



# Estate Planning through Family Meetings (without breaking up the family)

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International Self-Counsel Press Ltd.  
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*Self-Counsel Press acknowledges the financial support of the Government of Canada through the Canada Book Fund (CBF) for our publishing activities.*

*Printed in Canada.*

*First edition: 2010*

### **Library and Archives Canada Cataloguing in Publication**

Butler, Lynne

Estate Planning through family meetings / Lynne Butler.

ISBN 978-1-77040-036-8

1. Estate planning. 2. Communication in families. 3. Adult children of aging parents — Family relationships. I. Title.

K4568.B88 2010

346.05'2

C2009-906328-X

Inside Image

Copyright©iStockphoto/Adult Students Studying/Monkey Business Images

Copyright©iStockphoto/Old-Fashioned Will and Testament/Monkey Business Images

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International Self-Counsel Press Ltd.

1704 North State Street  
Bellingham, WA 98225  
USA

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North Vancouver, BC V7J 1H1  
Canada

*This book is dedicated to Chelsea for her encouragement and love,  
and for being the best daughter and friend I could possibly have.*



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# Notice to Readers

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# Introduction

Have you ever tried to bring up a sensitive topic with someone who simply did not want to talk about it? You feel like you have to force a conversation on someone because you really think he or she needs to know something important, but it seems impossible. The person is unhappy about it and you are uncomfortable and the whole thing ends up being an argument or creating a scene. Almost everyone has been in that situation once or twice, and almost everyone wishes they knew a better way to deal with it.

Talking to your parents about difficult topics has an extra dimension of difficulty simply because they are your parents. Most of us were raised to respect our parents and not to question their judgment about how they live their lives. It can be a lot easier for a parent to shut down an unwanted conversation than it is for

other people, just by drawing on authority as your mother or father.

In addition, most of us have trouble making the shift from having our parents look after us to having us look after our parents. We are so used to thinking of them as being competent individuals that it is difficult to accept that they may need our help. This can make many people reluctant to speak up on sensitive topics, and we may wait too long to take on the role of protector.

Have you ever tried to tell your aging parents that you think they might be losing their mental faculties and that legal steps should be taken to let someone take over? That is an unpleasant conversation that many people dread, as it rarely goes well. Then there is the talk in which you try to convince your aging parents

that they need to make wills. Again, this topic is near the top of the list of what everyone wants to avoid.

What about holding a family meeting? It is a great idea in principle but most families have never had one. They might feel awkward trying to hold one. Just the idea of having this kind of meeting raises a flurry of questions for most people, such as who should go to the family meeting? Who should run the meeting? What should be talked about in the meeting? The biggest question of all is how do you turn the results of a family meeting into a legally effective estate plan?

How do you have this conversation with your parents? How do you get the whole family to talk about what needs to be done for your mom and dad? How do you make sure that all of the talking is worthwhile and results in a proper, legally documented, sensible estate plan?

Knowing that the topic is essential does not necessarily make it any easier to bring up.

This book will explore how and when to raise these topics in a constructive way and bring about a successful discussion. The goal is to clarify and understand your parents' or your family's goals and document them in a legally effective way. Whether you just want to talk to your parents or you want to hold a full family conference, you will find ideas in this book about how to handle it in a way that will result in the right legal solution being put into place.

If you are reading this book, you may have a parent or other relative who is ill, in need of surgery, contemplating a move to long-term care, or showing the early signs of mental deterioration. In other words, your parent is beginning to need help from you and other family

members. Most likely, the parent you are concerned about does not have a will, an enduring power of attorney, or a health-care directive in place. You want your parent to get these documents in place before it is too late.

Even if your parents are completely healthy and are showing no signs yet of failing mental capacity or physical frailty, you may rightly want them to get on with their planning while they are mentally healthy. The topics covered in this book apply equally to elderly individuals who still have their complete mental and physical health.

Maybe you are thinking about how to bring up the subject of planning with your parents, or you have already brought it up and did not get the reaction you hoped for. Perhaps they were reluctant to do any planning, or even worse, they saw your involvement as interference and resent you for it.

Now what? How do you start a constructive conversation on such a potentially upsetting subject? Who should be involved? What is the process going to be like? How do you get things going without causing any family disharmony or upsetting anyone? Can it possibly be done without tears or shouting? What can you reasonably expect to achieve? Is it really possible to take all of this emotion and talking and form it into a legal plan of action that will be in place when you need it?

In this book we will explore all of these questions, and more. You will learn more about why people are reluctant to plan, so that you can understand and deal with objections to planning. You will read about some specific conversation starters for bringing up a touchy legal subject with your parents or with the

entire extended family. You will see how family meetings are held and will learn to design an agenda for your own meeting. You will learn more about who should be included and excluded. You will also learn more about some of the specific situations and questions that cause problems for family estate planning as well as ideas for dealing with them.

There are two different situations addressed throughout the chapters of this book. One is the case in which you want to speak only to your parents and there is nobody else in the family who will be involved in the process. This is where many readers will see a familiar scenario. Chapter 4 talks specifically about having a conversation with parents, though the information in all chapters will be useful to help you prepare for, conduct, and follow up on your discussion.

The second situation is that in which an entire family is going to sit down together to decide what needs to be done. This might be to talk about a parent's failing health and what the family should do about it. The family might sit down to talk together where there is a family business, farm, or cottage to deal with. Sometimes families like to do communal planning not because of a business or cottage, but because they want to ensure that family wealth is preserved or distributed fairly. Sometimes a family meeting is held simply because having such a meeting will ensure that everyone knows what is happening and individual family members will have the chance to be involved in decision making. Quite often the parents want a family meeting just because they want to know what everyone thinks of their plans.

Chapter 8 will show you how to prepare an agenda. Chapters 8, 9, and 10 will help you run your meeting successfully and smoothly. Chapter 11 will help you with the matters that have to be taken care of after the discussions have taken place.

If you are using professional advisors such as lawyers and accountants, you will find that this book gives you plenty of practical tips and ideas about making the most of the information you are receiving from those advisors. It will bring up topics that interest you and that you will want to explore further with your professional advisors. It will also give you ideas on how and when to involve your lawyer or accountant.

This book will also talk about the human side of making legal arrangements; it explores the fears and superstitions that hinder estate planning and gives you ideas for dealing with them. It will help you remember that though legal questions are being raised, there are real people with real fears and feelings involved at every stage. This book will be a useful supplement to the advice you are getting from other sources.

This book also comes with a CD that includes forms that you can use to gather your thoughts about the various legal solutions offered so that you can put what you have learned to work. It takes a practical, hands-on approach that is designed to help you get moving, get your parents and family moving, and reach your estate-planning goals.

Documents that have more or less the same legal effect have different names in different geographic locations. This is because laws having to do with wills, probate, and incapacity are

almost all made at the local level, as opposed to the federal level. In this book we use the terms “Enduring Power of Attorney” and “Health-Care Directive” but those documents are known by other names as well, as the following two lists will show. These lists should help you relate the information you see in this book to the information you hear or read about locally from lawyers, accountants, in magazines, or other sources.

Enduring Power of Attorney is also known as the following:

- Continuing Power of Attorney
- Durable Power of Attorney
- Lasting Power of Attorney
- Mandate Given in Anticipation of Incapacity
- Power of Attorney for Property

Note that in this book, the word “attorney” does not refer to a lawyer.

Health-Care Directive is also known as the following:

- Advance Directive
- Advance Health-Care Directive
- Durable Power of Attorney for Health Care
- Health-Care Proxy
- Living Will
- Patient Advocate Designation
- Personal-Care Power of Attorney
- Personal Directive
- Power of Attorney for Personal Care



# Addressing Difficult Topics

It is not really surprising that people do not want to talk about making their wills. Planning a will forces people to think about their own mortality. We all know that one day we will pass away, but most people do not want to think about that if they can help it. The reluctance to talk about it only increases when someone is terminally ill or critically injured, because the possibility of losing a loved one is uncomfortably close.

Talking about planning for possible mental incapacity is even harder. The fact is, our population is aging. The baby boomer generation is nearing retirement age. The parents of the boomers are now elderly. People live longer now than they ever have, thanks to medical and technological advancements. Living longer, though, does not necessarily mean living your whole life with full mental and physical

abilities intact. This is where the planning becomes important and the topic becomes touchy.

The knowledge that one day a parent could have to live with mental or physical impairment leaves many of us in a difficult situation in which we know we should take action, and we are willing to take action, but we are not sure how to do what we need to do. Many people have brought up subjects like moving a parent to a long-term care facility, helping out with banking, or making wills with sincere concern for an aging relative, only to find that their concern is unwelcome. The parents do not always want to do any planning, or even talk about it. The well-intentioned person is shut down, no help is accepted by the parents, and to top it all off, now there is resentment or tension between family members.

With this in mind, you may have come to the realization that your parents or other aging relatives need do some planning while they are still healthy. Or, it might have become painfully obvious to you that a parent is struggling with the onset of physical illness or mental lapses due to the process of aging. With their best interests at heart, you may ask your parents whether the necessary documents have been done. If you have asked this question, you may have discovered that your parents have no legal paperwork or inadequate paperwork in place. Most people fail to prepare the legal documents they need. With the onset of illness or dementia, the time for preparation of documents is running out.

## **1. Troublesome Topics That Need to Be Discussed**

Everyone is different so there is no way to predict every subject that is going to upset every person. However, there are some specific topics that are almost always hard to talk about and which are of special interest to aging parents and their families. These topics are mental capacity, money, and will planning. Each of these can be problematic for a family, sometimes extremely so, but finding the right legal solution will resolve those problems to a large extent.

Finding the right legal solution does not necessarily involve putting sweeping changes into place immediately; it means understanding the problem and having a plan in place to deal with it when the need arises. It means knowing in advance who is ready and willing to take on responsibilities for other people. It means having the right paperwork in place so that when medical or financial crises occur, they are not made worse by delays, challenges, or requests for clarification.

The topics mentioned in this section — mental incapacity, money and insurance, and will planning — will be the main focus of this book. They are the subjects that will be referred to in later chapters, which talk about holding a conversation with your parents or a meeting with your family. You will notice that although these topics are listed separately here, in real life they overlap and blend together. This means that the legal solutions to deal with them may also overlap.

### **1.1 Mental incapacity**

Mental capacity is the ability to make reasonable decisions. What is considered “reasonable” can be open to interpretation, but most people would consider a decision reasonable if it takes into account all relevant factors known to the decision maker, and takes into account the possible consequences of the decision.

For example, most of us would consider giving a cash donation to a charity a reasonable decision, but not if the donation was so large that it left the giver no money to pay for rent or food. A person who did not realize that giving his or her money away would cause financial hardship for himself or herself would probably lack mental capacity, particularly if this inability to manage money was a long-term pattern.

A decision is not considered reasonable if it is forced on a person by way of verbal threat or physical intimidation. It is not reasonable if it needlessly harms the person or his or her family members who are dependent on him or her.

A decision does not have to be popular to be reasonable, which is an important point when it comes to mental capacity. Every one of us has at some time made a financial decision that made someone around us unhappy, such

as overspending on a gift, or buying something frivolous. That is simply human nature to make the occasional poorly thought out, impulsive decision, particularly among younger people.

However, it is not uncommon for the adult children of an aging person to be unhappy with the decisions being made by their parent, particularly financial decisions. Sometimes this leads the children to attempt to use the legal system to control or stop the parent's financial independence. This is where it becomes necessary to tell the difference between, on one hand, a parent who cannot make good financial choices and, on the other hand, a parent who can make good financial choices but whose choices are somewhat unusual.

For example, a person who continually buys cans of dog food that are simply stored by the case in the basement because he or she does not remember that he or she does not have a dog is not making good financial choices. On the other hand, a person who takes skydiving lessons four times a week might seem odd to you but is, on the face of it, making a good choice of how to spend his or her money.

The fact that your parent makes a decision that you do not like or agree with does not mean that your parent has lost mental capacity. It is his or her money after all. Your aging parent is free to make as many unpopular decisions as he or she wishes, as long as those decisions are not the result of poor memory, confusion, or pressure by another person.

You might notice that your mom or dad is beginning to forget things and fails to recognize people. He or she can no longer take care of familiar tasks such as cooking, driving, or gardening that he or she used to be able to do easily. The person cannot keep track of money and does not know which bills have been paid and which have not. You are pretty sure your

parent is not taking his or her prescribed medications properly. You may have no choice but to conclude that your parent is beginning to lose mental capacity. You think it is time for your parent to let someone else help him or her.

Noticing that there is a possible problem with mental capacity is the easy part, and just the beginning of what might be a long, emotionally draining experience. Telling your mother or father that you think he or she is losing mental capacity and needs help is possibly the hardest conversation you will ever have. Most (but not all) parents will fight to retain independence and privacy. If you have seen the beginning of this deterioration in your parent, it can be almost impossible to raise the topic without insulting, frightening, or upsetting the person. Once the deterioration has gone past the initial stages, talking about it becomes infinitely more upsetting for everyone involved.

Alzheimer's disease, other dementias, illnesses, and physical deterioration may all contribute to the eventual lessening of an individual's ability to look after his or her own decisions. The pace at which changes occur is different in every individual. Sometimes this means that there is a span of several months, or even years, during which an individual is not capable of making good decisions alone and needs help from others.

As the family member of someone who is losing capacity, your goal is to assess the problem and offer the assistance that is wanted and needed. You may discover that although help is needed, it is not always wanted by your parent. It can be really difficult to persuade your parent to let you help or to allow you to find others to help. Because there is so much at stake in the parent's view — such as independence, identity, freedom, dignity, and privacy — the discussion can become very emotional.

Just as we should all plan for our eventual passing away by preparing a will that sets out our wishes, we should all plan for the possibility that we might lose our mental faculties as we age. We need to prepare legal documents that name individuals to make decisions for us if we cannot do that for ourselves any longer.

All aging individuals should have these planning documents in place but it is a very delicate topic. Most people realize that as they lose their mental abilities, they might also be losing their independence, dignity, and privacy. This idea is disturbing and alarming to most elderly people. Nobody wants to believe it is happening to them, and when it is happening, it is disorienting and frightening. Because we do not want to upset anyone, we do not bring up the topic, leaving our elderly family members without the help they need.

## 1.2 Money and insurance

The problem with talking to your parents about money is that it is hard not to appear greedy, either to them or to other family members who find out you have raised the subject. Most people are more private about their finances than they are about any other aspect of their lives. You might ask your parent, “Have you got your money invested safely and properly?” and what they hear might be, “How much money do you have, and are you leaving it to me when you pass away?” Money is a touchy subject.

Part of talking about money is talking about insurance. The types of insurance that are particularly relevant to aging parents and family estate planning are life insurance, long-term care insurance, and critical illness insurance (each of which is defined below). Not everyone has or needs all of these types of policies, as everybody’s situation is different. However, if you are helping your parents with planning, it

is essential that you find out and understand what your parents have in place.

Insurance can be remarkably useful in filling money gaps in estates. Your parents might find it useful to meet with an insurance representative to talk about how different kinds of insurance might be helpful in their situation. You should be aware though, that it is possible to be over-insured, so your parents should thoroughly understand what a policy is going to do for them before they buy a new one.

*Life insurance* pays out an agreed-upon amount of money to a named beneficiary when the insured person dies. Often, the named beneficiary is a spouse or other family member, but life insurance can be useful when the named beneficiary is the estate of the deceased person, because this creates cash flow that did not exist before the death. Life insurance is also used frequently in conjunction with privately owned businesses to buy back the shares of a business owner who passes away.

*Long-term care insurance* covers the costs of living in a long-term care facility, or, in some cases, the costs of receiving specialized care at home. It is intended to be used by individuals who are no longer able to deal with personal care such as bathing, toileting, or meal preparation due to the complications of aging. It is paid in the form of weekly or monthly benefits and can be used to supplement government or private sources of retirement funding.

*Critical illness insurance* pays out a lump sum of money to a policy owner who suffers a major illness such as cancer or a heart attack and survives.

The fact that these types of insurance are listed here does not mean that everyone reading this book should urge their parents to buy all of these policies. They are listed so that

when you have a discussion with your parents or a family meeting, you will be sure to ask what is in place. You might also see how one of these types of insurance might fill a need for the future and want to raise it at your meeting. Sometimes putting insurance to good use requires the cooperation of the whole family, such as when a group of siblings pays the premiums on a long-term care insurance policy for their parents.

The most common of all of these is life insurance. When talking about a life insurance policy, you must understand the following information about the policy:

- Who is the owner of the policy?
- Whose life is insured by the policy? (Note that some policies insure more than one life, such as Joint and Last to Die policies.)
- Who is the beneficiary of the policy (i.e., who will get the money on the death of the life-insured person)?
- Is the policy whole life, term, group, etc.?
- What is the face value of the policy (i.e., how much money will be paid out on the death of the insured person)?

### 1.3 Wills and dying

Most of us are not comfortable talking about dying, at least not about the deaths of our loved ones or ourselves. Almost nobody is comfortable asking their parents whether the parents have made wills. It is even harder to talk about wills if the parent is ill or hospitalized. Bringing up financial or legal questions when a person is dying or extremely ill may make you look cold or unfeeling to others who are distressed by the person's illness. You are not alone in finding that this is an extremely sensitive topic.

Yet, as sensitive as the topic may be, everyone is better off if it is brought up and dealt with properly.

One of the first major decisions that will be made by your parent when making a will is the choice of *executor*. This term refers to the person or people who will be in charge of your parent's estate when your parent dies. The executor's job includes everything from making funeral arrangements and paying bills to settling claims and paying out the estate to the beneficiaries.

It is common for a married couple to appoint each other as executors, but do not assume that is the case for your parents without asking. Even if they do appoint each other as their first choice, one of them is probably going to outlive the other except in very unusual circumstances. Therefore, it is also necessary for them to appoint an alternate choice of executor to take over in case the other spouse is already gone.

Should one of your parents die, the surviving parent is not always a good choice of executor and the family members should be realistic as to the capabilities and wishes of each parent.

The surviving person might not be a good choice for the job of executor if —

- he or she is beginning to show signs of mental incapacity, memory loss, or confusion;
- he or she is not the one who looked after the family's finances and has no familiarity with financial matters;
- he or she is overwhelmed, or likely to be overwhelmed, by emotions at the loss of his or her spouse;
- the parent who died owned a business that the other parent was not involved in;

- the surviving parent was the second (or subsequent) spouse of the parent who died, and the estate is going to involve the first spouse in some way; and
- he or she simply does not want to do it.

During the estate-planning process your parent can ask his or her lawyer for ideas about who should be the executor. There are plenty of possibilities, such as having one of the children act jointly along with the surviving parent or instead of the parent. Another choice is using a trust company, which is particularly suitable if there are likely to be family squabbles or disputes that will require a neutral third party as executor, or where none of the family members live close to the parents.

Whoever is chosen as executor should be aware that he or she has been appointed. If your parents want to appoint you or one of your siblings, they should let you know before they sign their wills. This is something that can be talked about at a family meeting.

A wills discussion will also cover the *distribution* of the estate, which refers to who will inherit the parents' assets after they pass away. This is, of course, where most of the disputes arise with estates, and it is an area in which many parents take great care to craft an arrangement that is fair to everyone, in their view.

In some families the distribution can be as simple as dividing whatever money is left equally among the children, but it is not always that easy. One of the most important elements of the distribution of an estate is that of special situations that need more attention than most. These situations might include a family member who is disabled and must have his or her inheritance placed in a trust, a business that is being passed down to the next generation

in the family, or a blended family that must balance the needs of a new spouse against those of the children from a previous marriage.

## **2. Are You the Right Person to Bring up the Troublesome Topics?**

An issue that a number of people wrestle with is whether they *should* be giving their parents any planning advice or asking them about personal documents. Are they sticking their noses into private matters if they decide to speak up? Are they the best person to bring up the subject with the parents? If so, where do suggestion and encouragement end and where do interference and influence begin? If not them, who else is going to bring it up and see that essential documents are done? Nobody wants to be accused by siblings or other family members of trying to force a parent's hand.

What if there is a family business and nobody has been named as the person who will take over if your parent becomes ill or mentally incapable of running the business? What if your parents own a cottage that is used by all family members and it is not clear who should be able to continue using it after your parents' death and who should pay for its upkeep? What if you have a sibling who is handicapped and your parents have not made any special financial arrangements for that person? You may see that all of these topics need to be addressed but you may have no way of knowing whether adequate planning has been completed unless you ask your parents.

You may feel some responsibility toward your siblings to make sure that things are in order, not to mention toward your parents whose retirement and golden years may be

directly affected by lack of planning. You may also feel that your parents' legal affairs will affect yours in the future if your parents do not put their affairs in order. If you, a child of the individuals directly involved, do not have the status as someone who is allowed to bring up a constructive discussion with your parents about their estates, then who does? If you do not bring it up, who will?

One of the factors that causes individuals to hesitate to bring up estate planning or incapacity planning is that they find it hard to accept that they now have to look after the person or people who always used to look after them. Sometimes it takes a very long time for this idea to dawn on a person who really does not want to reverse roles and become the caretaker.

We are not used to parenting our parents, but sometimes that is exactly what is required. You should do everything you can to ensure that your discomfort or disorientation with this issue does not prevent you from raising a topic that you think is important. You may be a "child" in the sense that you are the offspring of a certain person and therefore his or her child, but you are an adult.

Your parents might already have seen you change from a single person to a married

person, or from a child to a parent of your own children. They have seen you mature from a schoolboy or schoolgirl into a person with a job and responsibilities. They might have seen all of these stages and they realize that the impulse to protect and help them is simply part of that maturation process you have been going through. As an adult, you are expected to recognize when someone close to you begins to struggle with the tasks and challenges of everyday life and to shoulder the responsibility of helping if you can.

Sometimes talking about the role reversal with your siblings, spouse, friends, or even a counselor can help you get used to the idea that you might have to take over your parents' financial or health decision-making. You will also find information about "parenting your parents" on several websites and in magazines aimed at individuals who are caretakers for their parents.

If you are willing to bring up a difficult subject with a protective attitude and willingness to listen to others, and if you are willing to prepare in advance to ensure a good outcome, then you are the right person to bring up the topic.