



# 15

The Dimming  
of the Day –  
Estate Planning  
for your family  
and legacy

SCOTT STALLARD PHOTOGRAPHY  
The Dimming of the Day

## Step Fifteen - The Dimming of the Day Estate Planning

### The Dimming of the Day Estate planning for your family and legacy

Have we put our affairs in order?

Managing the finances of a single individual is a challenge any day of the week. Imagine how complex it can be when a nuclear family or several generations come into play. Some of the stressors that occur within family circles are the very ones that could be avoided by putting simple, easily understood estate planning into place, early.

We all know the classic example. We may have even experienced it. One family member no longer communicates with another because he “got more than I did when Mom passed on” - because she always liked him best.

We are all creatures of habit. Many of us find it extremely difficult at the end of the day to take care of financial tasks, so we don't; they just get put off, sometime inevitably.

### The Pitfalls and Pain from 'Forgetting' to Plan.

Consider the composite scenarios described below drawn from actual case histories (names, places and circumstances have been altered) from thirty years as a financial planning practitioner, but let me politely point out, they are heavily anonymous.

**Case 1.** XYZ Company is a good stock, the lady says, “my father and I owned the shares together, but he let me have all the dividends. They paid consistently and I used the money to buy our kids things.” She is now elderly herself and wants to sell the shares now to take advantage of a three year high in market value. However, the shares are still in paper certificate form, still registered in his name. Her father has been deceased for twenty-five years and today, the XYZ share value is dropping like a stone. It takes weeks to obtain a certified death certificate and reregister the shares in her name alone. Needless to say, XYZ stock does not sell for the value she had hoped.

**Case 2.** We are in an appliance repair shop. The dear couple running the place have worked all their lives, managing to compile an extremely modest savings account and a few investments. The husband looks terrible. When his wife is out of the room, he leans over and whispers to me: “I know you work with finances. I can't find our stock certificates and I think I burned them by mistake with the trash in the woodstove. I am just sick about it, I can't sleep, and I can't tell my wife. What am I going to do? It is all of our savings!”

**Case 3.** The client comes into our office seeking tax advice on a lump sum distribution from a pension account. She is 56 years old; has scarce resources and has recently been made redundant. The reality is in today's marketplace that her future employment prospects are bleak. She chatters on about di-vine intervention

'getting' this unexpected money. It seems that her ex-husband – from whom she has been divorced for more than eight years – has just died. He never removed her name as beneficiary of his pension. Thus, under contract law, she inherits and his current spouse (with two young children to support) is left almost penniless!

**Case 4.** She is 55; he is 58. Their home is owned jointly, so the husband said. They have put 35 years of sweat equity into the place with the understanding that they will inherit other assets when the matri-arch of the family goes to glory. His mother (79) has not been well; cancer treatments are eroding her health. Betty, who has never worked, has spent emotional and physical time caring for his mother at home. Unexpectedly, John, not Mom, passes away. At the reading of the will, he has bequeathed his joint holding in the house to Betty. Surprise, title was never conveyed to Betty by his mother. Not only that, but the matriarch's medical bills are mounting, and the home will be sold. After thirty years of being a homemaker with little in the way of marketable skills, Betty must simultaneously grieve, find a job, and an affordable place to live.

Four cases, four avoidable tragedies. We work so hard to acquire assets and establish the good life, but never quite finalise the details. Not to belabour the point, but Why is it so difficult for so many of us to take care of these most necessary financial tasks?

## The Avoidance of the Necessaries Can Pile Up.

People neglect to clarify all sorts of financial paperwork:

- They forget they own stock warrants and options which end up expiring on them.
- They earn pensions in other countries, have little to no documentation, can't remember the amounts, let alone where to claim what they are rightfully due.
- They make 'handshake' business agreements with family members (and other people), then never put anything in writing.
- They loan money to others and never collect.
- They get dividend checks and lose them.
- They marry and divorce, never once reviewing life insurance, pensions, wills, annuity contracts, and bank accounts for correct beneficiaries, ownership.
- They stop making payments on life insurance policies, with no idea if the contract is a whole life or term policy.
- They never check their property insurance to see if the face value of the policy will remotely pay for replacement cost if the property disaster occurs.
- They open accounts abroad, and forget how much, where they are, and tell no one.
- They forget to file income tax returns.
- They set up trusts, and never get around to funding them or transferring assets into them.
- They buy investments, have no idea what they bought, letting their broker choose for them.

And the list goes on.

Actually, no one enjoys this type of paperwork. One can try to blame universal

financial systems for the indecipherable language, complicated, lengthy, and tedious forms, wending the maze as it were. The reality is that we live in a complex world. It is just not easy no matter how you view it. We are after all, only human, and feel we have an excuse for being overwhelmed.

### **A Fact. We Think that we are going to live forever, \*\*\* until we don't.**

We never know when the Good Lord will call us home. You don't want your left-behind relatives (rels) to start with the refrains of IF ONLY he/she:

- had been more careful;
- taken better care of her/himself;
- put together a simple will;
- established a guardian to take of his/her little son and daughter;
- had filed the papers for the Bermuda Primary Homestead Resident Certificate;
- changed the beneficiary on his/her pension account (instead of leaving it all to that wufless rat of a first husband/wife);
- set up medical directives, and life-support testator wishes;
- had put all those documents in one easy place to locate.

And the even more painful, emotional IF ONLY'S...that make managing all legal and financial matters from the lost loved one, even tougher to manage.

- If only, I had told him/her we loved him/her one more time;
- If only, we hadn't had that last argument;
- If only, he/she spelled out non-resuscitation wishes for terminal illnesses;
- If only, we had had the chance to say goodbye.

Truly, no one wants to talk about "the end." This is reflected globally, where 45-50% of people do not have wills. A trend that simply has not changed: rich, middle class, or struggling, no one wants to pre-prepare for their own demise.

You! have the courage to break this trend.

### **If you are very young -**

single, with no dependents, very few assets, you may think you do not need a will.

But, even so, if you are employed, you probably do have a small savings account, possibly a term life insurance policy benefit from your employer, and your Bermuda National Pension Scheme.

Make sure that the people you care about are listed as beneficiaries on these accounts!

### **If you are older -**

in a serious relationship, especially with children, other dependents, extended family (divorce, wid-ow(er)hood), a mortgage, a home, and other assets, you need a will.

NOW!

Do you honestly want the Bermuda Government to decide who benefits from your assets, and who is assigned guardianship of your children, the residual of your life's work and your plans with your loved ones for the future, you know

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*"the things that built  
our dreams, yet slipped  
away from us?" \*\*\**

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Don't believe me? Then read Michael Mello's wonderful free Bermuda estate planning book, or wade through Bermuda Government estate law, both sourced below.

### **Then, make a will; be sure to execute your will with an attorney.**

It is not enough to write your last will and testament wishes down in a document that provides for your families' needs in a thoughtful, careful, loving and clearly designated manner.

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*Your will must be executed to be legally binding!*

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On rare occasions, a holographic will (hand-written, composed and signed by yourself) has been found to be legally valid. You must have your wishes documented, witnessed and placed into private, (sometimes public) domain as a legal document by an attorney.

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*Store it where it can be found and tell trusted individuals how to locate it!*

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Your wishes regarding burial with your favourite bottle of champagne - hidden in a high place over-looking the sea isn't going to happen if no one can find your will and its directives.

### **Dying intestate. The consequences if no will exists.**

In Bermuda, the law of intestacy is governed by the Succession Act 1974. Passing to your great reward without leaving a valid will is known as dying intestate.

Since no one at that point (other than you and you are gone) knows what to do with anything, the Bermuda Courts decide for you - from the grave as it were by utilising the Succession Act.

With the exception of very small estates of personal property BMD 50,000 or less, a more cumbersome process of obtaining a Grant of Probate, or Letters of Administration kicks in to dole out your net estate (after legal and filing fees, liabilities, stamp duty and other costs) according to a set formula that may bear no resemblance whatsoever to how you wanted to dispose of your assets, or care for the needs of your immediate family.

#### **For instance, Bermuda Succession Laws state the following:**

##### **One: If you and your spouse have no children,**

your spouse will inherit your entire residuary estate, but there is a catch. He/she will inherit all only if your parents, full brothers or sisters, or their children died before you did. If, for instance, your parents are still alive, your spouse will receive your personal possessions, house contents, boat, car and no more than two-thirds of the remaining assets or \$150,000 whichever is greater. Your surviving parent(s) will receive the final one-third. If both of your parents have passed away, the final one-third remaining won't go to your spouse but to your surviving brothers and sisters equally or to their children.



**Two: If your spouse and your children outlive you,**

your spouse gets an even shorter end of the stick. She/he will receive no more than 50% of your re-maining assets or \$100,000 whichever is greater. The remaining 50% is given equally to your children. This edict creates problems when a considerable fortune is left to minor children and no one is capable of managing these investments. Another body blow to the grieving spouse occurs when it is learned that transfers to spouses are exempt from stamp duty at death, but your estate may be liable for stamp duty of up to 15% on the taxable assets left to your children – that remaining 50% has just been considerably reduced, and you still have to raise and educate these children.

**Three: Overvaluation of the family home.**

Under the Succession Act rules, if the family home is worth more than your spouse's entitlement to your estate (that is two-thirds or fifty percent), your spouse can still keep the property, but he/she must pay the difference between what he/she is allowed back to the estate where it is distributed to the remaining beneficiaries. How many spouses have that type of liquidity in land-rich cash-poor Bermuda? We don't know what arrangements the court can or will make if the spouse can't beg, borrow or steal sufficient cash to keep what she/he has considered to rightfully theirs all their life.

**Four: Uncle Scrooge and Auntie Meanie become Guardians of your dear children.**

Regardless of whether the children like these people or not, if no Will exists, particularly in the case of a Single Mother, the Supreme Court may appoint a guardian who may be considered a more suitable guardian than even the child's biological father. The court takes the position that it is

always obligated to act in the best interest of the child(ren).

These types of situations can actually happen, even to people like Princess Diana, who had access to the most brilliant estate planning minds in the Commonwealth. Most of her £21.5 million fortune was bequeathed in trust to Princes William and Harry, but she failed to make a new will after her divorce from Prince Charles, leaving her sons with an £8.5 million inheritance tax bill on her estate.

Not to be outdone, other famous people neglected to plan, as taken directly from probate court filings in the United States which still has a fairly punitive estate tax regime. Marilyn Munroe, Elvis Presley, JP Morgan (the founder of the massive investment firm), JD Rockefeller, and the head of one of the Big Four accounting firms all died without leaving a will. Their estates paid from 55-73% of the value of the assets to US Internal Revenue Service before the beneficiaries received a dime. Even the most well-intentioned...

**Making a Will declares your intentions (to your executor)**

on how you wish your property to be disposed of at death. Additionally, if your estate held in your sole name (in Bermudian dollars) is above \$50,000, it is subject to death duties with only a couple of exceptions: bequests to charity and leaving your estate to your spouse.

What would happen if you were able to suitably restructure the titling of all of your estates so that at death there is an automatic transfer to the beneficiaries (or a trust) of your choosing?

Sharing the Load, also mean giving up

some control. Bermuda dollar bank deposits, securities, and other investments may be held with your spouse, partner or heirs or other parties. They may be titled as: joint with rights of survivor, joint, tenants-in-common, as guardian for, in trust and so on.

It is important for you to assure yourself and the family that the assets are titled correctly for your beneficiaries. There is a distinct difference between titling these assets and who will inherit them.

Life insurance proceeds. You, as the owner of the policy, have full authority to designate (or change) a beneficiary while you are alive. This is a legal contract between you, the owner and the insured, and the insurance company. At your death, your beneficiary(ies) receives the proceeds.

Pensions structured under the National Pension Scheme and other older private pensions generally work the same way as life insurance. The Government Old Age Pension does not. Your benefit dies with you, although your spouse may receive a similar sum under the widow entitlement.

Real estate property transfers (of Bermuda property) during your lifetime (known as voluntary conveyances) can legally be accomplished in a variety of ways, the most common being transfers into joint tenancy with spouses and others. Life interests, trust structures, and holding companies are more complex methods of holding real estate for future beneficiaries. There is a transfer stamp tax cost to these processes for real estate, but generally less than the cost of death duties.

**The Bermuda Government's Gift to You.**  
How would you like to save all death duties on your primary personal residence for your beneficiaries? Under the Stamp Duties Act 1976 as amended by the Stamp Duties Amendment Act 2005, you can do just that.

By making a formal application to exempt your primary homestead from stamp duty, you can save your heirs (and your home for them) the often-punitive cost of stamp duty due on Bermudian property at death.

Scuttlebutt from readers; Primary Homestead applications are taking years to be processed. This is simply unacceptable, when originally legislated it took a matter of weeks.

**Final Opportunity Arises even after Death.**  
Even after death, your estate representative may designate your sole property (or one of your properties) to obtain this certificate. There are several caveats, however: if you own more than one property, your executor can only designate the property you lived in. If you pass your last years in an extended care facility and do not receive the exemption prior to this change in residence, your family property will not be eligible at all.

Below is the Schedule of Bermuda death duties for your perusal. As stated above, there are planning opportunities to designate your assets for optimum benefit for your survivors. I highly recommend consultation with a knowledgeable Bermuda estate attorney, such as Michael Mello, QC who can provide expert advice and structure to your estate plans.

## Documenting Your Net Worth (Alive and Deceased). Death Duties to Be Paid

Source: LAW OF WILLS AND ESTATES IN BERMUDA Ninth Edition  
BY MICHAEL J. MELLO QC, JP, TEP  
page 82

### What you own

- House (your share if jointly owned) (at present market value)
- Car
- Furniture, Appliances and Fixtures
- Jewellery
- Other personal effects
- BD\$ Cash
- Bank account (BD\$ current & deposit accounts)
- Deposit Company BD\$ Certificates
- Bermuda Stocks & Shares, bonds, and mutual funds (at market value)
- Life Insurance (if your estate is the beneficiary what your estate would get if you died today in BD\$)
- BD\$ Money owed to you
- Any other Bermuda assets you own, company(s), partnership interests, etc.

### Less what you owe

- The mortgage on your house (not applicable if you have a Primary Family Homestead)
- Exemption Certificate from death duty)
- Overdraft facility at bank
- Loans from the bank
- Unpaid bills
- Credit card balance owing

- Contingent liabilities (i.e. guarantees of loans, etc. and other obligations which do not cease at death)

Deductions/Exemptions deducted from Net worth before death duty calculation

- Any Bermuda personal or real property left to a spouse or charity is exempt the value of any real property interest where you have a Primary Family Homestead Exemption Certificate foreign property of all kinds should be excluded, for example a US\$ bank account or US\$ de-nominated securities and investments, even if held at a local bank

**Net worth** \$ \_\_\_\_\_  
**(your total Bermuda assets less your total debts)**

**Net dutiable estate** \$ \_\_\_\_\_

### Bermuda Death Duty calculation

First \$100,000 Exempt \$ - 0 -

Next \$100,000 @ 5% (or part thereof) \$ \_\_\_\_\_

Next \$800,000 @ 10% (or part thereof) \$ \_\_\_\_\_

Next \$1,000,000 @ 15% (or part thereof) \$ \_\_\_\_\_

Everything over \$2,000,000 @ 20% \$ \_\_\_\_\_

**Total Death Duties** \$ \_\_\_\_\_



## Healthcare Directive, Advanced Directive Or “Living Will”

A Healthcare Directive (sometimes called an Advance or Medical Directive and commonly referred to as a “Living Will”) is either a separate document, or a paragraph in a normal Will in which a person sets out in advance what kind of medical treatment he wishes or does not wish to receive in the event that he subsequently becomes incapable of communicating his own wishes.

A Healthcare or Advanced Directive or “Living Will” is not really a Will in the traditional sense as it does not dispose of property and it does not speak from death. The purpose of a Healthcare Directive is to inform healthcare providers of the patient’s wishes when the patient is unable to do so himself and, equally as important, to spare relatives and medical attendants the problem of having to make difficult medical decisions on the patient’s behalf.

Basically, a Healthcare Directive sets out which person you want to make health care decisions for you when you can’t make them yourself (a healthcare proxy), the kind of medical treatment you want or don’t want, how comfortable you want to be, how you want people to treat you and what you want your loved ones to know.

### **Leaving Specific Instructions and Documentation. Don’t Forget!**

Internet Access to your social media, email, bank and investments and any other accounts: Passwords, keys, safety deposit boxes, copy of last will and instructions and so on.

### **Leave these where they can be found.**

No point in going to all the trouble of laying out your wishes, then not telling anyone where yours and your family’s valuable information is! Not having recourse to retrieve assets may mean the difference between survival and stability for your family!

Huge case in point - Cryptocurrency CEO - dying unexpectedly in Hong Kong leaving no passkey to access millions of Bitcoins. There you have it, a vast fortune, floating anonymously in global vapourware.

A crypto exchange may have lost \$145 million after its CEO suddenly died

By Daniel Shane, CNN Business, February 5, 2019

## Bermuda Trusts: Relative Thinking Applied to this Complex Area

This section has been included mostly as a reminder to include in your review if you are connected in anyway with Bermuda (or other) trust programs.

Trusts, almost used to be informally operated by trustees who were trusted family friends, possibly including an attorney, and so on. There were fewer requirements to formally conduct a trust under strict reporting, accounting, distribution, and other transactions.

Current trust legislation in Bermuda significantly changed how formal trusts must be administered, one particular requirement is that one trustee must be a registered trust company.

There were many reasons for these legislative upgrades, among them, the global tax, legal, financial, and accounting mandates for individuals and businesses, bot local and international, through the Anti-Money Laundering, Know Your Client, OECD influences, and large country governments to provide au-thenticity and transparency to even the most complex of trust structures. The United States, in particular, in enforcing the FATCA (Foreign Account Tax Compliance Act) increased complexity of administration and reporting with respect to any United States connected individuals, businesses, and trusts, themselves.

Noncompliance can trigger draconian monetary and financial constraint consequences through foreign financial institutions reporting requirements and oversight to US Internal Revenue Service. Other country Revenue Agencies have emulated this compliance model, meaning that a trust may face reporting to numerous country tax

agencies, depending upon the citizenship, residency make up of all individuals and entities associated with a trust.

Bermuda families who may have established to a trust simply to hold their Bermuda property, have found that the compliance requirements and accountability have decreased the trust cost effective-ness.

Needless to say, as trust structures are a complex topic in and of itself, we can only provide a brief review and reminder of you, the reader's possible potential issues and direct you to consult with an experienced trust officer, an individual with the TEP credentials is advised.

TEP is the Trust & Estate Practitioner designation earned through a rigorous series of examinations and participation in the Society of Trusts & Estate Practitioners (UK/ Bermuda).

**Are you the Grantor/Settlor?**

**A Beneficiary?**

**Are You or Any Individual Connected to the Trust, also United States Connected?**

**What is entrusted?**

**Has the Trust Borrowed Funds?**



[Listen to Part 2 - Pension Annuity - Drawdown Comparison](#)

## References & Resources

MICHAEL J. MELLO QC, JP, TEP Author:  
The Ninth Edition of the Laws of Wills &  
Estates in Bermuda

According to Attorney Mello,

“Of the topics we are most unwilling to discuss, making a Will is near the top of the list because it means making arrangements for our death. Most Bermudians will tell you they want their family and friends to know their last wishes, yet too many have never taken the time to set out in a Will what those wishes may be. For example, in the UK it was found that nearly two-thirds of adults with children in the household did not have a Will. However, the rapid increase in Bermuda’s death duties since 1976 has made more Bermudians take notice and embark on estate planning, one of the most important considerations when making a Will.”

Bermuda’s Executors and estate settlement. They must know their fiduciary responsibilities and act promptly on death of a testator.

<http://www.bermuda-online.org/executors.htm>

Bermuda Administration of Estates Act  
1974

<http://www.bermudalaws.bm/laws/Consolidated%20Laws/Administration%20of%20Estates%20Act%201974.pdf>

Government of Bermuda: How to Probate  
an Estate in Bermuda

<https://www.gov.bm/how-probate-estate-bermuda>

Bermuda Primary Homestead Certificate

The Administration of Estates Act 1974

The Non-Contentious Probate Rules 1974

The Succession Act 1974

The Wills Act 1988

Stamp Duties Act 1976 (as amended)