



## The 5 Ws of Estate Planning with Edmond Fhima

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**Keith:** Welcome to the Empowered Investor. My name is Keith Matthews and I'm joined by my colleague Edmond Fhima. Edmond, welcome to today's show.

**Edmond:** Thank you. I'm glad to be here.

**Keith:** In today's show, Edmond and I are going to discuss and review the five W's of estate planning. Essentially, those are the five W's of creating and preparing wills. Edmond is going to review who is doing what, what, where, when, and why about wills. So, Edmond, before we jump into some of the technical components, talk to us a little bit about your background in helping our clients and clients in general prepare, think about wills, discuss wills, and try to come up with a game plan as to how to move forward.

**Edmond:** Yeah. So, it's over the last 30 years I've been meeting with clients. A lot of the time I find that I'm surprised that many don't have wills. A lot of them are not prepared to pass their assets on to the next generation, whether it's their children, a charity, or a spouse, obviously. Because I know their situation personally and financially, I find myself in a great position to talk to them about wills, making sure that they have a will. That's the first thing I want to make sure that they do. And if they do have a will, making sure that the will is still valid and still does what the client wants. So, I help them through this process. I talk to them, I give them some information just to make them think about preparing a will before they go and sit down with the notary or lawyer to actually put the will together.

**Keith:** Yeah. One of the things I find really nice in working with you and our clients on this is that often clients, if they're just going to go direct to a notary or direct to a lawyer, it can be a bit intimidating. And the notary or the lawyer doesn't really understand the client inside. They don't understand all the financial assets or the motivations behind family structures. And I find we do, and we can help set a nice foundation. In the end, the documents obviously get executed and taken care of by either notaries or lawyers, depending on where you're located in Canada.

**Edmond:** Yeah, exactly. Like I was saying, because I know the situation of my clients, sometimes I have the inside information on the family dynamics. Sometimes there's an issue with one child—it could be a gambling problem, a drug problem, or a handicap, a disability. So, there are certain issues that I may know about the client, and I help them sometimes formulate the right questions when they go sit down with the notary or lawyer to make sure that those issues are properly addressed in their will.

**Keith:** So, let's dive into the five W's. Let's start with the first one. Who should have a will, Edmond?



**Edmond:** Essentially, every adult who has children or holds property should have a will. Otherwise, if you don't have a will and you're holding property, you may not distribute the assets the way you want to.

**Keith:** Yeah. And when you talk property, you're talking it could be residential property, commercial property, stocks, bonds, financial assets.

**Edmond:** It could be any type of assets, exactly, from investment portfolios. And when we talk about properties, some assets can be done through a will and some assets can be done outside of a will. And we'll cover that in a minute.

**Keith:** Okay. Obviously, when individuals get married, have kids, or acquire assets, those are trigger points in life that should motivate individuals to get these documents put in place. Okay, thanks.

**Edmond:** Yeah, I find it not surprising to understand that there's less than 50% of Canadians out there who have a will. The amount of people who have just a simple RRSP, a house, or children—they have to think about how to deal with these assets in the event of death. Every adult with children, with properties, and like you said, it could be investments, bonds, bank accounts, any type of monetary or even personal assets should consider doing a will at some point in their life, and the earlier, the better.

**Keith:** Okay, great. But let's now take a moment and discuss what happens if you have property and you don't have a will and you pass away. I know it's different in every province, there's different formulas, and we don't have to get specific into every formula, but generally speaking, what happens?

**Edmond:** The bottom line is, like you said, every province has different legislation, and they follow different rules but they're close to each other. The bottom line is that the government will decide how your estate is divided. So, if you don't have a will, you're considered to die intestate, and the government and any province across Canada, including Quebec, will dictate how the assets are divided. It may not be exactly the way you want it to be. It may be that it falls into the hands of someone that you didn't intend for those assets to go to.

**Keith:** Give me an example. You might say, "I think if I pass away, it's obvious all of my assets will go to my spouse." But if you don't have a will, if you have kids, that might not be the case, correct?

**Edmond:** Correct. If you just have a spouse, most provinces will leave everything to the spouse. But if you have children, then there may be a division between the spouse and children. It depends if the children are from the same relationship or not. That also has an impact on it. If you don't have children, the parents could become beneficiaries, or it could be your brothers and sisters, your next of kin. At the end of the day, if you don't have any of these individuals in your life, the government will step in and decide what to do.

**Keith:** Fair enough. And I think your point is incredibly important. At the end of the day, if you do not have a will, you are not in charge of your assets.

**Edmond:** Correct.

**Keith:** The government has an ability to direct the assets.



**Edmond:** That's right. And the other thing that's important about having a will is that if you have children, it allows you to name guardians or tutors. It gives the courts instructions or information about who you would have thought would have been the best individuals to take care of your children and how and where. But it also allows you to leave instructions on how to divide your property. Like we said just earlier, if you don't leave those instructions, the government decides on who is going to receive your property. Because of that, there may be some tax implications when certain things are broken up or not divided the way you want to. If there's a spouse, for example, in Quebec, the spouse may not inherit 100% of the estate. That means that certain things can trigger some taxes, unwanted taxes, because you did not choose where the property was going to go.

**Keith:** Fair enough. Fair enough. Okay, Edmond, let's talk about the what, and specifically, what assets are included in a will. What do wills refer to specifically?

**Edmond:** Wills will refer to any property that you have, whether it's here or abroad. It could be in any part of the country, but generally, it deals with all the assets that you possess at the time of your death. So, we could be talking about personal assets like clothes, jewelry, art, but most of the time when we're talking about assets, we're talking about financial assets and we're talking about the home, cottages, cars, investment portfolios, pensions, RRSPs, and insurance. Now, when we talk about some of these assets, you may be able to designate in provinces a beneficiary directly on an asset, and if you do, it falls outside of the will. So, we're really talking about financial assets that you have not designated a beneficiary directly on. For example, RRSPs, RESPs, TFSAs, pension plans, and insurance policies or annuities—things that you designate a beneficiary on would not form part of the will necessarily. But if you don't designate a beneficiary, these could fall into the will as well. If we look at the differences between provinces, Quebec is the only one where things like RRSPs you do not designate a beneficiary directly. It would fall into your will. So, you have to specify who that RRSP or TFSA or pension asset would go to, compared to other provinces where you could do that outside of the will.

**Keith:** Okay. So, for some provinces, you assign beneficiaries to specific assets, certain types of assets, and then the remaining assets can be covered off in the will. In Quebec, most of the assets are covered off in the will. What about private businesses? Business owners?

**Edmond:** Business owners have different options. They could do things prior to death or have the will take care of the assets at the time of death. Depending on the type of planning you do, it could be a strategic plan that you do prior to death, and you involve kids, and there's share reorganization. So, kids will participate in the business prior to death, so they have an ownership in the company, and that ownership would fall outside of the parent's responsibility. The parents would have to deal with their own shares through their will. Like any other assets, they have to choose how these assets are going to be transferred to the next beneficiary, whether it's a spouse or a child. There could be some tax implications with one or the other. For sure, when it goes to children, there's a tax issue that needs to be addressed, and it's important for them to meet with their tax advisors just to understand the tax implications. They could also look at doing some post-mortem planning as well to minimize those taxes.

**Keith:** So, for business owners, it's a little bit more complex. They need to make sure that the businesses are organized and structured before they go into wills, but they can also be mentioned in the wills.

**Edmond:** Oh, absolutely. They could specifically mention things about their will. If they have a child that's been involved in the business, they could do something either before they die in terms of



making them a shareholder or an important person in the business or also provide a different distribution of the share capital to a child who has been fully involved in the business versus other children who have been really passive and not involved in the business. There's a lot of different things when it comes to businesses. We could do a whole show on that by itself. To answer your question, it could form part of the estate like every other asset. It could be part of the residual asset estate. I do caution people who are outside of Quebec or in any province to look at should you put those same assets in with the rest of your assets or have a separate will just to deal with business assets. There are reasons that you might want to single out an asset like business shares and have them in a separate will and not part of the rest of the wills that might go through probate. We see that often in Ontario, for example.

**Keith:** Okay. You're leading us up into the question of should individuals have different wills based on the location of their assets? For example, if somebody in Canada owns a property in Florida or Arizona, should that property in the United States be included in the Canadian will, or should there be a different will? Does the location of assets matter?

**Edmond:** Yes. As a general answer to your question, yes. It could be important for a client to have a separate will to deal with assets in a different tax jurisdiction. The most typical one we see is obviously living in Quebec or snowbirds in Florida who own property there. While a will that you have prepared here is valid and if it's taken and brought to the U.S., it would be taken into consideration, but it would always be better to have a will to deal with assets that are only in that country or only in that province. When those assets are dealt with, that foreign jurisdiction will only have to deal with that one asset and not the totality of your estate. Of course, we're talking about Canadian residents. I'm not addressing this as if you're a U.S. resident or a citizen.

**Keith:** Fair enough. So, the reality of it is if you're a Canadian and you have assets located in different countries, you might want to investigate with your local advisor, attorney, or notary whether you should have more than one will.

**Edmond:** Correct. Sometimes what may happen is that if the will is, let's say, in French here in Quebec and you have to deal with individuals in the U.S., they won't necessarily understand the document. It has to be translated and made sure that it's validated before it's used in a different country or jurisdiction.

**Keith:** Okay. Thank you, Edmond. The next question. Who should be an executor and who should be a trustee? But before we get into the who, let's discuss what an executor is. What are the main responsibilities of an executor in a will?

**Edmond:** An executor, or you could also call them administrators or liquidators in Quebec, is an individual that you've named through your will who will wrap up your personal and financial affairs and carry out your instructions. They should be over age 18, a majority age. They would assist with funeral arrangements, find out where your bank accounts are, make a list of things that you own, all the debts that you have, cancel credit cards, federal income tax returns, and distribute properties to the beneficiaries according to your will. They are responsible for taking care of your estate from the time of death until the time of distribution. The distribution could be either immediate or deferred. We'll talk about that in a minute. They are the ones who are named to take care of your assets once you're gone and make sure that everything has been filed correctly with the provinces and federal government, making sure that all taxes are filed, notices of assessments are received, and filing for clearance certificates, getting death certificates.



**Keith:** And what's a clearance certificate?

**Edmond:** A clearance certificate is once the individual has passed away, and we file a tax return and report all income that has to be taxed, we wait for a notice of assessment to come in. The executor will take that notice and file for a clearance certificate with the federal and provincial government to give him the right to distribute all the assets to the beneficiaries so that there's no more liability coming back to the executor. It's basically the government saying, "Yes, you've paid all your taxes, you don't owe any more taxes, and you're free to distribute the estate without being liable in the future for any future taxes that come up."

**Keith:** So, if I hear you correctly, the main responsibilities of a liquidator are essentially to organize the affairs of the person who's passed away. Organize in the sense of gather the documentation, understand where all the assets are, and then start to work through the estate. Working through an estate essentially means at the very end, distributing assets to the beneficiaries. But prior to that, there's a whole series of things that must occur. That has to do with getting specific documents in order, gathering the documents, bringing those documents to financial institutions that need them, getting the final tax return done, and then filing for this clearance certificate. All that is the responsibility typically of a liquidator.

**Edmond:** That is correct. It's not that the liquidator or executor is the one who has to have the expertise in doing these things, but he is the person that you've nominated to go out and take care of these things and hire any professional to do it. That may be necessary to assist in all of these steps. The liquidator or executor would go out there and hire an accountant, a lawyer, or a notary to assist in taking care of all these steps. It doesn't have to be the executor himself that needs to be taking care of these things himself.

**Keith:** Fair enough. Fair enough. Who do you typically suggest or recommend? It sounds like this is, first of all, a pretty significant responsibility. Obviously, for various different types of estates, you'll have various different levels of complexity. If you're liquidating an estate and there's multiple properties, commercial properties, businesses that are owned, that's a more complex file. If you're liquidating an estate and there's a single principal residence with one RRSP and an investment account, that perhaps is a more straightforward estate to liquidate. But who in general should individuals nominate or name as liquidators?

**Edmond:** A lot of the time, you might want to name somebody who's close to you, somebody who lives in your province, your city, your jurisdiction, someone who's able to deal with the individuals or the professionals that you've dealt with in the past. It's a good idea to let them know who your accountants are, who your insurance agents are, who your financial advisors are. This way, they're able to meet with them easily or contact them and see who is the best person to help them at different stages of the process of executing their estate. This could be a long process. In my experience, it could take 18 months to two years for certain estates to be liquidated because they have to go through a lot of different steps like filing the tax returns, waiting for the assessments, the clearance certificates. But I find a lot of the time the person who's crucial in this and helping the executor could be the accountant, somebody who's been involved in the financial side of this person's life, taking care of their tax returns. But it depends from person to person. If you're a business owner, you may have a partner, a business partner that you may need to get involved in certain decisions. If there's a family trust, you might have trustees to deal with. Really, it's a case-by-case situation. The answer to your question is that.



**Keith:** Yeah, Edmond, you're absolutely right. It is case by case. We've worked together on many cases. We've seen lots of different situations. There are definitely situations where liquidators—it's obvious that it should be this person. There are times where it's not so obvious. What I've seen, for example, is let's start with simple straightforward wills. Somebody owns a home, maybe a cottage, and maybe investment accounts. Often, the liquidator is the spouse, for example, throughout the lifetime of the adults. But we know through experience that at some point, maybe the spouse isn't the right person to be the liquidator. That might be an aging couple, for example, two individuals in their early 80s. Maybe it's not fair on the surviving 80-year-old to be that liquidator. Maybe it should be one of the adult kids at that point.

**Edmond:** Yeah, I have this conversation more and more with clients who are in that situation. Their whole life, they've named their spouse in their will as their liquidator, but they themselves recognize that it's a big burden to put onto the surviving spouse at a certain age. Finally, they're more open to bringing in children, adult children who would step into that role. So, if the will does not name the children as the replacement executor, we would add them to the will either by a codicil or have a new will redone, naming them as the executors.

**Keith:** You just used a technical term, codicil. You want to take a moment and explain what a codicil is?

**Edmond:** A codicil is if you want to make a minor change, a simple change to a will, it's like an amendment to the will, and it's done in a formal way in front of the lawyer or notary. Your existing will remains in force, but the codicil will talk about either an addition or a change to the will, and it'll refer to a certain paragraph or article. For example, when we're talking about liquidators or executors, if we want to change the spouse to a child, the codicil will basically say that "I revoke or change this paragraph to now name my child as the liquidator," and it's signed in front of the notary or lawyer.

**Keith:** It's a straightforward but legal way to make changes in a will without having to redo the whole document.

**Edmond:** Yeah, funny stories. I've had conversations or met with clients, and they had shown me their will, and in their will, they had written on the side margins or in changes in the belief that this would be okay. But in reality, it wasn't. It has to be done formally and legally through a codicil or rewriting of a new will.

**Keith:** I bet you I'm just assuming they had initialed it. They've made the change, initialed it, like many organizations say—make the change, initial it, and that's good.

**Edmond:** Yeah, and it depends. Some changes could be initialed, but they have to be witnessed. If you're making changes, sometimes it requires two witnesses, two independent people to be there and sign affidavits to a change that has been done on an English form, for example.

**Keith:** Yeah, 100%. Back to the idea of who should be liquidator. I've seen personally individuals who own businesses often go to seasoned individuals that they know and trust—colleagues, partners, other business colleagues that they know to be the liquidator because they just want someone who has a little bit more business experience managing some of the complex files. But that again is simply for complex files.





**Edmond:** That is correct. A lot of the time people I meet with and have discussions like this, they're always stuck on who to name as the executor other than their spouse or children. You have to find the right person that you have confidence will take care of your affairs the way you'd want them to and that they'll be around for a long period of time. So, you're not going to name somebody who's 20 years older than you. You'd want to name somebody your age or younger so that you know they'll be around for a long time before you have to make a change to your will.

**Keith:** Ideally, it's younger. If you're dealing with two individuals who are 75, ultimately it would be nice to have someone who's younger in the file. We're seeing that more and more often, not just on wills. We're seeing some of our senior clients wishing that their adult children be involved in their files more and more, even just in terms of doing portfolio reviews and investment reviews. We're off-topic here a little bit, but we're definitely seeing an openness for individuals to get adult children they trust into the file.

**Edmond:** Yeah, and I think where it becomes a hiccup is the individuals believe that including the adult children in their will means that they have to disclose everything they have, and it's not the case. They just have to let them know that they would be the ones responsible and where to find the will, where to find the accounts, where they're located. If they have relationships with certain banks or financial advisors or accountants, just to let them at that point know where to find these individuals or these firms or where these assets are located. Just give them that information. We're not talking about giving them specific details and opening up your personal net worth to them, but it's important if you are naming your children and even somebody else to leave instructions as to where to find these accounts and assets.

**Keith:** Absolutely. What you're talking about is disclosure of assets, transparency of assets. We see very many different flavors and styles of this. At the most rudimentary level, generation one should tell the liquidator where all the assets are—where my accounts are, what I have—so that if anything happens to me, there's almost a list. You may or may not disclose asset sizes, but more often than not, people are disclosing asset sizes.

**Edmond:** And I just want to make one quick point. We've been talking about assets, but don't forget about debts as well. It's important for them to understand if they have mortgages, credit cards, lines of credit. These things have to be dealt with as well because it's all part of how assets are distributed to beneficiaries. The beneficiaries accepting the estate will also have to make sure that they've accepted any liabilities that are tied to these assets. Otherwise, if the assets are not as great as the debts or the debts are higher than the assets, they may just want to renounce the estate and not be saddled with the debts of the individual who passed away. Debts are very important to take into account as well in this whole process.

**Keith:** Fair enough. This gets back to the transparency issue. I know that we have our estate planning documents that are six pages long where individuals can actually complete a list of assets right down to if you own hockey tickets, who they have to speak to, to make sure that's wrapped up correctly. There's a whole list of assets. Off record, we were talking about digital assets, Facebook accounts. We were talking about all sorts of digital assets.

**Edmond:** Yeah, you have Amazon accounts, Facebook accounts, Gmail. The digital footprint today is so large and wide that people forget that they need to deal with that as well. You don't want to have accounts still open past your death. So yes, I would list those inside your list of where your assets are. You may also want to identify what the passwords are to those. Otherwise, you may be locked out as an executor trying to terminate or close an account.



**Keith:** Fair enough. So, this is the list of assets. You should at least have a list of assets as to location, who to deal with—the investment advisor, the accountants. Then the next level of transparency is what is actually the asset sizes. All this can be provided to the liquidator so they know what they're dealing with well in advance. Finally, you and I have dealt with situations now where we're seeing a little bit of a trend for families wishing to have meetings where they review and disclose exactly what is in the will, and they review and disclose exactly what assets generation one currently have in their name. We've seen tremendous success in holding these meetings. Do you want to speak a moment about the one that we did together and just in terms of what were the general outcomes? How did individuals feel at the end of the process?

**Edmond:** It's something new that we're seeing. I found that not just the beneficiaries or the children who were involved in this meeting were now aware and felt great to be brought into the fold, but the parents, I felt like there was a weight lifted off the parents when they were able to speak to their children openly about what their estate was worth, what they were in, making sure that everything was outlined, and who was going to be taking care of what. It brought the family together. I felt at the end of that meeting.

**Keith:** I agree 100%. They're very positive meetings. This is a nice wrap-up for the liquidator section. Let's take a moment, Edmond, and get your thoughts on trustees.

**Edmond:** The liquidator is the person who will liquidate the estate until all the assets are distributed. Usually, the trustee is someone who could be the same individual. You can have different hats. You could be the liquidator, but usually, the trustee comes into play after the estate has been moved from the estate account to a trust or held in trust for a child or spouse. So, the trustee would be the person who would continue the process of managing, administering, and monitoring the assets going forward until a certain time—a specific time that the will would have dictated the payout of capital, income, and capital to beneficiaries.

**Keith:** Most of the trustees that you would see in today's will world, I would assume, would be linked to overseeing assets left to kids and possibly assets left to spouses. Although the tax issues there are no longer as favorable as they used to be five years ago and earlier.

**Edmond:** Yeah, it used to be where you could do some income splitting with the trust that had assets where the beneficiary was only the spouse. There was very good income splitting at the time, but the government changed those rules a few years ago. They've allowed for a period of 36 months to continue some income splitting with the estate. They call it a graduated rate estate. But after that, the trust mechanism as an income-splitting opportunity is no longer something that works. When it comes to children, you're still able to distribute assets or put assets into trust for them because of things like age. They may be too young, or maybe there's a problem with the child in terms of gambling, drug addiction, or things that you wouldn't want the assets to be distributed directly to a child right away. So, when we talk about age, it might be that children are minors, and they're not ready to handle or manage, and they don't have the maturity to manage a large sum of money. Putting it into trust and naming trustees to oversee that for a certain amount of time until the instructions to pay out the income and capital to the child are reached. When it comes to children who have certain situations where they are disabled or have a problem, you may want to continue having some control over those assets so that they don't abuse the funds.

**Keith:** Essentially, these trustees are gatekeepers.





**Edmond:** They are. They're gatekeepers for a while. I can say in the will, until a white age. Typically, you'll see they'll stagger the distribution of the capital when it comes to children. It could be at certain ages—20, 25, 30, 35. It's really up to you to decide when assets are distributed and income. When we were saying earlier that there were changes to the rules about the income splitting, if all the income remained in the trust, it would be taxed at the highest marginal rate. So, there has to be a provision to allow for income to be paid out to the children so that it's not taxed at the highest rate but actually taxed at their marginal brackets.

**Keith:** Fair enough. This is really good disclosure about a trustee and what a trustee's responsibility is. Do you have one more thing you wanted to add?

**Edmond:** Correct. It's very important to understand that if you are naming a trustee, it should be an independent person. You don't want to name one of the beneficiaries as the trustee of their own trust. You'd want to name a second person who's independent for the store.

**Keith:** And that's not you want to name; you have to name.

**Edmond:** Exactly.

**Keith:** Fair enough. We've covered the basics of liquidator and trustee. Can you speak a little bit about guardianship? Often, individuals who have minors, especially young children, really want to make sure this is covered off.

**Edmond:** The will is the vehicle that allows you to give information about who you would want your children to be taken care of in the event that you die and the children are minors. Often, people will name someone like a sibling, like your brother or sister, to take care of your children. Ideally, it would be somebody who lives in the same area as you, so the children would continue to have the same type of lifestyle, go to the same schools, etc. It's a document that allows you to also ask that the children are kept together, possibly in the same home. Otherwise, it will be up to the provinces and their laws and who becomes guardian and who's entitled to be a guardian of your children. Every province is different, but at least putting the information in your will gives the court some information about who you think are the people that you would trust the most to raise your kids if you're not around. Ultimately, it could be that the courts decide if a child remains with those guardians, but at least you're providing them with guidance.

**Keith:** Fair enough. So, it's pretty much a must if you have kids that are minors.

**Edmond:** A lot of these roles, when we talk about liquidators, executors, trustees, guardians, it's always important to name more than one person at a level. If one person cannot act or if they refuse to act, they predecease you, who would be the next level to come in and take that responsibility? Across the board in the will, in all of those sections we've discussed in this podcast, make sure that you're also thinking about who would be the replacement individual and review them regularly to make sure that they're still the right people that you want to name.

**Keith:** That's an excellent point. Often, individuals can think about the first level fairly easily, but they have to think a little further to get to that next level of the backup. Listen, we're almost at the end of the W's here. We've got one W left. You spoke about it a little bit earlier. When should an estate be distributed?



**Edmond:** The estate should be distributed once all of the steps that the executor is responsible for have been done. One of the things that we didn't mention as well is that in the city that you live in, you might want to also, through your newspaper, put an article just to let the public know that the person has passed away. If there's any liabilities, any debts outstanding that somebody had that you're not aware of, they could actually step up and say that there's somebody that is owed money and have a chance to ask for it. But in essence, all of the assets should be distributed once all of the steps have been done, the tax return has been done, assessments received, clearance certificates have been received, and all the debts have been taken care of. When it comes to the distribution of assets, it depends also on whether the children are young or older. You may distribute assets at a later time. We've discussed the use of a trust or a continued administration. There's a timing of when things could be done, but essentially, when all of the taxes, debts, and conditions set out in the will have been met.

**Keith:** I will say from our perspective, what we end up with is if somebody passes away and they have investment accounts with us, it's up to the liquidator to do all their work and to finally give us letters of direction. Usually, when an asset is held by an organization, they're going to want to see our custodians, for example, want to see the final wills. They want to see that the beneficiaries are mentioned in those wills. It's like a cross-referencing that goes on with institutions that have assets. They want to see the liquidator's name. They want to see letters of direction coming from the liquidator. So, they want to match everything up based on what's in the will.

**Edmond:** Yeah, death certificates, will searches are also required, assessments and clearance certificates. All of those are the important documents that any financial institution will require before they take instructions from the liquidator. Obviously, the will be a document that will identify the executor and liquidator. But in certain provinces like Ontario, for example, they have to go through a different step of probating, and probating is just to make sure that the will meets all the legal requirements. It also confirms the appointment of the person who you've named as the executor and takes care of that first before the estate can be distributed.

**Keith:** Fair enough. This is great, Edmond. We've covered the five W's. There's a few other areas we want to just touch base on right now. You were speaking about probate. One of them has to do with sharing with the listeners the difference between notarial wills, English form wills, and holograph wills. Let's speak first about a holograph will. What exactly is that, and how valid are they?

**Edmond:** A holograph will is a will that's prepared by hand. It's got to be handwritten. It cannot be typed. It should include all of the elements of a legal will—your name, your date of birth—and should state the same things that you revoke all previous wills. You name an executor, you name your beneficiaries. So, all these things have to be included in the holographic will to make sure that it meets all the legal aspects of a will and is valid. Because a holographic will can be done by hand and be considered invalid if it doesn't meet all of the criteria. What happens after that is that the holograph will, the handwritten will, would have to be probated. It goes through a process where the notary will have to attest to the fact that this is a valid will, it was done by the hand of the individual. They check to see if the signature is correct, and it's validated through the court. It goes through probate. That takes longer and there's additional costs of doing that. When you talk about a notarial will, it's a will that's done in Quebec according to the civil code. When we talk about notarial wills, it's really in the province of Quebec only, and it's done in front of a notary. The notary is a court-appointed officer, so when a will is prepared in notarial form, it is valid right away. It doesn't go through a process of probating, and all institutions, financial institutions, will accept it. The notarial will, the death certificate, and the will searches—once they have that, they can go right away and act on the estate and take care of the estate. When it comes to the rest of the country, it



falls under more of an English form type will, and every province has their own succession act and probating. There's more time that takes for the will to be validated. It's a question of more time and more administrative steps to go through when we're looking at other provinces.

**Keith:** And that validation process is called probate.

**Edmond:** Exactly. Probating of a will.

**Keith:** So, outside of Quebec, there's a process in which the will has to be authorized, probated. It takes months, and there's a charge for that too.

**Edmond:** There are certain charges, but provinces have what we consider as a probate tax, and it varies from province to province. They basically look at the value of your estate and assets that are in that province and establish an amount of tax. We call it probate tax. To give you an example, in Ontario, estates under \$50,000 do not have a probate fee to pay or a probate tax. Above \$50,000, they would have to pay \$15 per \$1,000 in excess of that \$50,000. So, just to give you an idea, if you have an estate of \$1 million in your will that's being probated, it includes all these assets. If you've nominated and named a beneficiary on a certain asset, it falls outside of this will, so it's not part of the probate calculation. But in this case, for, let's say, \$1 million of assets inside the probated will, you would pay about \$14,000 of probate tax. So, a lot of people will look at this as an irritant and try to find strategies or ways to minimize or avoid probate tax. There are certain strategies that exist. So, it's important to talk to your lawyer, accountant, or financial advisor in the province of residence to see if there are ways to minimize probate tax in that province.

**Keith:** Obviously, we live in a country with 10 provinces and different jurisdictions, some provincial jurisdictions, some federal jurisdictions. It strikes me that if you're a liquidator, the process is probably easiest in Quebec dealing with a notarial will because you can skip that whole probate process. Is that one of the advantages to either passing away in Quebec or being a liquidator in Quebec?

**Edmond:** If your will is notarized, yes, you basically are in the best situation of all the provinces because it's the quickest way to settle, to move to the next step of settling the estate. In Quebec, we don't have probate tax. It's not like all the other provinces. There's no probate tax. If you have an English form will assigned here in Quebec, you do go through probate, but it's different. It's more of an administrative charge on the document and not on the assets like other provinces.

**Keith:** We live in an amazing country, and every province has its small advantages and disadvantages and small differences. Clearly, there are differences in how wills are created and how wills are executed. Edmond, a couple of last questions here. Individuals that are in the process of getting divorced, how should they be thinking about wills?

**Edmond:** Again, it's one of those questions that can be answered differently depending on the province that you live in. A divorce may have different effects on your will. If you get divorced, your will may not automatically be canceled. It's something that you'd want to look at—whether there are any continuing obligations to a spouse or a previous spouse or a dependent, depending on where you live. It's something that you should speak to a lawyer, notary, or someone to make sure that if you've been divorced or contemplating divorce, your will should be reviewed and possibly redone.



**Keith:** I'm assuming it goes on both sides. If you've been divorced and you're getting remarried, you need to make sure that everything is in order, and then you sign appropriate new documents. If you are getting divorced and you still have your will in place that has your divorced partner or spouse as a beneficiary, you're going to want to settle your divorce, settle all your affairs, and then create brand new wills as soon as possible.

**Edmond:** In general, when you get married or remarried, an existing will may be revoked or invalid. But like in divorce, and depending on the province you reside in, there are new laws that could affect how your assets are distributed. In Quebec, we have what's called family patrimony. There are things that are decided according to the family patrimony law. So, new marriages, new divorces, you should take into account that if things haven't been settled correctly or properly, there may be ongoing obligations on your part. Again, very important to talk to a lawyer or a notary.

**Keith:** Fair enough. We're wrapping up on this episode, and this has been a great episode. Very thorough. Thank you, Edmond, for that. This is really on wills. There's another document that we want to spend a few moments on right now, and we're just going to put some general highlights on it. In Quebec, it's the mandate, and outside of Quebec, it's power of attorney on assets and health. Can you just spend a moment talking about some generalities? Usually, individuals do them at the same time. They do their wills and their power of attorney at the same time. We'll dedicate a future show just to those documents, but anything in general you want to mention?

**Edmond:** Yeah, like you said, I would say 99% of the time when a client is having their wills redone, either they don't have a mandate or the mandate needs to be updated because they did it so many years ago. The mandate in case of inability is a document that allows somebody that you've named to take care of your assets and your person. If you become mentally incapacitated, who's going to take care of you and who's going to take care of your property? It's important to have this document done. In Quebec, like you said, it's a mandate in case of inability. In other provinces, it goes by different names. It could be advanced personal directives. There could be living wills as well, which will give instructions on end of life. There's a lot that needs to be addressed at the same time as the will. It's a very important document because this document could be long-lasting. If the person becomes mentally incapacitated, it could be an illness where a person is in a home for many years. I could think of a lot of people with dementia who are the prime candidates for this. A mandate in case of inability will not freeze your assets and will allow that somebody you've named to take over to continue taking care of those assets and making sure all bills are paid and making sure you're taken care of as well—where you would be, what kind of residence, what kind of care, what kind of end-of-life treatments. These are all important things that need to be addressed as well. This separate document is the document that you would use for that.

**Keith:** Thank you for that explanation. We will have a follow-up show just on those documents. In the meantime, let's wrap up. Any final comments for our listeners on wills?

**Edmond:** I would encourage anybody who doesn't have a will to meet with a lawyer to get them addressed. In the meantime, put together a holographic will just to make sure that you do not fall under the government rules and not have any control over your estate. When I talk about holographic wills, it's really a stopgap measure just in the interim until you get a formal will done. Do not just do that and put it aside and say that I've done my will. Things could be a lot better worded through a formal legal document, and it will avoid being challenged in court.

**Keith:** I think that's amazing advice. Thank you, Edmond, so much for being on today's show. This is a big topic. A lot of individuals still need to address it. Thank you so much for sharing your 30 years of



financial planning knowledge around this. I know that you work with outside counsel. So, at the end of the day, it's always in Quebec the notaries or outside Quebec the lawyers that put together these documents, but I know that you care deeply about the people you work with, and you've done an amazing job. Thank you for that. Thank you for being a guest on today's show.

**Edmond:** My pleasure.

**Keith:** To our listeners, thank you for listening. We look forward to hearing and speaking to you soon.

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