



PROTECTING YOUR WEALTH

The Wealth Inventory



Life often seems like a huge battle. The path is strewn with obstacles, as we take two steps forward and one step back in an effort to improve our situation.

Gradually, we build up a certain amount of wealth and then suddenly, we realize its full economic value. We strive to protect it and, at the same time, to make it grow, to ensure that we enjoy financial security in our retirement years. There are, however, life events that can affect this

wealth: marriage, purchase of a house, birth of a child, accident, illness, separation or divorce and, of course, death.

When any of these situations arise, one person has the skills to counsel you and help you protect your wealth. With this expert's advice, you can build on your assets and use them wisely. Or, if bad luck befalls you, they will be distributed according to your wishes.

The notary: legal advisor for Quebec families!

WEALTH



PROTECTION



PROTECTING *Your* WEALTH

MAKE SURE YOUR HEIRS GET THE INHERITANCE THEY WERE MEANT TO RECEIVE

The notarial will is the key element in successfully planning for the protection of your wealth and your bequest to your designated heirs.

Since the new *Civil Code of Québec* came into effect in 1994, settling a succession has become trickier and more complex than ever. The law imposes rules and a specific procedure for the liquidation of a succession, which includes appointing a liquidator, taking inventory, paying debts, distributing assets, etc.

In the absence of a will, the law designates the heirs, who then appoint the liquidator.

The notarial will has the advantage of including our precise instructions as to the disposition of our wealth. It identifies heirs, names liquidators and defines their powers, specifies methods for vesting assets (particular or universal legacy, testamentary trust, etc.) and measures for reducing taxes, appoints a guardian for minor children, and so on.

Notaries can help clients protect their wealth and improve their overall estate planning through such measures as a will, wealth inventory, mandate in case of incapacity, examining the content of insurance policies and retirement plans. If some assets are held abroad, they can prepare a will in another language to facilitate the transfer of property to heirs.

Another clear advantage of a notarial will is of the fact that it never requires probate and is recorded in a register so it is easy to find.

AVOIDING SQUABBLES AND MISUNDERSTANDINGS: THE READING OF THE WILL BEFORE A NOTARY

All too often, the liquidation of a succession involves frustration, quarrels and resentment, even in the most closely knit families. Why? Because death itself, as well as settlement of the succession, creates problems the deceased could never have imagined. Often, it is also because the liquidator or executor, the person assigned to handle the succession, does not understand his or her role and responsibilities toward other members of the family.

To help resolve these misunderstandings and ensure that the liquidation of a succession does not turn into a family feud, notaries suggest adding a clause to the will requiring that it be read and explained to the heirs.

Thus, following a death, the notary will call a meeting with all the heirs to inform them about the content of the will and its consequences. The notary will play the role of moderator, asking questions that no one else would dare ask for fear of upsetting other family members. The notary can also act as a mediator if the contents of the will give rise to conflicts. Lastly, the notary will explain the role and responsibilities of the liquidator designated by the testator.

The reading of the will is the first step toward successfully settling a succession. Both the liquidator and the heirs will feel more comfortable about the procedures to follow so that the final wishes of the deceased are respected.

THE BIRTH OF A CHILD: AN OPPORTUNITY TO PLAN OR REVIEW WHO WILL INHERIT YOUR WEALTH

The birth of a child constitutes the ideal opportunity to take stock of your wealth and begin planning how it will be handled. It is not only imperative to take measures to protect the assets you have accumulated, you must now also see how they can be secured well into the future for your family. By giving thoughtful consideration to all elements, you can ensure a minimum level of comfort for your loved ones and protection against the unforeseen.

The will and the mandate in case of incapacity are the bases for this protection. They outline the actions to be taken if one day we are unable to take care of our own affairs, ourselves, our children or our loved ones.

When a new member arrives in the family, the notary will not only clarify these points with the couple but will also go over all other elements that could affect the protection of wealth.

A notary is a legal advisor who focuses on meeting the needs of today's couples and families, whether traditional, single-parent or blended. They help clients who want to put their affairs in order and to protect their wealth should an unfortunate event occur during their lifetime. This way, parents can fully enjoy the birth of a child!

THE TESTAMENTARY TRUST: PROTECTING YOUR MOST VULNERABLE HEIRS

The idea that money accumulated throughout a lifetime is quickly squandered by an heir is not a pleasant prospect. And it is natural to be concerned about what will become of a disabled child once we die, even if a substantial sum of money from our savings or life insurance has been set aside for him or her.

Sometimes, it is not enough to prepare a will and plan who will inherit our hard-earned wealth. There is, however, a tool for controlling the use, management and eventual distribution of assets: the testamentary trust.

The testamentary trust makes it possible to give instructions during your lifetime for the money that will be bequeathed upon your death to one or more people. With this type of instrument, wealth is no longer given directly to heirs, but rather to a trust. For example, the trust can pay an income to the surviving spouse until his or her death, at which time the residual capital will be shared among the children. The trust can also be used to pay the children's tuition fees until a predetermined age.

The notary is an expert when it comes to protecting wealth. The testamentary trust is a way of extending the protection of your wealth to the benefit of your loved ones. Notaries advise their clients about the suitability of such a trust and, if necessary, help them set it up and select a trustee. This includes delineating the trustee's powers and duties.

The notary can also suggest advantageous tax and estate planning measures allowed under a testamentary trust.



BREAKING UP WITHOUT LOSING EVERYTHING

Statistics reveal a devastating reality: between 50% and 60% of first marriages and up to 80% of second such relationships end in failure. And, after the ensuing romantic and family dramas come those of property.

While notaries cannot save the couple or the family from the obstacles that arise in their path, they can play an extremely important role in protecting the couple's wealth and, consequently, in the "success" of the period following the break-up.

Notaries can ensure that the assets the couple has accumulated together do not disappear. The immediate concern in a separation is ensuring that the couple and their children continue to enjoy the same quality of life, insofar as possible.

By making both parties aware of this concern, the notary helps them avoid the vicious circle of confrontation so that they may more easily reach a mutually acceptable compromise. This way, the notary can guide the couple and ensure that they are mindful of protecting the assets they have accumulated together and dividing them in an orderly fashion.

The notary may get involved before or after the break-up. One of the tools the notary uses in this process, in a preventive manner, is the wealth inventory. It lists all of the couple's assets and liabilities: movable and immovable property such as a house, cottage, car, RRSP and pension plan. If prepared beforehand, the inventory will be updated to reflect the situation at the time of the separation. The listing will enable the two parties to clearly understand the value of their assets and the extent of their debts before beginning to divide or, if necessary, transfer them. The notary will then direct the couple's attention to the wealth protection measures that need to be contemplated in the wake of the separation: the mandate in case of incapacity, will, life insurance, etc.

For the notary, protecting wealth also means helping the couple negotiate an amicable agreement, with no winner and no loser. This is done by means of an agreement where the family assets are divided in a fair, transparent manner, in the best interests of each spouse and the children, and which promotes an effective reorganization of the family's affairs in order to preserve the bulk of the assets collectively accumulated up to the time of separation.

THE MANDATE IN CASE OF INCAPACITY: AS INDISPENSABLE AS THE WILL

A sudden illness, accident or the aging process can leave you incapacitated and pose a threat to your wealth. Have you taken the necessary precautions to deal with such a situation?

Protecting your wealth not only means planning your retirement and succession, but also preparing for the possibility of your becoming incapacitated.

Have you imagined the impact such an ordeal would have on you, your wealth and your family? Who would take care of your affairs, and how? What would happen to the business you operate? If you have a disabled child or elderly parent in your care, who would take over? What would become of your investments, your house and your cottage?

In fact, this possibility must be considered and prepared for in the same manner as death. As an expert in wealth protection, the notary can help you plan for this eventuality by suggesting measures to ensure your physical and financial security, for your own well-being and that of your loved ones.

With a mandate in case of incapacity, you can choose someone you trust ahead of time, from among those close to you (spouse, sibling, child, friend, professional). He or she will look after you and your assets in the event of misfortune. Without a mandate, the court will appoint a representative and establish protective supervision for the administration of the property and the care of any incapable person.

The advantage of a notarial mandate in case of incapacity is that it is a customized plan based on your interests and needs, developed with the help of a wealth protection expert. Furthermore, since the mandate is signed before a notary and recorded in a register, it will be easy for your loved ones to track it down should it ever be needed.

Do you know whether the representatives you designate in your mandate are aware of the assets and liabilities that make up your wealth? If they had to take over for you tomorrow, would they know where to start? To increase the effectiveness of the mandate in case of incapacity and make life easier for your representatives, the notary may suggest that you compile a wealth inventory.

This wealth inventory lists, in as much detail as possible, your assets and their location, as well as your debts, to facilitate your representatives' work. It is useful not only if you become incapable of looking after your own affairs, but also for your liquidators in the event of your death.

Wealth protection must be planned in case of incapacity as well as death. By consulting a notary—an expert in wealth protection—you can plan for measures that will meet the need for security for both you and your loved ones. Why not take advantage of the privilege of deciding who will ensure the protection of your wealth while you still have all the faculties to do so?

WHEN PERSONAL AND CORPORATE WEALTH MINGLE

Many business people and self-employed professionals have difficulty drawing the line between company assets on the one hand and personal assets that are part of their family's wealth on the other.

These people are highly vulnerable to financial difficulties, accident, illness and lawsuits involving professional liability. When the loss of one of the company's major clients results in significant personal consequences, or the divorce of the president affects his associates, there are serious questions to be answered.

Why risk squandering, in only a few hours or days, money that has been acquired through hardship and personal sacrifice over almost an entire lifetime?

There are obviously several ways to protect your wealth and take steps to keep personal and corporate assets separate.

A notary's first recommendation would be to establish a wealth inventory, to serve as a reference when planning the will and succession of the entrepreneur and guide the next of kin in the event of incapacity or death.

More than just a collection of information, the inventory serves as the basis for in-depth discussion on the sort of protection the company has at its disposal for surviving a major crisis. For example, notaries and their clients may examine corporate liability insurance coverage. They will also determine if the entrepreneur's personal wealth is safe in terms of the company's professional activities.

Once the wealth inventory has been established, notaries will suggest two other key wealth protection measures: the preparation of a will and of a mandate in case of incapacity.

The will is still by far the most structured manner of passing on your wealth and your business. The notary's advice is extremely useful in determining the method to use for distributing assets while at the same time, if possible, reducing taxes to be paid upon death. The notary can also help a client choose the most appropriate person to act as liquidator.

The mandate in case of incapacity is a basic precaution for entrepreneurs who do not want to leave their company at the mercy of events. This legal document outlines solutions should their health deteriorate. Through the mandate, they can designate a person close to them to take care of them and another person who knows the business well enough to be responsible for managing it as well as their personal assets.

Notaries can therefore be proactive well before an unfortunate event (death, dissolution or transfer of the company, etc.) occurs in the life of a self-employed worker or entrepreneur.



Listing Your ASSETS

SO NO ONE HAS TO PLAY DETECTIVE

Do you have the skills of a detective?

If so, you could have put these skills to work as a liquidator for numerous Quebec wills over the past few decades.

Today, we find it funny that half a century ago, our ancestors, stashed their precious bank notes around the house, in the barn or in the tool shed in case of hard times—hiding places that were eventually discovered only after their death. While the proverbial sock under the mattress is rarely heard of anymore, the places where our assets and liabilities are hidden have multiplied.

We no longer have just one credit card but five, two savings accounts, chequing accounts with three different financial institutions (one next to the plant where we used to work, another in the town where we were born and still another close to where we now live), a safety deposit box, two RRSPs, two investment accounts, a few thousand dollars invested in labour-sponsored funds, both term and whole life insurance, a loan to a sister, not to mention a half-paid mortgage on rental property.

And what if, tomorrow, someone had to liquidate your assets to disburse the money due to your heirs? How would he proceed? How would he find out about all your assets and debts? How would he know where to locate the safety deposit box opened by the key he found in your dresser drawer?

He would do the research, of course, but settling your estate would be an arduous process and your loved ones would have to wait a long time before receiving the money you left them. But what if the insurance policy you paid into every year until age 65 is never found? And who knows that you have a substantial personal debt?

Without all this information, it will be difficult for your heirs to evaluate the value of what you have left to them. In fact, if they know about the sizeable amount you owe, they might decide it was in their best interest to refuse the legacy left to them.

THE WEALTH INVENTORY

All these problems can be avoided in one easy and effective step: by drawing up a list of your assets and liabilities.

An inventory of the various elements that comprise your wealth will include information such as the location of your assets and investments: where you have bank accounts, your credit card issuers, your broker, where your bonds are kept, information about mortgages and personal loans, etc.

Ideally, this inventory should be drawn up before a notary at the same time as a will and a mandate in case of incapacity, since these documents are complementary and are used by the liquidator of our succession or our legal representative should we become ill or have a serious accident.

The notary keeps the original copy of the inventory and records it in a register at the *Chambre des notaires du Québec*. This makes it easier for the liquidator or legal representative to find it at a later date.

Obviously, the inventory must be updated periodically to reflect new financial circumstances. The value of the wealth bequeathed as well as the financial products of which it is composed—as well as their location—often changes quickly as we near retirement.

The inventory is an instrument that closely reflects the reality of today's families, as it could also be used to redistribute wealth after separation or divorce. Moreover, it can prove useful in the event of an insurance claim following a fire or other disaster.





Lise LACAILLE, *The Notary and Daily Life*