



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686

E-mail: iven@itlawcorp.com

Website: www.iventse.com

Real Estate and Estate Planning: What You Need to Know

Presentation to Chinese Real Estate Professionals Association

June 25, 2021

Real Estate and Estate Planning: What You Need to Know
For web links and a copy of this text, please email me
@ iven@itlawcorp.com or text me at
(604) 817-7063

IVEN K.S. TSE
LAW CORPORATION
Barrister, Solicitor, and Notary Public
謝國星律師樓





Conveyances & Mortgages
Family Law
Real Estate Litigation
Commercial Litigation
Commercial Law
Corporate Law
Wills & Estates



Iven K.S. Tse
Professional, Courteous Service
604.817.7063
www.itlawcorp.com



iven@itlawcorp.com
office: 604.877.2686

Suite 701-601 West Broadway,
Vancouver, B.C. V5Z 4C2

 TWITTER: #iventse
 FACEBOOK: Iven Tse Law Corp

 TWITTER: #iventse
 FACEBOOK: Iven Tse Law Corp



Iven K.S. Tse Law Corporation
BARRISTER & SOLICITOR
謝國星律師樓

REAL ESTATE • BUSINESS • FAMILY • WILLS & ESTATES • IMMIGRATION



Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

THE LEGAL FRAMEWORK:

Powers of Attorney Act

Patient's Property Act

Fraudulent Conveyance Act

Family Law Act

WESA (Wills, Estates, and Succession Act)

Property Transfer Tax Act

Foreign Buyer's Tax

Income Tax Act

THE CONCEPTUAL FRAMEWORK:

Legal and Beneficial Ownership

Gift vs Loan

Badges of Fraud

Joint Tenancy v Tenancy in Common

Deeds of Gift and Bare Trust Agreements

Constructive and Resulting Trusts

Legal Presumptions



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

ESTATE PLANNING:

Involves Planning for the future,
both when alive, **AND** when deceased.

When Alive – The Questions:

Who will look after real estate assets if a registered owner becomes incapable or physically unable to look after the assets?

Who will Pay the taxes and keep the mortgage payments?

Who will maintain and repair the assets?

How will the asset be kept Insured?

Who will collect rent or manage tenants?

How to protect real estate assets from creditors?



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

When Deceased:

- How will real estate assets get distributed?
- Which method will result in less over-all taxes?
- How to avoid Wills Variation proceedings?
- How to protect assets against creditors?
- What are the claims of common law spouses?
- How to settle disputes between representatives?



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

When Alive



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

Power of Attorneys (POA) and Real Estate:

In BC, being joint owners, or being a spouse of a property owner, does not automatically give the joint owner or spouse any rights to act on behalf of the other owner or spouse.

Legal authority can only be given through a power of attorney.

Power of Attorneys (POA) and Real Estate: Important Considerations

1. Name of Donor on POA must match exactly with the registered name on title.
2. Original POA must be registered at the Land Title Office to be able to use it for any documents filed at the Land Title Office, which will refer to the registration number.
3. Must be signed by both the donor and the donees before a person who has the power to take oaths under the Evidence Act of BC. Be wary of POA's signed outside BC as not all notaries have this power.
4. For land title purposes, the POA must contain a sworn declaration by the Donee that they are 19 years of age or older

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

5. Three ways to give power to more than one Donee

- (a) The Donees must all act together
- (b) The Donees can act separately (with or no tiebreaker rule)
- (c) The Donees are prioritized – one will be the Attorney until he or she dies, becomes incapable, or refuses to act

6. Three (3) year expiry date when it comes to real estate, unless

- (a) POA is an enduring POA, or
- (b) The Application of s. 56(1) of the Real Estate Act is specifically waived.

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

7. If a seller or buyer is using a POA to sell or buy, the Licensee must (a) get a copy of it and (b) recommend the client to seek independent legal advice to ensure it is valid

8. See: RECBC Decision published October 7, 2020
GWH and KM, Royal lePage Kelowna
 - copy of POA was not obtained or reviewed before listing
 - Two owners, instructions from A, for B, but POA did not give powers from B to A, it gave powers for A to B
 - B was incapable of making decisions, no way to correct
 - POA was therefore not valid and Deal Collapsed

Committeeships, Patient's Property Act and Real Estate: Important Facts

1. When there is no valid POA for a person on title, and that person is incapable (dementia, Alzheimers, Stroke Victim etc), **someone has to apply to the Court** under the **Patient's Property Act** for a Committeeship – giving powers to an Applicant, to manage the affairs of the owner
2. Affidavits from 2 medical specialist are needed to prove incapacity.
3. The BC Public Guardian and Trustee **PGT** must be notified and served with the Application, who may require conditions to protect the patient.

4. Conditions may include a requirement to purchase a Bond, and pay the premiums each year, until the Patient recovers or dies, which may cost thousands of dollars.
5. If an applicant cannot qualify or purchase a Bond, the PGT may require the consent of the PGT before the property can be sold, or a Court Order
6. Time and Cost: Legal costs for the Application can be up to \$10,000 and it could take up to six months.



REAL ESTATE - BUSINESS - FAMILY - WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686

E-mail: iven@itlawcorp.com

Website: www.iventse.com

PROBATE AND LAND TRANSFERS

Governing law: Wills, Estates, And Succession Act (WESA)

The Probate Process

With Will (Probate) v Without Will (Administration)

Probate Fees (Inheritance Tax)

Grant of Probate or Administration

(Certified Copy Needed for property transfers)



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686

E-mail: iven@itlawcorp.com

Website: www.iventse.com

PROBATE AND LAND TRANSFERS

Land owned as Joint Tenants means that there is no requirement for a probate procedure to transfer the deceased' share of the land to the survivor, but there are still “transmission” procedures that require a the Death Certificate, Land Owner Transparency Act Forms/Filing, and Property Transfer Tax to be file.



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686

E-mail: iven@itlawcorp.com

Website: www.iventse.com

PROBATE AND LAND TRANSFERS

Does anyone know what happens, however,
when both or all joint tenants owners
pass away at the same time?



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686

E-mail: iven@itlawcorp.com

Website: www.iventse.com

PROBATE AND LAND TRANSFERS

All owners will therefore be owners as if they were tenants in common and their share will follow their Will or WESA procedures for intestate (no Wills) estates.



REAL ESTATE - BUSINESS - FAMILY - WILLS & ESTATES - IMMIGRATION
Tel: (604) 877-2686 E-mail: iven@itlawcorp.com Website: www.iventse.com

Important Timelines:

Grant of Probate from Time of Filing: On average, 6 months – This often varies depending on which Court Registry is processing the application.

Transfer of Property After Probate Grant: 210 days - Section 69 of WESA requires a **210 day** wait period after the Grant before property can be transferred to beneficiaries, unless all beneficiaries consent or with court approval.

Challenges to the Grant of Probate: 180 days - Section 61 of WESA sets a limitation date of 180 days of the Grant being issued for a challenged to be filed in court, and the service of that Claim has to be done within 30 days of the expiry of the 180 day deadline.



Iven K.S. Tse Law Corporation
BARRISTER & SOLICITOR
謝國星律師樓



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION
Tel: (604) 877-2686 E-mail: iven@itlawcorp.com Website: www.iventse.com

POTENTIAL OBSTACLES TO PROPERTY TRANSFER DURING PROBATE

Wills Variation: Who can challenge the Will?

Spouses (including common law spouses, defined as having lived together in a marriage like relationship for two years);

Biological and legally adopted children – not stepchildren.



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES – IMMIGRATION

Tel: (604) 877-2686

E-mail: iven@itlawcorp.com

Website: www.iventse.com

Caselaw Examples

Hoessmann Estate v Aldergrove Credit Union, 2018 BCSC 256
(CanLII),

Aldergrove Credit Union forecloses home held by the estate with the deceased's daughter as executor, and obtains conduct of sale and sells the home, but the son initiates a Wills variation proceeding and places a CPL on the home even after it was sold.



Iven K.S. Tse Law Corporation
BARRISTER & SOLICITOR
謝國星律師樓



- REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION
- Tel: (604) 877-2686 E-mail: iven@itlawcorp.com Website: www.iventse.com

Subject Clauses for Contracts

- “Subject to the Seller receiving the following by (date) :
- “(1) a copy of a grant of probate or letters of administration that allow the Property to be sold; and
- “(2) assurance that everyone entitled to claim under the Wills, Estates and Succession Act has waived or released their claims against the Property. This condition is for the sole benefit of the Seller.”



- REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION
- Tel: (604) 877-2686 E-mail: iven@itlawcorp.com Website: www.iventse.com

Suggestion:

- Clause to **automatically extend the subject removal date**
- Clause to **automatically extend the completion date** as well, for example, 15 days after the Grant of Probate



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

Transferring Land to Adult Children and the Question of When is a “Gift” of Real Estate Really a Gift?

When is a “Gift” of Real Estate Really a Gift?

1. Land Transfers between adults, intended as a gift, requires additional documentation to prove that the intention really was to gift.
2. A Gift is the voluntary transfer of assets from one person to another without any or full consideration.
3. A Gift or transfer of land from the transferor to the transferee is presumed to be held in trust for the transferor if it is challenged. This is called a “**resulting trust.**” It is a rebuttable presumption, meaning that the transferee has to prove it was intended to be a gift.

When is a “Gift” of Real Estate Really a Gift?

4. Deed of Gift, or a Bare Trust Agreement or Declaration, should be done at the time of the transfer to confirm intentions at the time of transfer. It is the intention of the transferor that is important.
5. If there was a transfer that already happened, without further evidence of the intention, the transfer can be challenged.
6. Evidence of the subsequent treatment of the property by the both can be used to determine intention at the time of the transfer. Usually, this is because the transferor is not able to give evidence.



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

When is a “Gift” of Real Estate Really a Gift?

Gifts of real estate to adult children, can also be challenged by creditors, if they can prove the existence of facts that make the gift suspicious.

Fraudulent Conveyance Act: The “Badges of Fraud”

When real estate assets are disposed of, especially to family members— they can be challenged by creditors.

If it is determined that the transaction was intended **only** to avoid creditors, it can be reversed.

The Badges of Fraud

Factors to be considered in deciding whether to cancel and reverse a transfer of real estate include:

- (a) Timing – just before judgment, litigation or declaration of bankruptcy or when a debt is due
- (b) Continued use and benefit of the property by transferor
- (c) Inadequate Consideration given by transferee
- (d) Transfer to a non arms length person ie family
- (e) Transferor has few remaining assets after transfer

Tax Issues Relating to Real Estate and Estate Planning

1. Transferring Real Estate using a Will, or in the case of no Will, means the payment of **Probate/Administration Fees**, and maybe **Property Transfer Tax** at the time of the transfer, and legal fees to probate a Will or process an Administration (when there is no Will).

2. Probate or Administration Fees are the same:

i. Basic Fee: \$200

ii. If the Value of the Estate is

less than \$25,000: Waived

\$25,000 to \$50,000: \$6 per \$1,000

Over \$50,000: 1.4% of the Gross Value (\$14 per \$1,000)



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686 Fax: (604) 877-0330 E-mail: iven@itlawcorp.com Website: www.iventse.com

Tax Issues Relating to Real Estate and Estate Planning

\$2.5M Home + \$300,000 Savings

Total Value of Estate: 2.8 Million

Probate Fee:

\$200 (Basic Fee) +

\$300 (\$6 per \$1,000, between \$25,000 to \$50,000) = $25 \times \$6$ +

\$38,500 (\$14 per \$1,000 for the balance) = $\$2,750,000 \times 1.4\%$

= Total: \$39,000

Tax Consequences of a Transfer of Real Estate to Adult Children

1. Property Transfer Tax: Payable if the property is not the principal residence of the Transferor or the Transferee
2. Capital Gains Taxes: After a transfer, if the Child does not reside on the home, the property is considered the Child's investment property and capital gains taxes are applied on their share of the property when it is sold or disposed of.

Other Potential Consequences of a Transfer of Real Estate to Adult Children

1. Children can borrow on the equity of their share of the Property without the parent's consent
2. Spouses of Children can lay a claim to the value of the appreciation of the child's share of the property since the time of the transfer upon separation
3. Children may not cooperate with the Parent when the Parent wants to sell or make other decisions

Possible Solutions for these Issues

1. Powers of Attorney

Children sign POAs appointing the parents as their attorneys as it related to the Property

2. Private Loan Agreements:

Registered on title with a Form B, securing the value of the gift of Equity to the child, to be extinguished upon the death of the parent/Lenders, and preventing transfers or other loans taking priority

Possible Solutions for these Issues

4. Property Management Agreements

Setting House Rules for the owners that include who is to pay for what expense, or how to make decisions.

5. Life Interest Agreements

Allowing the Parent the right to reside in the Home until they die, and restricting the sale of the home until that happens, which can be registered as well.

Corporate Ownership of Real Estate

If a shareholder of a company that owns land dies, the land itself does not get transferred, but there the shareholder's shares have a value, and it is the Shares that become part of the Estate that has to be probated.

Companies can purchase shareholder insurance however - the Company would pay the premiums for the value of the shares in the event the shareholder dies, so that the Company can use insurance proceeds to buy back the shares to the Company. A shareholder agreement can set out the rules for the share transfer, on death, and can be used to transfer shares without a probate procedure.

Real Estate Can be Held by a Trust

Often real estate is held within a trust, delivered to the Trust by a Settlor, and set up to specifically hold assets within it, with trustees appointed by the Settlor who will manage the assets for the benefit of the Trust beneficiaries.

This is a way for assets that would otherwise be subject to probate rules when the settlor dies, had it not been transferred to a trust.

Very specific tax rules need to be followed, including the “deemed disposition rules” that simply means that the assets in the trust is “deemed” to be sold, and all realized capital gains have to be taxed, every 21 years.

Beneficiaries do not “own” the trust assets, so creditors cannot go after the assets for debts, unless the Badges of Fraud can be proven.

Real Estate and Estate Planning: What You Need to Know
For web links and a copy of this text, please email me
@ iven@itlawcorp.com or text me at
(604) 817-7063

IVEN K.S. TSE
LAW CORPORATION
Barrister, Solicitor, and Notary Public
謝國星律師樓





Conveyances & Mortgages
Family Law
Real Estate Litigation
Commercial Litigation
Commercial Law
Corporate Law
Wills & Estates



Iven K.S. Tse
Professional, Courteous Service
604.817.7063
www.itlawcorp.com



iven@itlawcorp.com
office: 604.877.2686

Suite 701-601 West Broadway,
Vancouver, B.C. V5Z 4C2

 TWITTER: #iventse
 FACEBOOK: Iven Tse Law Corp

 TWITTER: #iventse
 FACEBOOK: Iven Tse Law Corp



REAL ESTATE - BUSINESS - FAMILY – WILLS & ESTATES - IMMIGRATION

Tel: (604) 877-2686

E-mail: iven@itlawcorp.com

Website: www.iventse.com

THANK YOU!

For web links and a copy of this text,

please email me at

iven@itlawcorp.com