

THE IMPORTANCE OF WRITING A WILL

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At its most basic level, a will is a simple legal statement of your wishes regarding how you want to divide your property after death. It would seem obvious that everyone should make a legal will, no matter how much they own, but an alarmingly high number of Canadians don't. The result is that, after they die, their survivors have to cope with the consequences. These can entail anything and everything from not being able to use a deceased person's bank account to pay everyday bills to unpleasant and long-lasting family conflicts.

If you are a British Columbia resident and die without a legal will, the courts will determine the distribution of your property and assets in accordance with the *Estate Administration Act*. This provides that, if you are married without children, your estate will pass to your spouse (including persons of the same sex or opposite sex, living in a common-law relationship). However, if you have children, your spouse will receive the first \$65,000 of your estate, and the remainder will be split between your spouse and your children. It will be an equal division if you have only one child but, if you have two or more children, a third goes to your spouse and the remainder to your children. If you have neither spouse nor children, your estate will go, in order, first to your parents, next to your siblings, then to your nieces and nephews, and finally to your next of kin.

For parents who die without a will that names a legal guardian for their children under the age of majority, there is no similar standard formula for determining guardianship. A judge becomes responsible for selecting the guardian and will have to act without the information and emotional knowledge that parents have for determining who would best take on their role and responsibility.

Even given all these common-sense reasons for taking the time to make out a will, there are still many who don't. The excuses they offer for not having prepared, or adequately prepared, their will are remarkably consistent. The most common are:

“But I don't own much of anything.”

In fact, few estates are so small that a will is not necessary. Without a will, any money you have solely in your name in a bank account or any vehicle you own will have to be the subject of an application to court to move those funds or that vehicle into somebody else's name. Furthermore, many disputes have nothing to do with monetary value. Sentimental items such as family jewellery

cause many family disputes and long-lasting ill feelings. Even if your assets are few and of little value, not making arrangements in a will for their disposal can be an additional stress for your loved ones.

“Why do I want a will? Everything I own will go to my spouse.”

This assumption may be mistaken. As previously indicated, if you have children, the assets will be split between them and your spouse. Even if your children are self-sufficient adults and your spouse relies on your assets, your children are still entitled to their share under the EAA. But, even if the assets do go to your spouse, does he or she have the financial knowledge and capability to manage them? What happens to your assets if your spouse remarries?

“I can write my own will and save the legal fees.”

While that may be true, a badly drafted will can be the source of lengthy legal battles that will eat away at the assets you wanted to leave to your family. The cost of litigating a poorly expressed will can be many times more expensive than a lawyer’s fees for drafting one. A simple sentence like “I wish my family to receive my entire estate” can leave your executor scrambling to track down long-forgotten cousins on the other side of the world.

Further, a poorly drafted will may delay or unnecessarily complicate the probate and completion of your estate. This can lead to unplanned consequences, such as inadvertently altering or revoking beneficiary designations you may have made separately under pension plans, life insurance policies, RRSPs and RRIFs. Even if the confusion is eventually sorted out, your family may be left struggling financially in the interim.

“I’m not sure what I want to do exactly and I may change my mind later anyhow.”

Your will doesn’t take effect until you die. It is not written in stone but represents your present intentions which you can revise whenever you like as your circumstances change. For example, the person who is the best guardian for your infant child may not be as suitable for the teenager that child will become. Or, if you leave your Rolex to your brother-in-law and then subsequently give it to your son on graduation day, that’s okay—it doesn’t invalidate your entire will. Your life circumstances are never going to be static or fixed. This means that now is the best time to have your will properly drafted—you can always alter it as circumstances change and your life evolves.