

PERSPECTIVES

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ESTATE ADMINISTRATION CHALLENGES OFTEN BEGIN WHERE THE WILL ENDS

On paper, everything seems in order: an up-to-date will, a carefully selected liquidator who understands your situation and the task ahead, and clearly expressed wishes. But upon your death, the question becomes: will the liquidator know where to look for all the information needed to carry out their duties?

Before assets can be distributed in accordance with the deceased's wishes, the full extent of the estate must first be determined. Bank and investment accounts, real estate, insurance policies, interests in companies, works of art and collections, digital assets, movable property held outside Québec: over a lifetime, your assets accumulate and an estate can become more complex than it appears.

While proper estate planning involves determining how your assets will be distributed efficiently, in accordance with applicable laws and with tax mitigation in mind, you should also take steps to make the process easier for the person who will be responsible for settling your succession.

Identifying and locating the deceased's assets: an essential step

One of the liquidator's first responsibilities involves preparing an inventory of the succession's property as at the date of death. To do so, they must first determine what assets exist and where to find them.

When an estate is not very complex and its assets are concentrated among a few institutions, the exercise can be relatively simple. But the more numerous and diversified the assets are, the more demanding the task of piecing everything together becomes.

Extensive research may be required when dealing with an old bank account that appears dormant, an insurance certificate without the underlying policy, a missing marriage contract, uncertainty surrounding your civil status, an interest in a private company without adequate documentation, a collection that has never been appraised, or digital assets. The liquidator must also identify the professionals or individuals who may be able to provide information, including a portfolio manager, accountant, tax specialist, notary, lawyer, or insurance broker.

This reality takes on another dimension when an estate extends beyond Québec's borders. Assets located outside Québec can significantly complicate the settlement of the succession, an issue we will explore further below.

Advance preparation can therefore make a meaningful difference by helping the liquidator understand what to look for, where to look, and whom to turn to.

Providing the Liquidator with Guidance

Preparing a settlement file does not mean having, from the outset, a comprehensive file containing every bank or investment statement and every password. Rather, it means ensuring that the liquidator has all the information needed to know where to look or whom to contact.

To that end, preparing a list of your assets is always worthwhile. Updating it periodically is equally important, and indicating the existence of your most recent will, a prerequisite. With which institutions do you hold accounts? Are there assets outside Québec and, if so, where exactly?

Providing contact information for people to reach out to regarding property located outside Québec is also useful. Where can your important documents be found, such as your marriage or civil union certificate and contract, deeds of acquisition for real estate, insurance policies, bank and investment statements, most recent income tax returns, and notices of assessment? Which professionals should be contacted for further information?

This roadmap can take different forms, either in writing or electronically. What matters is that it be accessible upon death and sufficiently detailed to allow the liquidator to act promptly.

It must also evolve over time. Information may become outdated following a divorce, an inheritance, the sale of a property, a change of manager, the opening or closing of an account, or the acquisition of a new asset.

The Memorandum: Useful, but With Certain Limitations

A handwritten or typed memorandum attached to the will can be one of the tools used to provide guidance to the liquidator. It may indicate where certain information or property can be found and, in some circumstances, explain provisions of the will.

However, it is important not to give such a document a legal effect it does not have. It is not a document intended to provide for the transfer of property upon death. It is not a will, nor should it be viewed as an amendment to the will. Its purpose remains explanatory, providing directions to help ensure an orderly settlement. Inclusion of intentions regarding the transfer of certain property may sometimes raise questions about the memorandum's legal scope and its interaction with the will. It should therefore be regarded as an additional tool whose content and use must be carefully considered, rather than as an estate planning vehicle.

When Assets Cross Borders

Did you get married in France or elsewhere in Europe? Do you own a second home in the Maldives, a joint bank account with a survivorship clause in Florida, or investments or other property in a jurisdiction outside the province of Québec? If so, principles of private international law or conflict of laws then come into play, raising questions and issues that must be examined in relation to the succession and, quite often, the deceased's matrimonial regime.

Settling an international succession in Québec, i.e., a succession involving property in Québec and in at least one other state, therefore brings its own set of complexities. It should be noted that each Canadian province or territory constitutes a separate state for the purposes of private international law. While a succession involving property in Ontario or another Canadian jurisdiction may be relatively straightforward to settle, the

situation can be very different when property is located elsewhere in the world. Determining which laws apply to the succession may then raise several questions. Mandatory rules from a jurisdiction outside Québec may also affect the devolution of property in Québec; France's forced heirship rules are one example. An international convention relating to successions may also apply, such as the EU Succession Regulation, in effect since 2015. The liquidator's task suddenly becomes more complex, in a context where the rights of legatees or heirs can often differ.

As a result, thoroughly documenting assets located outside Québec, including a valuation and their dates of acquisition, allows the Québec liquidator to take a position on the matter relatively quickly. You will also have taken care to include the contact information for relevant people in the foreign jurisdiction to facilitate the liquidator's work.

Preparing for the Handover

Estate planning is generally approached from the perspective of transfer: who will receive what, under what terms, and with what tax implications.

But there is a crucial intermediate step between death and that transfer: execution.

For people whose assets have become more complex over time, preparing for this stage can make a real difference. Not by trying to anticipate every step the liquidator will need to take, but by giving them the tools to understand what exists, find the relevant information, and quickly bring the right people on board.

In estate planning matters, the standard of excellence is also measured by how easily it can be implemented upon death. At Eterna Trust, this dimension is an integral part of our approach: preparing for the transfer of assets while ensuring that the conditions are in place to operate efficiently when the time comes.



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