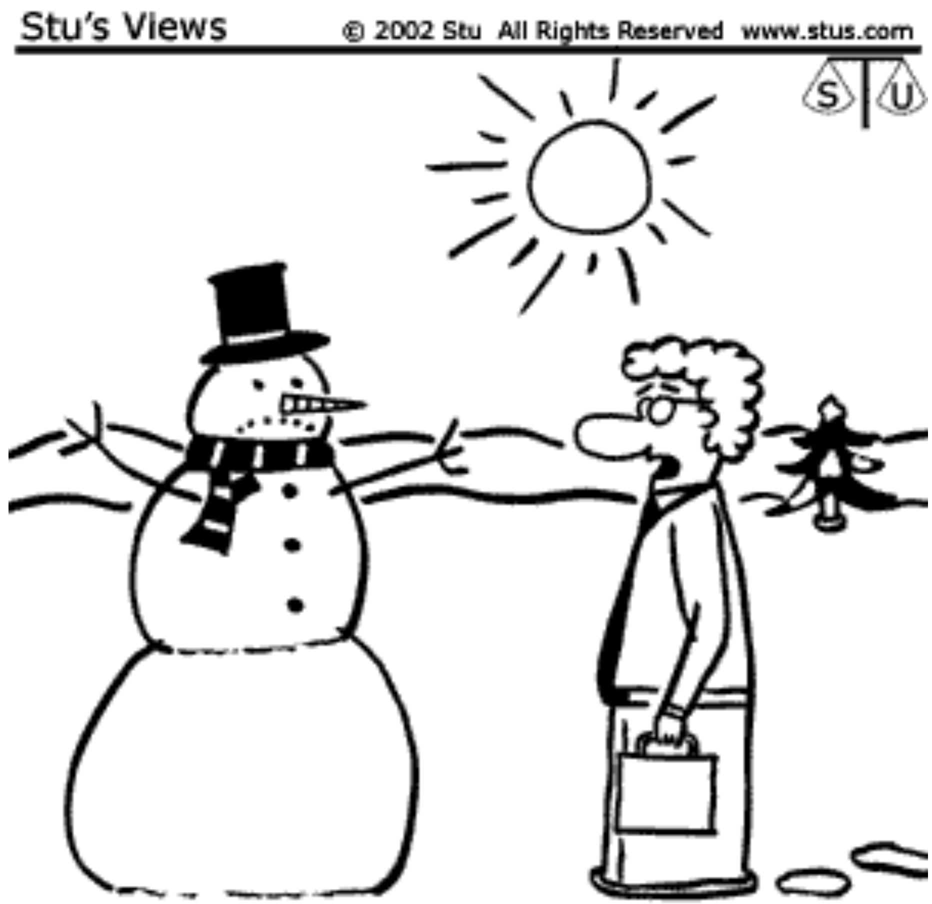
Wills and estates

LEGAL INFO
NOVA SCOTIA

Agenda

- Powers of Attorney – for property and assets
- Personal Directives – for health and personal care
- Wills
- Intestacy (death without a will)
- Probate (and probate avoidance)
- Getting professional advice

LEGAL INFO
NOVA SCOTIA



"Mr. Frosty, it's March.
Time to talk estate planning."

LEGAL INFO
NOVA SCOTIA

Power of Attorney

- A legal document allowing someone else to act on your behalf to look after you while you're still alive

- You may need a Power of Attorney if:
  - You are sick and can't look after your own affairs.
  - You will be travelling outside the country.
  - You need help for some other reason.

LEGAL INFO NOVA SCOTIA

Who can be my attorney

- Attorney under a Power of Attorney does not mean "lawyer"

- Your attorney must be:
  - 19 years or older
  - Of sound mind

- Back-up attorney(s) can (*should!*) be named

LEGAL INFO
NOVA SCOTIA

Powers of Attorney

- Different types of POAs:
  1) a general power (attorney can do anything you authorize)
     - Typically ***enduring***
     - Common examples: banking, selling and leasing property, signing legal documents, taking out loans

  2) a specific or limited power (attorney restricted to certain tasks or a limited time)

- Your attorney <u>cannot</u> make a Will for you

LEGAL INFO NOVA SCOTIA

Representation Order

- Alternative to POA is an application to the Supreme Court of Nova Scotia for an adult representation order
- Beware:
  - costly
  - time-consuming
  - not easy

LEGAL INFO
NOVA SCOTIA

Personal Directive

- Authorizes your *delegate* to act on your behalf when you can't
  - may name only one delegate at a time
  - encompasses health and personal care
  - can include specific treatments, life-support, "general philosophy", an "advance directive"
  - *note*: medical assistance in dying legislation ("MAiD") – requires competency

LEGAL INFO NOVA SCOTIA

Personal Directive

- Must be made while competent
  - not effective until you are found incompetent

- More information about preparing a Personal Directive in Nova Scotia:
  - https://novascotia.ca/just/pda/

LEGAL INFO
NOVA SCOTIA

"My advance directive was for you not to show up."

LEGAL INFO
NOVA SCOTIA

What is a will

A Will is a legal document that says who gets your property when you die

LEGAL INFO NOVA SCOTIA

Words to Know

- Testator
  - a person who makes a will
- Intestate
  - a person who dies without a will
- Beneficiary
  - a person who inherits under a Will
- Executor
  - the person who carries out the terms of your will

LEGAL INFO NOVA SCOTIA

Why make a will

- Peace of mind and dignity
- Let your family & friends know your wishes
- Make sure what you own goes to the people you choose
- Avoid disputes, save time & money
- Name a person to care for dependants
- Provide for companion animals (pets)

Who can make a Will?

- 19 years of age or older
  - Note: this is the age of majority in Nova Scotia
- Under 19 years old <u>if</u> the person is or was married
- Of sound mind
  - You know what a Will is, what property you own, and who your family and your dependants (typically, spouse and children) are

LEGAL INFO NOVA SCOTIA

How to make a will?

1. Signed by the testator and 2 witnesses
   - **all three people must sign together**
   - witnesses must be age 19 or over, not beneficiaries of your Will (or their spouses), and of sound mind

2. Handwritten and signed by the testator
   - there should be no other marks or writing on the Will – be <u>very</u> careful if you choose this
   - ‘Holograph’ will

LEGAL INFO
NOVA SCOTIA

Other will details

- A Will must be written, dated, and signed
- The pages of the Will should be numbered and initialed by the testator and witnesses
- A document called an “Affidavit of Execution” should be done at the same time as the Will
  - this is a sworn witness statement that says the Will was properly signed and witnessed
- **Please speak with a lawyer before making a Will**

LEGAL INFO NOVA SCOTIA

Executor

- Your executor/trustee is perhaps the most important decision you will make
- Must be 19 years and older
- Who should you choose?
  - Someone trustworthy, with time to devote to your estate, responsible with financial matters, and calm in the face of family disputes
- No one <u>must</u> accept the job of executor
  - **Talk with the person you choose to make sure they want to do it**

LEGAL INFO NOVA SCOTIA

More than 1 executor?

Yes.

- However, joint executors must agree on all decisions and sign all documents together.
- What if they do not agree?

LEGAL INFO
NOVA SCOTIA

What's in a will?

- Basic:
  - Appoint executor
  - Payment of debts
  - Personal effects and specific gifts (if any)
  - Primary beneficiary
    - Typically spouse
  - Secondary beneficiary
    - Typically children
    - In trust, if minors
  - Powers clauses
- More complex:
  - Grandchildren
  - RESPs
  - Mutual disaster clause
  - Cottages and land
  - Insurance (incl. trusts)
  - RRSP/RIF (incl. trusts)
  - Joint accounts
  - Charitable intentions
  - Appointment of trusted advisors
  - Trust provisions

LEGAL INFO NOVA SCOTIA

Limits

- Can I do whatever I want with my property?
- Yes, with some exceptions:
  1. You must provide adequately for your dependants. This law is called the *Testator's Family Maintenance Act.*
  2. The *Matrimonial Property Act* is a law that says you are entitled to 50% of your spouse's property when your spouse dies.
  3. You may not leave instructions that will be illegal or against public policy.

LEGAL INFO
NOVA SCOTIA

Some things distributed outside will

- Jointly owed property (eg. house, bank account*)

- Assets where you named a beneficiary, like:
  - RRSP, TFSA, RRIF, RDSP
  - life insurance
  - other pension plans

LEGAL INFO
NOVA SCOTIA

Updating your will

- Can be changed any time before death as long as the testator has "testamentary capacity"
- Destroy old wills to avoid confusion
- Don't cross out or add words – get a new Will
- Good idea to review every 3 to 5 years, or whenever circumstances change
    - New marriage or divorce
    - New child/grandchild
    - Death of executor or beneficiary
    - Significant change in financial circumstances

LEGAL INFO NOVA SCOTIA

Revoking a will

A Will is revoked (cancelled) in these 5 ways:

1. You get married.
2. If you get divorced, the parts of your Will that apply to your spouse are revoked.
3. You sign a written document cancelling your Will.
4. You make a new Will.
5. You destroy your Will.

Minor children

- You may name a guardian to look after your children
  - ➢ this person may be their estate guardian, guardian of the person, <u>or both</u>
- **Estate guardian** – looks after the legal and financial interests of the minor child(ren).
- **Guardian of the person** – looks after the personal care of the minor child(ren).

LEGAL INFO NOVA SCOTIA

Aboriginal law

- federal *Indian Act* rules for making wills, PoA, apply to persons who have status under the *Indian Act* who ordinarily live on reserve.
- The *Indian Act* does **not** apply to persons with status who live off-reserve, or to those who live on-reserve without status.
- the Confederacy of Mainland Mi'kmaq (CMM) has a Mi'kmaw Wills and Estates series: How to Write a Will, How to Settle an Estate, How to Write a Power of Attorney and Personal Directive, Wills and Estates & Matrimonial Real Property
- Copies are located in band offices of CMM's member bands or can be found online at cmmns.com/program/wills-estates/

LEGAL INFO NOVA SCOTIA

Why make a will?

So what you have goes:

- to the people you want
- the way you want
- when you want.

Because of what happens if you **don't** have a will.

LEGAL INFO
NOVA SCOTIA

No will

- *Intestate Succession Act* rules say who gets your estate
- The rules are not flexible
- Lists **nearest relatives**: married spouse or registered domestic partner, children, parents…
- Common law partners are **not** listed

LEGAL INFO NOVA SCOTIA

No will (Intestate Succession)

- *Spouse only* ➔ all to spouse
- *Spouse & relatives, no children* ➔ all to spouse
- *Child(ren) only* ➔ all to child/children
- *Spouse & one child* ➔ First $50,000* to spouse, balance equally between spouse and child
- *Spouse & children* ➔ First $50,000* spouse, rest 1/3 spouse – 2/3 children
- *No spouse or children* ➔ All to closest next-of- kin

(* can elect the family home in lieu of or as part of $50,000, if <u>not</u> held <u>jointly</u> prior to death)

LEGAL INFO NOVA SCOTIA

No will

- Beware:
  - ***"spouses" are not common-law partners*** (unless registered as domestic partners)
    - common law partners are people who live together like spouses, but are not married
    - they do not have the same legal rights as married spouses
    - if you die without a Will, your common-law spouse will not automatically inherit your property
  - no guardian appointment (if minors involved)
  - requires bonding/security (1.5x estate value)

LEGAL INFO NOVA SCOTIA

Probate


Stu's Views
© Stu All Rights Reserved www.STUS.com
STU
I'm a performance piece entitled,
"The Probate Experience".

Probate – What is it?

- A legal process where a court gives your executor or administrator ("personal representative") the authority to look after your property and divide it among your heirs/beneficiaries
  - Your estate is probated (with a will) or administered (no will)

- When do you need probate?
  - Nature of Assets (sole owned real estate, public stocks)
  - "Large" estates (financial institutions differ re their definition of "large")
  - Where beneficiaries don't get along or guidance needed
  - Debts or claims

LEGAL INFO
NOVA SCOTIA

Executors & Trustees: Duties

1. Identify and take control of property
   (professional advice - estate lawyer)

2. Pay debts and taxes
   (professional advice - estate lawyer and accountant)

3. Distribute property according to the will
   (professional advice - estate lawyer and financial advisor)

4. Administer any ongoing trusts
   (professional advice - estate lawyer and financial advisor)

LEGAL INFO NOVA SCOTIA

Compensation

- Probate taxes in Nova Scotia = in excess of 1.6% of the value of your assets
- Executor commission = up to 5% (approved by Court) <u>plus</u> reimbursement of expenses
- How to avoid probate? Beware…
  - Joint ownership with right of survivorship
  - Designating beneficiaries (for RRSPs, RRIFs, TFSAs, and insurance policies)
  - Gifts to beneficiaries before death

LEGAL INFO NOVA SCOTIA

Professional Estate Planning

- Most lawyers have websites.
- Ask community organizations for referrals.
- Legal Information Society of Nova Scotia - Lawyer Referral Service
  - 1-800-665-9779 (toll free) or 902-455-3135
- Nova Scotia Barristers' Society lawyer directory - http://nsbs.org/member-search
- Some lawyers offer free or low-cost initial consultations
- Lawyers will often give you a "checklist" to help you get organized and think through issues
- **Planning up front costs less than litigation afterwards!**

LEGAL INFO NOVA SCOTIA

Thanks

- Jessica Lyle, Sealy Cornish Coulthard

- Generous funding for this project was provided by the Law Foundation of Ontario Access to Justice Fund.

The Law Foundation of Ontario

Advancing access to justice

LEGAL INFO
NOVA SCOTIA

Questions?

LEGAL INFO NOVA SCOTIA

LEGAL INFO NOVA SCOTIA