

WHAT IS A PROFESSIONAL CORPORATION?

✍ Mark Baergen

A Professional Corporation has a very specific definition in Alberta. It is an entity that provides professional services by regulated member(s) of a profession who is/are governed by a professional body. The member is an employee of the Professional Corporation, which carries on the business of the professional practice.

In Alberta, only some professional bodies allow members to practice through a corporation as opposed to a sole proprietorship or partnership. These include:

- Lawyers;
- Physicians;
- Dentists;
- Accountants;
- Chiropractors;
- Physiotherapists; and
- Optometrists.

The province restricts the activities that a Professional Corporation may carry on and it limits the business of the corporation to the practice of the profession or “activities ancillary to the practice”. However, Alberta generally permits surplus funds earned by the practice to be left in the corporation and be invested therein, which provides a potentially significant tax-deferral advantage.

Who can hold shares in a Professional Corporation?

Generally, the shares of a Professional Corporation can be held by the regulated member of the professional body that allows for the establishment of the Professional Corporation.

Effective March 1, 2010, non-voting shares of a Professional Corporation may be issued to the spouses, common-law partners, children or family trusts of the regulated member.

What are the main income advantages of a Professional Corporation?

1. Tax deferral

One of the main advantages of utilizing a Professional Corporation is the ability to take advantage of the difference in tax rates between the highest personal tax rate of approximately 48% and the more favourable small business corporate tax rate of approximately 13.5%. By taking out less than the full amount of corporate earnings, you can defer the tax paid to a later date when you are in a lower tax bracket.

2. Potential income splitting

Another advantage is the ability to issue salary or dividends to family members in lower tax brackets to reduce your overall tax liability. Instead of taking out the entire amount of necessary funds in salary by yourself and paying tax at the highest personal rate, you may be able to split the amount between your spouse and children (over the age of 18) which can significantly reduce your overall tax bill.

How does a Professional Corporation differ from a Non-Professional (“Ordinary”) Corporation?

The main difference between a Professional Corporation and an Ordinary Corporation is that

of liability. While there are some exceptions, generally, if an individual establishes an Ordinary Corporation, and such corporation ends up getting sued and is ultimately found to be at fault under such a lawsuit, the liability that would be realized personally would be limited to whatever that individual invested in the corporation.

These general rules in regards to liability are slightly different when it comes to a Professional Corporation. If the individual is a physician and is sued for malpractice, the Professional Corporation does not protect that individual personally from the complainant in the same way that an Ordinary Corporation protects its shareholders from creditors. Potential personal liability under such circumstances would be governed by the terms of the individual’s professional insurance. What the Professional Corporation does provide is some protection from creditors if you borrow money, perhaps for the financing of a new office or for some expensive equipment.

If you are a regulated member of a professional body and would like to incorporate a Professional Corporation to utilize some of the benefits which come with such a structure, please contact our corporate lawyers at Duncan Craig LLP and we can assist you in establishing your Professional Corporation.

THE LINK

CONNECTING YOUR BUSINESS AND PERSONAL LEGAL NEEDS



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ESTATE PLANNING 101

✍ Mae Chow and Martin Prentice, QC

If you are like most of us, thinking about getting older is not your favourite topic. It is a good idea to be proactive however, and having plans in place can bring you peace of mind, save tax dollars, and make things easier for your family. Consider putting an estate plan in place, or updating your existing one. Here is an overview that will help you get started.

There are three basic building blocks to a well-planned estate:

- The **Will** appoints a personal representative (formerly called an executor) to divide your property upon your death.
- The **Enduring Power of Attorney (EPA)** appoints an individual to manage your property when you are incapable.
- The **Personal Directive (PD)** appoints an agent to make decisions about your person when you are incapable.

Let’s take a look at how you can use these three tools to plan the management of your affairs as you age and after you pass away.

Your Will

A Will appoints a personal representative(s) to manage your estate and outlines how to divide your property among your beneficiaries after you die. From a practical standpoint, a Will can help reduce the tax burden on your estate and allows you to control how your assets are dealt with on your death. Without a Will, government legislation is applied to the division of your assets. A Will also offers you peace of mind and makes it easier on your family as decisions are already made.

When you select your Personal Representative, you should not only consider your trust in that person, but also his or her age (think about how old they will be when the Will comes into play) and his or her knowledge of you and your family. Your Personal Representative must be an Alberta resident who is over the age of 18. Alternatively, you can choose to appoint a trust company to administer your Will.

Enduring Power of Attorney

An Enduring Power of Attorney (EPA) is different from a Will in that it comes into effect while you are still alive. It appoints a person to make legal and financial decisions on your behalf if you become incapacitated. Without an EPA in place, the Adult

Guardianship and Trusteeship Act applies and your family would need a Court Order for Trusteeship, which can be both stressful and costly.

An EPA may be Immediate or Springing. A Springing Power of Attorney comes into effect only if you become incapable of making reasonable judgments. An Immediate Power of Attorney is effective when you sign the document and continues if you were to become incapable of managing your own affairs in the future.

Personal Directive

In a Personal Directive, you appoint an agent to make non-financial decisions on your behalf. These are most often related to health care, and might include directions on the kind of medical treatment you might wish to have – or not have – if you were in a coma, for example.

Hopefully, this introduction gives you the information you need to start thinking about planning your estate. We recommend that you obtain legal advice when preparing these documents, particularly a Will, to ensure that they are valid and will be accepted by the courts. If you have any questions, please do not hesitate to contact our office.



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REAL ESTATE COST SAVERS FOR SELLERS AND BUYERS

MAKING YOUR DEAL RUN SMOOTHLY

✍ Jeffrey R. Fixsen and Brittany Earl



For buyers, sellers, landlords, and tenants alike, real estate transactions are complex. Here we take a look at the process, outline who is responsible for what aspects of a transaction and offer some hints to help things run as smoothly as possible.

It takes a Village: Who does What in a Real Estate Transaction

There are a variety of people involved in any transaction, so let's start at the beginning. The **Realtor** is the person who negotiates the details and structures the deal between buyer and seller. He or she modifies a standard contract to fit the circumstances of the sale and informs the buyer and seller of their rights and responsibilities.

Next we have the **Mortgage Broker**, who connects buyers to lenders and vets the buyer's information. Some buyers will choose to organize their mortgage directly with a bank or another lender.

Finally, the **Lawyers** enter the equation. The buyer and seller must have independent representation to conduct due diligence, document the transaction and close the deal. What does this mean? Here's an overview of the legal aspects of a real estate transaction:

	BUYER'S LAWYER	SELLER'S LAWYER
Due Diligence	<ul style="list-style-type: none"> Review contract terms Review title Review survey/condominium plan Tax Search 	<ul style="list-style-type: none"> Review contract terms Review title Review survey/condominium plan Municipal compliance Tax search Request payouts
Documentation	<ul style="list-style-type: none"> Direction to pay Transfer Back Tenancy at will Shortfall cash Confirm Insurance Foreign ownership (if required) Mortgage documents 	<ul style="list-style-type: none"> Transfer Direction to pay Seller's Lien Caveat Real Property report with Compliance (or title insurance) Deliver documents to Buyer's lawyer in trust
Closing	<ul style="list-style-type: none"> Deliver funds in Trust to Seller's lawyer 	<ul style="list-style-type: none"> Receive funds Discharge of encumbrances

agreements, employment law, dispute resolution, intellectual property, commercial real estate and shareholders agreements. Our business topics are presented in tandem with other important legal topics that can have a dramatic impact on an owner's personal life and business results. These include family law, estate planning &

administration, trusts, not-for-profit / charity and insurance. By subscribing to The Link, you will also be invited to our Business Plus Legal Series where our lawyers present on topics from The Link.

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Things to watch for – Sellers

There are a few 'tripping hazards' for sellers and their lawyers to be aware of and tackle.

A **Real Property Report** is a legal survey that illustrates all the features of a property and includes an opinion by a surveyor that shows the location of all the buildings and structures on the property. It is essential that this document is correct and up-to-date for the transaction to proceed.

Are there **tenants** living in the property? If so, will the new owner assume the leases, or is there an expectation that the property will be vacant on possession? Again, important issues to clarify and document.

An **encumbrance** is a claim or liability against the property that is held by someone other than the owner of the property. These include mortgages, property liens, restrictions on use, easements, and encroachments. An encumbrance does not necessarily prevent the transfer of the property, but it must be reviewed and included as part of a transaction agreement.

If there are **alarm systems** on the premises, are the contracts assignable to the new owner? If so, do you need to adjust the annual contract?

Things to watch for - Buyers

On the buyer's side, it is important to review the **mortgage documents** to ensure that the content and schedules are correct.

If the property is a **condominium**, details like the parking stall, storage, and mailbox should be included in the agreements. And, of course,

identifying and outlining any recent **Special Assessments** that the buyer will be responsible for, is essential. It is important to know that condominiums with fewer than 12 units are treated differently than larger buildings. They have lower standards for reserve fund studies which means you cannot be sure proper maintenance is being planned or completed.

Too good to be True?

There are a few more areas that can cause problems and delays in transactions, which you should be mindful of when proceeding through a sale.

Often, a buyer will include **conditions of sale** in an offer that the seller is expected to satisfy as part of the sale. It may be something substantial, like repairing a roof, or smaller issues, such as patching and painting walls where shelves or artwork is removed. There can be disagreements on the quality of work expected vs delivered. To avoid this, be sure to include a holdback amount and establish clear guidelines on timing and satisfaction in your documents.

A **Rent to Own** purchase is an arrangement in which a tenant agrees to buy the property from the landlord at the end of the rental term. In these agreements, the purchase price is guaranteed at the beginning of the lease term. The buyer tends to pay higher-than-normal rent, with a portion of it going toward a down payment on the home.

Rent to Own arrangements are attractive to sellers because they appear to guarantee the future house sale while still earning income on the property. For the buyer, Rent to Own may be

a way to enter the market when he or she would not otherwise be able to because of a poor credit rating. The risk for the seller is that the buyer may be in no better position to get a mortgage when it is time to sell the house. The risk for the tenant is that he or she could lose the deposit if they are unable to complete the transaction. A well-written Lease with option to Purchase or Agreement for Sale are better options to cover the interests of both buyer and seller and is key to ensuring a fair arrangement.

An **assumable mortgage** allows a home buyer to take over a seller's existing mortgage along with the property. The lender must agree to the transfer and approve the buyer who will assume the mortgage. This offers the seller the advantage of avoiding mortgage prepayment fees and the buyer can potentially take advantage of a lower interest rate than he or she may be able to obtain with a new mortgage. However, if the original down payment on the mortgage was less than 20%, and the mortgage being assumed is protected by high-ratio insurance, the original borrower remains liable to the lender for any shortfall if the lender enforces the mortgage against the buyer.

Hopefully, this short introduction prepares you to ask the right questions and avoid some potential headaches in your own transactions. As always, it is important to consult legal advisors who can manage your real estate transaction successfully.



The Link is our quarterly e-newsletter that equips business owners with helpful insights on corporate topics such as business acquisitions and sales, banking and financing, commercial