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WILLS

Introduction: I have written this report based on questions often asked of me while in private law practice in British Columbia and Alberta, Canada, since 1975. Although my first hand experience is limited to those jurisdictions, wherever possible I have written in non-legal terms and with general principles in mind.

“The fact is you don’t need a Will until you die. But if you are dead, what do you care? And besides, you aren’t planning on leaving just yet anyway. So let’s leave it for now - some other time maybe.” Familiar thoughts?

Here’s the deal. If you die without a Will *prepared by a lawyer*, there is a high chance that your estate won’t be handled or distributed the way you wanted. Unless you have some extra-worldly power, you can’t make a Will after you are gone, and you won’t be able to call home to give instructions.

Why do I say “prepared by a lawyer”? The law is really tough on Wills. Why so tough? Because you aren’t there to explain what you really meant. There are very strict rules about the language to be used, how it is to be written, how the Will is to be signed, and how the Will is to be handled. You won’t know all these rules, so if you do the Will yourself, there is a good chance you will mess it up. And sometimes, a messed up Will is worse than no Will at all.

There are lots of examples I could give you about what happens if you die without a Will. I don’t want to bore you with too long of a list, but on the other hand, I do want to scare you - a little. Here are a few examples of what can happen without a Will.

- The law won’t know who you wanted to handle your affairs, so the law will pick someone for you. A list is provided, and the person on the top gets the job, if they want it. The trouble is, it might not be who you wanted or it might be someone who is not suited for the job.
- If you appoint someone in your Will to look after your affairs, the law will in most cases assume you trusted that person. If you don’t appoint someone, the law will do it for you, but will not be as generous in the “trust” department, and may require that person to post a bond. A bond is like a policy of insurance, that says if the person looking after your estate takes off with the loot, the bonding company will reimburse the beneficiaries. Getting a bond is expensive and cumbersome, and guess whose money pays for it. Yours.
- The law won’t know to whom you wanted to give your assets, so again the law will decide for you. A list of beneficiaries is provided, and the law just works through it without any sensitivity. The list is designed to handle general considerations, and is often very different from what you would have expected or wanted. For example: you die, your spouse survives you, and you have children. In this instance most people would say “give all my assets to my spouse.” The law might not see it that way, and could pass some of the assets directly to your children.
- Death and taxes - a double whammy. Do you want to pay as much tax as possible? Are you feeling a little low in your public contribution? Or do you feel like saying to the tax collector: “Here’s my cheque, just fill in the amount”? Then die without a Will.
- There are a whole lot of very commonplace things that every estate might have to do. A well drawn Will gives the person looking after your estate the powers to do these things. Without such a Will, questions can be asked about these powers, and sometimes a visit to the court is needed. And guess who pays for that visit? Courthouses are usually warm and clean, but don’t go there unless you have to.

Ok, you say, I see the reasons for a Will, but I don’t want to spend the money. Answer? It’s a choice. Spend a little now - or run the risk that your estate will have to spend a whole lot more later.

“If I do my Will, it means I am going to die.” Wrong. You can’t get out of this alive, with or without a Will. I have never known anyone who did their Will and died because of the process.

You wouldn’t expect to read anything “legal” without some kind of caution - so here it is: This report is general information only and not to be relied upon without legal advice. For legal advice, call us.

I hope this helped answer your questions.

For more answers to common legal questions, please visit our website: www.salmonarmlaw.com

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