

Wills 101

Jonathan Ng

Underwood Gilholme Estate Lawyers

Suite 228, 4935 - 40th Avenue NW

(403) 288-8855

jonathan.ng@willsandestates.ca

Presented to:



*Ranked by Canadian Lawyer Magazine
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Overview

- What is my “Estate”?
- No Will. No Problem?
- Will Power
- When to change Your will
- Enduring Power of Attorney and Personal Directive



Your Estate

An **estate** is the sum of assets and liabilities owned by a person at any given point, while alive or at the time of their death.

Questions:

What falls INSIDE of your estate?

What passes OUTSIDE of your estate?



Inside/Outside Your Estate

Jointly named property
and bank accounts

RRSPs and RRIFs

TFSA's

Property owned by
YOU only

Life insurance
proceeds

Pension
benefits



How Assets Pass on Death

Jointly named property
and bank accounts

To: **Surviving owner(s)**

RRSPs and RRIFs

To: **Designated Beneficiary**

TFSAs

To: **Designated
Beneficiary**

Property owned by
YOU only



To: **???**

Life insurance
proceeds

To: **Designated Beneficiary**

Pension
benefits

To: **Designated Beneficiary**



No Will? No Problem.

Intestacy describes an estate of a person who dies without a valid will.

- The law takes over your estate distribution
- The *Alberta Wills and Succession Act* becomes your default will



No Will. No Problem?

A **beneficiary** is a person or legal entity who is entitled to the benefits of an estate.

- Limited to family and adult interdependent partners
- No opportunity to plan a trust for children
- Charities and friends receive nothing
- No tax planning



No Will. No Problem?

An **administrator** is the person responsible for administering an intestate estate.

An **executor** is the person chosen by the deceased to administering their estate according to their will.

- The law chooses your administrator
- No opportunity to choose your executor



No Will. No Problem?

- Burial or cremation?
- Family heirlooms – who gets them?
- Who will be the guardian of minor children?
- What if you and your spouse die at the same time – which side of the family benefits?
- Who will take care of your pets?



Will Power

Your power to choose

- Executor
- Guardian of minor children
- Beneficiaries*
- Trusts for: spouse, children, dependants, special needs persons, spendthrifts
- Charitable giving

* Consider Family Maintenance and Support claims from dependants



Choosing your Executor

Duties

- Arrange funeral
- Obtain legal title to all your property
- Pay your debts and income taxes
- Distribute assets to your beneficiaries
- Act as the trustee of any trusts

To obtain legal title to your property, the executor may need to apply for a Grant of Probate



Choosing your Executor

- Someone you trust
- Can be more than one person
- Does not have to be a family member
- Preferably someone younger than you
- Can appoint alternate executor(s)
- Get their approval



Choosing your Guardian

- Someone you trust
- Does not have to be a husband and wife; can be just one person
- Lifestyle
- Economic situation
- Religious beliefs
- Educational expectations
- Cultural considerations
- Compensation
- Get their approval



Personal and Household Effects

There three general ways to deal with these assets:

1. List them in your will
2. Informal memorandum
3. Leave it up to your executor



Bequests

A **bequest** is a gift given through a will.

- Can be specific items
 - “To my nephew, my entire Coca Cola bottle collection.”
- Can be cash gifts
 - “\$1,000.00 to each of my grandchildren.”
- Can be a cash gift to your favourite charity
 - “\$1,000.00 to Mount Royal University for their general use.”



Residuary Beneficiaries

Residue is what remains in an estate after debts, estate expenses, and bequests are paid.

- “Residual beneficiaries” can be family, friends, and charities
- These beneficiaries are the last to receive



Trusts

A **trust** is a relationship where assets are held by one party for the benefit of another.

- Trusts for: spouse, children, dependants, special needs persons, spendthrifts
- Executor can be the trustee; but not always
- Decide: when/if the trust is paid in full, income payments, discretionary payments
- Example: 50% at 18, 100% at 25, with discretionary payments throughout



Don't forget...

Family members may have a “claim” on your estate:

- Spouse
- Adult Interdependent Partner (“AIP”)
- Minor children
- Child, under 22 who is a full-time student
- Dependent adult children
- Minor grandchild or great-grandchild, where the deceased acted as parent at the time of death



Family Maintenance and Support

- Obligation to family members
- There may be more than one family member
- What is proper “maintenance and support”?
- Spouse or AIP has an automatic right to stay in the shared home for 3 months
- The law gives the Court the power to modify your Will



Charitable Giving

- Leave a legacy!
- Donor-advised funds: Involve your family
- Gift of stocks: No capital gains tax
 - Otherwise estate is taxed 50% on the gains
- Charitable gifts are tax deductible
 - New rules allow for maximum tax benefits



Formal Requirements of a Will

- *Wills and Succession Act, S.A. 2010, c. W-12.2*
 - Section 14
- Made in writing and contain signature
- Witness requirements
- Holograph Will
- Non-compliant Wills
- Codicils
- Will “kits”



When to Change Your Will?

- Change in marital status/living arrangements
- Birth/adoption of child
- Marriage of child
- Disability of a beneficiary
- Death of an executor or beneficiary
- Substantial change in assets
- Purchase of foreign assets
- Tax optimization



Planning for Incapacity

Two important documents protect you in the event that you become incapable:

1. Enduring Power of Attorney

Property and financial decision-making

2. Personal Directive

Personal and medical decision-making



THANK YOU

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