chapters that you think are unimportant to you. If you don't have children, you could skip the chapter on making arrangements for your children to be looked after following your death. If you don't own a business, you could skip the chapter on passing on your business.

You also don't have to read any text preceded by the Technical Stuff icon in order to understand what we're talking about.

## *Foolish Assumptions*

This book was written for people who aren't lawyers or accountants or insurance brokers or financial planners but who want to know how to plan their estate and make their will. We don't assume that you have any background knowledge about law or income tax or insurance policies or funeral planning or anything else. We start at the beginning of each subject and build up information about it. We avoid using technical language when it's not necessary, and we explain technical terms in plain English if you need to know them.

## *How This Book Is Organized*

This book is divided into six parts, each covering a major area of estate planning. The chapters within each part cover specific topics in detail.

### *Part I: Estate Planning Basics*

In this part you'll find the basic information you need to understand the estate planning process. In Chapter 1 we explain what your estate is, and what estate planning is and why you need to do it. In Chapter 2 we tell you how to prepare an inventory of your estate. In Chapter 3, probably the scariest part of this book, we tell you about the Canadian tax system and the impact of the federal *Income Tax Act* on estate planning. But don't worry, we also tell you how to work with the income tax rules to keep taxes on your estate as low as possible. Then, as a bonus, we explain what probate fees are and offer some strategies for keeping them down too.

### *Part II: Estate Planning Tools*

In Part II we introduce you to the tools commonly used to plan an estate. Chapter 4 helps you figure out whether you need life insurance and, if you do, how much; and gives you the information you need to decide which kind of life insurance is right for you. In Chapter 5 we talk about giving away your property before you die, and explain why there is no such thing as a simple gift. In Chapter 6 we talk your ear off about testamentary trusts and living trusts. In case you just can't wait — trusts are a way to give property away while still keeping some control over it.



## ***Part III: Creating an Estate Plan***

In Part III we start to take you through the estate planning process. Chapter 7 assists you in choosing the people you'll give your estate to (your beneficiaries) and the person who will manage your estate until it has been completely given away (your executor). In Chapter 8 we let you know what will happen to your young children if you die before them and how to make the best advance arrangements for their care. In Chapter 9 we explain what you have to do to pass your business on to family members or other people of your choosing. Chapter 10 helps you decide whether to give a gift to charity and when to do it (while you're alive or in your will). Chapter 11, destined to become a cult classic, gives you the low-down on planning your funeral and donating your organs.

## ***Part IV: Putting Your Plan into Action***

In Part IV we get down to the nitty-gritty of estate planning — creating the documents required to carry out the plan you've worked so hard on. In Chapter 12 we set out all the unpleasant things that will happen if you don't make a will, and in Chapter 13 we actually show you a will, in all its glory, and tell you all the things that can go wrong if your will isn't done right. In Chapter 14 we talk to you in our perky way about making arrangements to manage your finances if you become disabled before you die; and in Chapter 15 we cover arrangements to manage your physical care if you become unable to make decisions. In Chapter 16 we take a little pity on you and tell you how to get help with all the things we've told you you'd better do if you know what's good for you.

## ***Part V: Readyng Your Estate and Keeping it Up to Date***

Just when you think it must surely be all over by now, along comes Chapter 17. In that chapter we encourage you to put your affairs in order so you won't drive your executor to an early grave or make your estate impossible to manage. It's at this point that you'll probably want to throw the book through a plate glass window. But if you resist that impulse in Chapter 17, you'll almost certainly give in to it in Chapter 18, where we cheerily tell you that the only way to avoid going through the whole estate process again . . . maybe many times . . . is to die as soon as you've made your first estate plan and signed your first will.

## Part VI: The Part of Tens

In Chapter 19 we build on our advice in Chapter 16 and suggest ten questions for you to ask a lawyer before you hire him or her. In Chapter 20 we offer ten tips for using the Internet in the estate planning process.

### Icons

We use a number of icons in this book to guide you to information that's particularly important or useful . . . or in one case, that's particularly easy to ignore.



This icon draws your attention to important information that you've probably already forgotten if we told you about it before or that we want you to remember in the future.



This one reminds you that there are some things you mustn't do without getting professional help from a lawyer.



And this one lets you know it's probably safe to jump to the next paragraph, especially if your eyes are already glazing over from reading the paragraph that came before. But seriously, if you're really interested in understanding the topic you should read these detailed definitions and explanations.



This icon alerts you that we're saying something that could save you time, trouble, or money. When we hit a bull's-eye, it could save you all three.



This ominous icon suggests not very subtly that you're heading for trouble and very possibly complete disaster if you don't follow our advice to the letter.

## Where to Go from Here

Estate planning and wills were not invented for controlling people who want to keep their hands on their property after they're dead. (Well, they weren't invented *just* for never-say-die controllers. . .) They were invented for people who want to make sure that, after their death, life goes on fairly smoothly — financially if not emotionally — for their family and friends.

# Part I

# Estate Planning Basics

## The 5<sup>th</sup> Wave

By Rich Tennant



“That? That’s form 1040DTX. In the unlikely event that anyone ever does figure out how to ‘take it with them,’ the federal government has in place a form and instructions on how to send back the appropriate amount of taxes due.”

## *In this part . . .*

**T**his part gently introduces you to estate planning. We hardly ask you to think about your approaching end at all! Instead we tell you exactly what estate planning is, help you figure out the present size of your estate, and explain how Canadian tax laws affect your estate plan.

## Chapter 1

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# What Is Estate Planning, Anyway?

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### *In This Chapter*

- ▶ Figuring out what it means to have an estate
  - ▶ Knowing what estate planning involves
  - ▶ Exploring why estate planning is essential
  - ▶ Looking at the tools of the estate planning trade
  - ▶ Understanding the right time to prepare an estate plan
  - ▶ Ensuring that you'll be financially covered in your lifetime too
  - ▶ Taking care of your needs in case you become physically or mentally incapable
  - ▶ Going to the experts
- .....

**H**ere's the good news about estate planning: *You* have an estate! You don't have to be a sports star or a computer maven, or to have inherited old family money to have an estate or to need to do estate planning.

Now for the bad news about estate planning: It forces you to think about death — and not just in an abstract philosophical kind of way. It forces you to think about your own death. You may not enjoy the estate planning process very much, but in this chapter we explain why you should do it even though it's not a lot of fun. We're going to ease you gently into estate planning. We'll briefly discuss the main things you need to know, and then in the following chapters we go into more detail.

# Understanding What Your Estate Is

We keep talking about this estate of yours, but before you start wondering why the butler and chauffeur didn't show up for work this morning, we'd better give you a little more detail about what your estate is.

Your estate is made up of everything you own. But in legal terms, your debts — everything you owe — are also part of your estate, because what you own must be used to pay off your debts when you die. (We show you how to take stock of your estate in Chapter 2.)



The things you own are referred to in law and accounting as your *assets*, and the debts you owe as your *liabilities*.

You need to take some other things into account when you're estate planning, although they're not technically part of your estate:

- ✔ **Life insurance:** If you have a life insurance policy, when you die either your estate or an individual (or individuals) you name as beneficiary, whichever option you have chosen, will receive the insurance proceeds. (We tell you more about insurance in Chapter 4.)
- ✔ **Pension plans:** If you're a member of an employee pension plan, your spouse or a person you name as beneficiary may be entitled to receive a pension after your death or to receive a one-time payment.
- ✔ **Government benefits:** Your spouse and/or children may be entitled to receive either a pension or a one-time payment from the Canada Pension Plan, Old Age Security, Veterans Affairs Canada, or Workers' Compensation after your death.



Besides being what you own and owe, your estate is also a legal being that comes into existence on your death. It has some of the same legal rights that you had when you were alive, such as the right to enter into contracts and to sue and be sued. It also has some of the duties you had, the principal one being the duty to pay income tax.