

# The Just Word Podcast

## Transcript of Episode 38: Estate Planning

Guest: David Edey

**Pat Bolland** 00:00

David, a real pleasure to meet you,

**David Edey** 00:02

Pat, it's a pleasure to be here. Thanks for having me.

**Pat Bolland** 00:05

Now I know you've been in the business for more than three decades in terms of advising people about executing a, well, a will for as much as anything else. But you know, how many people actually have an estate plan? How many people actually need one?

**David Edey** 00:21

Well, in your opening, you were saying that you know, just about everybody has a will, you think you did, but that's ...

**Pat Bolland** 00:28

That's if they listen to this podcast, because we did one a few weeks ago.

**David Edey** 00:31

Exactly. Not to correct you. But actually, you would think it would be a no brainer that people should have a will, but statistically, it's shown that close to 60% of Canadians don't have an estate or a will plan. And what's also been shown is that men are more likely to have a will than women do. And I thought when I had wrote my book, executive help, how to settlement state, pick an executive, avoid family fights, I thought that it would be women that we'd be more interested, you know, in the book, and, you know, based on the metrics at my website, it's mostly men. And, and I get the subject that we're talking about when we're talking about will and end of life planning. It's not a sexy topic. People usually will avoid the topic, they procrastinate, or they, they take the view, I'm going to be dead. It's not my problem. Well, spoiler alert, it's going to happen to all of us. And we need to plan and have conversations and I'll be saying this a lot in during our conversation, that conversations have to be have to take place. My book came about because it took me seven years 10 court appearances and \$50,000 in lawyers fees to settle my parents estate, and they had a will. And the more I would talk about it to clients being in the financial planning industry for over 35 years, I'd hear from executors who were having problems. And I'd also hear about from families that were broken up because of not having conversations and this particular issue. So I didn't want anybody else to go through what I went through. So I wrote the book,

**Pat Bolland** 02:13

it's often been said that the road to trouble is paved with good intentions, how often are there disputes, in terms of the execution of a will?

**David Edey** 02:26

Far more than you it happens a lot when I was doing the the research for the book, I talked to some mediators. And before you would have problems with kids fighting over the estate, when parents were had passed away, but what's now far more common is that people are fighting while the parents are still alive. And all of that could be, you know, taken out of those out of taken away. If there are conversations, in my case with my parents. You know, were three kids, you know, and I would think that, you know, everything was gonna be split three ways. And it was in the well, my parents had had the will done in my office. One of the mistakes is, even though I would sit with clients while they were with the lawyer and have it done in my office, I wasn't in the room when my parents had their will done, I just couldn't find them. Again, because of the topic of talking about their death. My other sister was a third sister wasn't there. But you know, when it should have been split three ways, apparently equal was not fair. And hence we had to end up going to court. And that, if anything as much as I missed my parents voices every day, they didn't have the conversations with us to explain what their wishes were, and how to keep the family together. My books based on preparing the executor for the responsibility, and it's also for the individual who is planning their estate and wants to make sure that they leave a legacy and not a legacy and a mess.

**Pat Bolland** 04:06

I understand that. Okay, so let's walk me through the process. How do you start by picking your trustees or in some cases, I guess guardians,

**David Edey** 04:17

well, it's two different things. So if you're going to pick somebody to be your executor, you're going to because you're asking them to do probably the biggest favor in their lives, because taking on the responsibility of an executor is very difficult. And it's time consuming. On average, it takes anywhere from 100 hours in between 18 to 24 months. And because of the pandemic, it probably could take longer, and you're asking them to do a myriad of of things do you know, shut down social media, deal with accountants, lawyers, all of those things, you're asking them to do all those things and 99% of the time people are not sure reigned for this particular job. And on top of that, you've also got beneficiaries, who are they look at their inheritance is something that is owed to them, and they're not going to understand the process you have to go through as an executor. So you have to think, long and hard who you asking, you're also going to have to prepare them because for the responsibility and make it as easy for them. So you know, part of what I talked about in the book, you need to make sure that they know where all of the information is kept, such as the will, a new part is digital assets, you know, we spend a lot of time on online, and you know, just one email address is going to have probably 130 different digital entries, in terms of you know, Netflix, Facebook, so that's all gonna be connected to that. So if someone doesn't know where all of those digital assets are, which is a whole new area that's coming to the estate planning area, if they don't know where those assets are, you've also made the job harder for your executives. So you're setting them up for failure if you don't prepare them properly. And again, we're coming back to leave a legacy or a legacy and a mess

**Pat Bolland** 06:15

I do want to talk about digital assets. But let's do that later on. Okay, I want to talk about a really plain estate, if you will, money, how often is money split evenly and fairly, in your opinion, just money, we're not talking about houses or real estate, or cottages or farms, just money?

**David Edey** 06:37

Well, all of those things, you just mentioned money, you really don't know about somebody until you have to share an inheritance with them. Believe me, I know. So you're going to see people who you thought you knew change overnight. Because the way it's set up now is that people, when you're leaving money to someone, you think you're leaving them a legacy, you know, and you're passing it on, they look at it a different way they're looking at as money coming to them. And it's for some people this could be I look at as you know, their lottery ticket that this, you know, this is going to set their, whatever mistakes MIT made financially, or whatever they think they are in, entitled to, is coming now and they want it as fast as possible. They're not interested in about the tax situation. They're not interested about what has to be, you know, what's going to be sold, all they're looking at is when do I get my money. And I have a friend of mine who's in the legacy planning area, and she calls it the curse of inheritance. And it's an evil thing, that it's a monster that eats up families because of that sense of entitlement in which is what I went through over seven years.

**Pat Bolland** 07:53

You know, it's interesting, I had an associate that put a clause I guess, in their will it said none of this would take place for three years because they had to establish things that you talked about, for instance, taxation of the estate and and money that was coming in from different sources, those kinds of things. Is that a good strategy? Do you think?

**David Edey** 08:14

Absolutely anywhere where you can make it easier on the executor to understand what's involved. So I talked about in the book, your executor, the minimum should have access to a lawyer, an accountant and a financial adviser. But they're probably going to need on at some a lot of times, it's up to 17 different professionals that they're going to have to deal with, you know, there's real estate agents, there's going to be auction years for the estate, there's so there's so many people that you probably could, your as an executor, you're going to be faced with that your bare minimum you should have is that accountant, the lawyer and the financial advisor. And again, you're setting up the executor so that you're making the job a lot easier on them. Because a lot of people aren't trained for this. A lot of people don't have an administrative mind. A lot of people don't have the financial mind. A lot of people don't know where to go to get started. And on top of that person's also dealing with the grief the loss of this person that they're doing this favor for. So it's a lot of things and a lot of times it's family members that are asked to be executors and they're dealing with a lot of things. It's it's life altering. When I lost my parents, both to cancer, they're gone within a year of each other. And I can tell you, it's changed the direction and the the the outlook of our family going forward. The three of us have not spent a holiday together since my mother passed away in 2010 because of this estate problem.

**Pat Bolland** 09:47

Wow, That's such a shame. As you well know, estates aren't always just about money. They often deal with property and you know, sentimental Property, I'm thinking cottages, for instance, and they can't be shared will often or typically can't be shared equally, is it better to liquidate the cottage, get the cash and then split that equally.

**David Edey** 10:14

Again, it's the money. When it comes to cottages, I'll say this and I talked about in the book. And probably the biggest dangers and problems that cause stress for everybody is you don't know what the wishes are of the testate, the person who wrote the will, you don't know what the tax situation is going to be. So you need to have an accountant, because that's going to have an effect on everything. You don't know how to manage the property until the decision is made. In the book, I've got a friend of mine, he went through this. And he came to find out even though he had this cottage, his mom and dad didn't have a will, the two brothers, two of the brothers decided that they're going to be the executor. And they ended up selling the the cottage, under the other children. And on top of that, they charged the their siblings, an executor fee, never told him what it was. So he had to end up going to court with them as well spending over \$50,000 in lawyers fees. And that's because of just that one area of the cottage. And if the parents hadn't had a will, or if the parents had a cottage conversation and said what they wanted to do, everybody would understand what needs to take place in everyone. So in what a lot of hap, what will happen is, you know, like you said, maybe you're going to sell it, but what will be the tax implications, then there could be for sentimental reasons, you know, say this three kids. Two of them use the cottage, the other one doesn't, but they want their money. You know, they don't go up to the cottage, they live too far, or whatever it might be. It doesn't have the same sentimental value. So now the two other siblings have to figure out a way how do we buy them out? You know, and then so you have to go through the whole process of getting it evaluated, you know, and then suppose you can't afford it, yes, it has sentimental value, then you're going to have to, to sell it, which again, might be difficult on the family who's left behind. But that all could be alleviated. If the testator person who's who wrote the will, makes it clear has the conversations to their beneficiaries, what they their wishes are going to be

**Pat Bolland** 12:28

it's important, I think, in many circumstances to look at a will as, as you point out a legacy as opposed to an entitlement. You know, I'm entitled to the cottage, I'm entitled to the cash, I'm entitled to this, that and the other thing, how many people take that approach.

**David Edey** 12:48

In terms of they feel they're entitled,

**Pat Bolland** 12:51

yeah, or vice versa, don't feel they're entitled, and they're willing to accept their will and the their estate, their portion of the estate as a gift, which it really is, it's a gift from one generation to the next.

**David Edey** 13:04

Absolutely. But it comes down to, you got to back it up even further to link with if it gets to this point where someone has, has passed away. And they're just a mistake to do to distribute, you've got to back

it up and think about what kind of family is this, there's three types of families, there's the family who, who buries a head in the sand, and they don't talk about, you know, possible death. They don't, they don't, they don't, you know, they don't want to talk about it. Because we get together at Christmas or the holidays and we have a good time, then there is the family that does have the will, but they don't have a conversation and say what's in it. So there's a lot of surprises, and they leave the wheel to be the to do the talking for them when they're gone, which could lead to problems of like, you know, what happens to the cars, etc. So there needs to be a conversation. And then the third type of family who plans for this legacy, this intergenerational transfer of wealth, and they say, You know what, someday I'm not going to be here. But I want the cottage to go to, you know, to the kids, I wanted to stay in the family. You know, there's dollars I wanted to pass it on to the next generation and the next unborn generation. So there's some sort of plan, the family gets together. Now a lot of people will say, hey, you know, my family is perfect. Look, every family's got issues, believe me, we, I know. So. But we every family also starts out with the area from the starting point of perfection, but we all know, they all got issues, and you have no idea how people are going to react when you're no longer there. So if you plan and get them organized, and you're thinking about the next generations, it'll whatever the problems they might have today and jealousy and fighting, that's infighting that goes on right now. You probably can try and quash it in put it out while you're To hear in in, you know, make it easier on them going forward. But again, the important thing is to have the conversations and a lot of families don't want to have those conversations. I know, my mom and dad didn't have the conversations.

**Pat Bolland** 15:15

Okay, let's change tack a little bit. Can you cut somebody out of a will entirely if they're part of a family? Or does that always end up in court?

**David Edey** 15:27

Yes, I mean, it's your estate, you can do anything you want. But then again, if you're going to cut them out, then you need to have a conversation. And let them know why you cut them out. They may or may not like it. Again, it's a sense of entitlement. If you think I need to be in there I deserve. You don't deserve anything. It's, it's your legacy. You can do anything you want with it. But I think to make it be less messy, again, we're coming back to leave a legacy or a legacy are a mess, it's best to say, Well, I've cut you out. And here's the reason why to do it. Why I did it, you're going to have those conversations. And when I say have those conversations, and it's gonna be a family conversation, I don't suggest doing it at Christmas dinner. You know, by the way, I've cut you out of my Well, can you pass the rolls? And keep going? No, find a time where you're going to have that family meeting and explain to them why you've cut them out. It gum comes down to conversations. Again, it's not a sexy topic. People are uncomfortable with it, I get it. But you need to have those conversations, get it over with it's uncomfortable. But you got to get it over with. So to answer your question, yes, you could do it. But you're also going to have to explain why you're doing it.

**Pat Bolland** 16:40

I think that make a great movie, that whole dinner roll conversation we've had out of the will. You mentioned it earlier digital assets, and they seem to be a growing true asset. How do you suggest people and the executors handle digital assets?

**David Edey** 16:59

Well, first you need to, you have to, because every and I go through this in the book that every social media company has their own sort of terms and conditions of how to shut down an account. So you know, Facebook has and Twitter and Instagram. So you need to understand what you need to do to shut those down. I have a friend of mine, he a buddy of his passed away three years ago, but the Facebook account is still saying it's his birthday. And you know, there's still posts coming from it. So, so clearly, you know, it's the executor hasn't either the executor knows us there and doesn't know how to shut it down, or they haven't got the passwords to shut it down. Because there's a couple of ways that you can shut down a Facebook account. So I suggest I mean, there's a lot of solutions, you could, you know, just put it on a spreadsheet, or you could write it out all your passwords, or there's a lot of digital online solutions that work can be kept in the cloud. And all you would have to do is just, you know, make that part of your bright red folder that your executor knows, or the people that knows need to know, in case number emergency. It's important to have that because, and make it easier for them to find whether use the you know, the bright red folder or use an online solution is that when people are traumatized, they can't find things, and they're just going to be scurrying around, they don't know where to look. But if you told your executive if something was to happen, look for this bright red folder, or here's the the login information that you're gonna need, all my information is going to be there to make it easier on you. If you can do that. Prepare your family prepare your executor, again, you're making it easier on them, especially because they're already grieving for the loss of of you. So why not give them the biggest gift of love that you can and having things organized? Yeah. Is there

**Pat Bolland** 19:02

a risk to that? And I'm thinking so for instance, let's say I left a spreadsheet of my passwords and one of them was my banking password and the executor went into my bank account and started to transact. Is the executor liable? Is the bank liable? Am I even though I passed ... Am I alive?

**David Edey** 19:23

Well, the the executor when you take on that responsibility, you are legally going to be held responsible. So any mistakes any I was gonna say fun angling, any things that you think you can do, you can be held responsible, you have to be held criminally responsible. So even though they have the passwords once the banks know that you have passed away, then an estate account has to be set up. So the banks are going to freeze all the accounts. So say there, and in one way I would suggest before you let the bank knows that As an executor that you know, the person has passed away, you may, you might take out some dollars to make sure the funeral is taken care of, there's no, you know, because it's going to take a while you're going to need some dollars and then let the bank know and then set up the state account. I mean, the executor is responsible for everything. And you can be held liable if there's any misappropriation of funds. And a lot of times, that's why beneficiaries, if they think things are going slow, that they want to take a and it's not uncommon that beneficiaries are going to sue an executor.

**Pat Bolland** 20:39

Okay, so suppose I'm in an executor. And I have no idea what I'm doing with any kind of an estate, I don't care whose it is, can I go? Where can I go for help?

**David Edey 20:51**

Well, first, you would get my book, okay, that's the first step, make it a lot easier. You see, I've already saved you a lot of time right there. So again, the the, the minimum amount of professionals you're going to need is an accountant to help you with the taxes. The tax situation, also, maybe hopefully, there'll be willing to explain to the beneficiaries, if there's some stuff he can explain, let them you know, hopefully account to be able to answer those questions, have the lawyer and also a financial adviser to make sure the assets are transferred, or maybe they need to be managed until it's time to be distributed. I've talked about the three goals in in the book of what an executor needs to know, in terms of make sure you file the right tax return, make sure that you pay the beneficiaries and make sure that you get the clearance certificate from Revenue Canada are a CRA that the the estate is all settled, and you move on from there, I suggest you don't pay out anybody anything as much as they might be saying, where's my where's my money until you make sure that the tax planning and all the tax issues are going to be taken care of and you make sure that there's enough money to pay the taxes first, before you distribute any money, because what could happen is you might distribute money, the county hands you the tax bill, and you haven't got enough money trying to collect that money back after you've scratched them a check for, you know, 80 or 90,000 hours, you can think they're gonna notice like a habit. So you make sure that those things are taken care of first, and then you distribute. The one thing I would suggest, if you're going to be the executor is that if you you want to stay out of trouble is to stay constant communication with the executors. Maybe it's an email every one or two weeks, hey, this is what I'm doing. Maybe it's a zoom call, once a month, and you get everyone and let everybody know what's going on. What you need to do is make sure that you have constant contact with them. Because if there's radio silence on your behalf as the executor, now they're gonna start to look at you sideways. Why is this taking so long? What's he doing? What is he up to? What do I do I need to send pat a lawyer's letter, which, you know, get, you know, why is he not phoning me back, you know that you're doing everything that's and there's a lot of things to be done. During those, those 100 hours, you can't do just on the weekends, there's a lot of times you might have to take time off from work to get these things done. So they don't know what you're doing to get the job done to get them their money. So you just need to keep them apprised of what you're doing and keep it going there and keep out a good line of communication. And despite maybe you might not like some of the beneficiaries put that aside because not about you.

**Pat Bolland 23:48**

that's not your job. From beginning to end, David, what you said is communicate before you die, communicate your wishes, you know, after you die, the executor asks to communicate. That's a great message to have. Do you ... is your book available online?

**David Edey 24:03**

Absolutely. You can go to my website, David at.com. It's available at all fine online retailers. It's available at Indigo. I just want to say that my book is is I know you've done a show on wills. But my book is about why why you need to do this. And the the the why. And having a will is the how so you need to do those things. Because intensive care is no place to find out that your mom or dad or someone you love doesn't have a will because I know you can't have a meaningful conversation when somebody's on a respirator. So you need to make sure that you prepare your executor you also prepare your estate so that you again I say leave a legacy. Not a mess.

**David Edey** 24:54

David great chat. Thanks you!

**David Edey** 24:56

Thank you!