



## YOUR WILL

There are two basic rules for a Will - you must be of legal age and “mentally competent”. The details of your Will are up to you. It could be a simple bequest made on one page or a lengthy document including such things as instructions creating a trust.

You can change or cancel your Will at any time; a simple amendment can be made by adding a “codicil”. If you want to make extensive revisions, it is best to have a new Will drawn up which incorporates the changes you wish and revokes any previous Wills.

### **If you die without a Will**

Any assets which aren’t owned jointly or made payable to a named beneficiary become part of the estate which is distributed under provincial law. Added expense, inconvenience and financial hardship may result if your estate must be settled under “intestacy” law.

The division of assets may be vastly different from what you would have wished since fixed amounts or percentages are distributed to your spouse, children, and other family members. The process of a court appointing an administrator and the subsequent settlement of your estate can take months.

If you have minor children, a court application is necessary to obtain funds from their share of the estate to provide for ongoing support and education. “The Crown” is the beneficiary of your estate if you die without a Will and no heirs recognized by the law can be traced.

## **Who should prepare your Will?**

There are lots of good do-it-yourself projects - but a Will is not one of them. You run the risk of preparing a document that can be interpreted in ways you didn't intend, or, your Will might even be declared invalid.

In short, drafting a Will involves a high degree of specialized legal knowledge and skill. You should have the benefit of professional assistance. There may be special considerations concerning your Will that your legal advisor will be in a position to point out, such as tax issues, matters related to a business you own or perhaps provisions for the spouse or children of a previous marriage.

## **What does a Will cost?**

The costs involved in having a Will drawn up are usually fairly minimal unless you have a particularly complex estate plan. You'll make most effective use of your legal advisor's time and expertise by arriving at the appointment prepared with some questions answered. I can provide you with a Wills questionnaire that you can answer to prepare. This is also an important aspect of estate planning.

## **Keeping your Will up to date**

Your will should be kept current so it reflects what you want to happen with your under age children, money and possessions as you go through life. Because your situation changes, it makes sense to review the provisions of your Will on a regular basis, say every 3-5 years.

Make a point of checking your Will if there is a change in your circumstances such as moving to another province, the birth or adoption of a child, the death of a beneficiary or executor. Any change in your marital status should definitely prompt a review. If you decide to alter your Will, the details should be handled by your legal advisor.

## **The Executor**

A Will usually names at least one individual to serve as Executor of the estate. This person is completely in charge of carrying out the wishes you expressed in your Will. If settling your estate is likely to be a demanding job, it might be wise to appoint more than one Executor.

The responsibilities your executor assumes include: paying debts and filing a final tax return: changing ownership of assets to your heirs and keeping a complete accounting record of the administration of your estate.

Your Executor(s) can retain professional advisors to assist with the legal and financial details of your estate. It is wise to name an alternative executor. This is simply a contingency measure in case the person you originally select should die or is for some other reason unwilling or unable to act as Executor.

If there is no Executor, an application must be made to the provincial court that deals with matters relating to Wills and the settling of estates. The court will then appoint an administrator. However, it means additional costs and delays before the settling of the estate can begin.

### **Choosing your Executor**

You appoint an Executor so there is someone to act on your behalf to wind up your financial and legal affairs. It is a job for a trusted, competent person: preferably one known to your heirs. The value and complexity of your assets and the length of time required to administer your estate are important considerations in choosing an Executor.

If your estate is complex - say, there is a business to sell - you may want to appoint a professional individual such as your accountant or lawyer or financial planner as one of your Executors, or you may want to have a corporate executor such as a trust company. Always make sure any individual or corporation you wish to appoint as your Executor agrees to assume this responsibility.

### **What about a guardian?**

If you have young children, it is highly recommended that you name a guardian for them in your Will. Think, for example, what the effects might be if an accident resulted in the death of both parents. The advice to name a guardian also applies if you have a dependent unable to function independently because of mental or physical disability.

Although the appointment of a guardian may have to be confirmed by a court at the time the guardian wishes to act, the recommendation made in your Will is usually followed. Before naming a person as a guardian, make sure the individual you have in

mind is willing to take on the role. It is a potentially enormous responsibility that both you and the prospective guardian should consider carefully.

The person you name as guardian might also be given responsibility for the financial affairs of your estate. For example, you may want to have the same individual act as a guardian for your dependents and as an Executor of your estate. The guardian could also be someone who manages a trust you've established for your dependents. Again, this is a matter best discussed with your legal and financial team of planners because the considerations and technical details can be quite complex.



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To have a deeper conversation about how this subject will affect your business, please contact:

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