

WILLS 101

Wills and Estate Planning

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ESTATE LAWYERS

Ranked by Canadian Lawyer Magazine in the Top 10 in Wills, Trusts & Estates

Overview

- What is my “Estate”?
- Do I need a Will?
- Making choices: Executors and beneficiaries
- Charitable Giving
- Planning for Incapacity



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



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 will 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



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, Joshua, 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 The Mustard Seed Foundation.”



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
- Dependant adult children
- Child under 22 who is a full-time student
- 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



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:

1. Enduring Power of Attorney

- Property and financial decision-making
- *Powers of Attorney Act*, R.S.A. 2000, c. P-20

2. Personal Directive

- Personal and medical decision-making
- *Personal Directives Act*, R.S.A. 2000, c. P-6



THANK YOU

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