

## Estate Planning

### Why Make A Will?

It's never too early

Many people postpone thoughts of making a Will until faced with an overseas trip or an unexpected illness. There are many reasons that a Will should be made earlier and revised regularly as part of your personal and financial planning.

### Mental Competence

In order to make a valid Will, you must be of sufficient "sound mind" to appreciate:

1. The act of making a Will
2. The extent of your property; and
3. the identity of family and friends who should be considered as potential beneficiaries.

Mental competence may be impaired due to illness, advanced age, strong medication, or other factors. If competence is in question, a Will should only be made by experienced lawyers who are aware of any medical opinion, and who will take the time to assess the client's mental capacity, and properly document their reasons for proceeding.

### Selection of an Estate Trustee

A Will usually contains an appointment of one or more Estate Trustees (formerly executors) whose authority will be effective from the moment of death. If an Estate Trustee is not appointed by Will, the court will appoint someone to administer your estate (usually the spouse or the closest next of kin). The selected person may not be the best candidate due to a lack of familiarity with your assets or lack of financial expertise. The court usually appoints only one person as administrator of the estate. More than one Estate Trustee may be appointed in a Will allowing you to choose family members and/or professionals and provide for alternate Estate Trustees if those appointed cannot act.

### Selection of a Guardian

In a Will, as a parent, you can appoint someone to have custody of and be the guardian of any child who is under the age of eighteen years at the date of death of the parent. This appointment is temporary and expires 90 days after the date of death unless the person so appointed applies for a Court Order of Guardianship.

### Personal Wishes

A Will may contain your instructions with respect to both funeral arrangements and organ donation although this is not the best place for such instructions. Many people deal with these matters in a letter to the Estate Trustee that is kept with the Will. Such instructions are merely an expression of your wishes and are not legally binding on the Estate Trustee.

### Consult a Lawyer

While some Wills can be drawn up using a "Will Kit", we recommend that, should your estate consist of a significant assets, you select a lawyer.

## Other Obligations

An existing domestic contract (cohabitation, marriage or separation agreement), shareholders' agreement or partnership agreement may require the parties to make a Will containing specific terms. Income tax planning may be incorporated into the dispositions contained in the Will. However, the freedom to make a Will leaving your property as you see fit is restricted by current legislation protecting spouses and dependents whose rights to share in the estate may thwart your intentions.

## If You Die Without A Will

If you die in Ontario without a Will, the current law of Ontario will determine who will receive your assets and the amount of the inheritance. This distribution of assets may not necessarily coincide with your wishes. Your jointly held assets may pass to the surviving owner. In the absence of a Will, your surviving legally married spouse, if any and other heirs who are chosen on the closeness of the blood relationship to you, receive all your assets.

- Any children will inherit at age 18, which is often too young.
- No gifts will be made to friends or to your Church or favorite charity, no matter how much it meant to you during your lifetime.
- A court appointed Estate Trustee may have to post a bond— an additional cost to your estate.

## Why A Will

By making a Will, you can choose your own beneficiaries based on their existence and potential financial needs as well as their relationship to you. You can establish trusts and determine at what age your children or beneficiaries will receive their inheritance. Family heirlooms and items of sentimental value can be given in a Will to specific named beneficiaries avoiding conflict among family members. You can make charitable bequests to your Parish, or other institution and organizations that have always been important to you.

## Review Your Will Regularly

Once made, a Will should be regularly reviewed and revised where circumstances have changed including:

- Significant changes in your personal assets.
- Death of your spouse.
- Change in status of dependents such as a child attaining eighteen years or financial independence or an aging parent becoming a dependent.
- Change in marital status. For instance, a marriage revokes an existing Will. If a separation or divorce from a spouse or commencement of a "common-law" relationship occurs, it is necessary to have your Will reviewed by a lawyer to ensure that your wishes are carried out regarding the distribution of your assets.
- Change in residency and/or location of assets which may require that a Will be made in international form or what multiple Wills be made in different jurisdictions.
- Change in one of the assets specifically gifted in the Will.