

8 Clauses That You Should Consider Before [Your Client] Dies

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Clearly our role as estate planning counsel is to ensure that our client's wishes are properly documented in a legally-valid Will. However, a further role – arguably – is to attempt to facilitate the administration of the estate, and to preserve relationships among the beneficiaries. Properly documenting a client's wishes requires that the client is fully informed of the testamentary consequences of the client's specific personal and financial circumstances – and the lawyer has fully explored all relevant questions with the client.

The following clauses are unfortunately unique. They seldom appear in Wills in Alberta, which can lead to headaches for the Executor, and conflict among the beneficiaries. You may wish to consider incorporating the following questions and clauses into your estate planning discussions and documents:

1. DIGITAL ASSETS

'Digital assets' is a phrase that is currently trending among legal commentators. Some argue that it is a critical topic for any estate plan. Others feel it has no place in an estate planning meeting. So, what is the answer?

The answer: it depends. The key question is: "do you have digital (electronic) assets?" Does your client have electronic property that has value? "Value" is a subjective question. It may mean monetary value (such as a vast digital music library, or a four-digit PayPal seller account). However, it can also mean sentimental value (such as those digital photos that are stored only on your client's laptop or in the cloud, or a blog that documents a child's first year). Electronic accounts that contain information of a personal or sensitive nature may also be "valuable" to the extent that it is vital to your client to either prohibit or restrain access to such information on death (such as private Facebook or other social-networking accounts, or email accounts with sensitive correspondence).

If on a review of online or electronic property there is little that your client would describe as "valuable," your client may not need to undertake a rigorous planning exercise to assist the Executor and/or beneficiaries. In some cases, providing "access" to such assets by providing the Executor with necessary information may be sufficient to allow the Executor to take control over such assets. More difficult questions arise when determining how to provide such information to the Executor, being mindful of security concerns and relevant terms of use.

It is important to understand that not all of your client's digital assets are transferable, nor can all be continued after death. Many of your client's assets are not "owned" by your client: use is governed