

Where There's a Will There's a Way

When was the last time you updated your Will? For many people, the last time their Will was updated was when their children were born and now that they are adults, appointing Aunt Gwen and Uncle George, who are well into their 80's, as their guardians is no longer necessary.

Many individuals feel that once a Will has been drawn up there is no need to update it. This is a misconception. Although your Will does not become invalid simply by the passing of time, the circumstances of your lifestyle may make some of the current provisions of your Will no longer appropriate or even possible.

We strongly recommend that you review your Will every couple of years to ensure that the provisions contained in the Will still meet your objectives. Below is a list of circumstances, which would likely merit a review and possible changes to your Will:

- Your assets change significantly or you acquire significant assets outside of the province
- The person or persons you have appointed as your Executor(s) move out of Canada, die, or become unable to act because of ill health or age
- A beneficiary dies
- You no longer own an item you have bequeathed to a specific person
- There are births or adoptions in your family
- Your marital status changes
- The marital status of a beneficiary changes
- You move out of the province or you no longer are a citizen of Canada

With respect to changes in marital status, in general, marriage or remarriage automatically revokes a Will. Divorce on the other hand, does not revoke an existing Will, but does revoke a bequest to the spouse from whom you are divorced and removes that spouse as the Executor if so named.

Choosing your Executor(s)

The role of the Executor (also known as Estate Trustee) is an extremely important one and the selection of a person or persons to fill this role should not be taken lightly.

Your Estate Trustee(s) have several obligations and duties in their role as administrator of your estate. Generally, their duties include:

- Locate your Will after your death and ensure it is your *last* Will and Testament
- Obtain proof of death
- Make funeral/burial arrangements if not already provided for
- Provide for the immediate needs of any dependants
- Locate, collect and preserve all the assets of your estate
- Determine if the Will needs to be probated (now called a Certificate of Appointment of Estate Trustee with (or without) a Will)
- Determine the names, addresses and ages of all beneficiaries and notify them of their interest in your estate
- Open an Estate bank account
- Determine the value of your estate, which may

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include obtaining valuations where necessary

- Determine all of your debts and satisfy them (this may involve the advertising for creditors if the Trustee(s) believe there to be outstanding debts of which they have no knowledge)
- Notify any governmental and non-governmental organizations of your death (i.e. passport, SIN, Heathcard, credit cards, Canada Pension, insurance, Canada Revenue Agency, etc.)
- Arrange for the preparation of income tax returns and determine liability for and payment of income tax
- Invest portions of your estate until it is distributed (if required)
- Distribute your estate, which may include the sale of real estate
- Prepare an accounting of your estate to the beneficiaries (this necessitates good record keeping)
- Obtain releases from the beneficiaries

Although the Trustees may rely on the estate solicitors, estate accountants or investment counsellors for advice, the ultimate decisions to be made when it comes to the administration of the estate rest with the Trustees and this responsibility cannot be delegated. Given the responsibilities of the position, here are some tips for choosing your Trustee(s):

- Choose someone you trust and is fair-minded
- Consider appointing multiple trustees to assist with the administration of your estate and the decision-making that will be required
- Choose someone who lives either in Ontario or at the very least lives in Canada because appointing a foreign executor can not only cause a hardship on the appointee from both a geographical and practical perspective, but in the process of probating your Will, the foreign executor may be required by the court to post a bond.
- Age can also be a factor in selecting your Trustee, especially if you have minor children or have set up a trust for your spouse. In these cases, there is no outright distribution of your estate and the Trustee(s) will be required to hold/invest your estate until the children become adults or your spouse dies or remarries.

This obligation could last a number of years and appointing someone who is older may place a burden on the Trustee that he or she may not be able or willing to take on.

You should also choose a substitute Trustee who will take over the administration duties if the person you appointed dies or is unwilling or unable to take on the role.

Make sure you speak to the person or persons whom you wish to appoint to see if they are willing to take on the role of Estate Trustee. If they are unclear as to their role and responsibilities, one of the Estates and Trusts lawyers at our firm would be happy to speak with them to explain what those responsibilities entail.

Multiple Wills

Currently, the Province of Ontario boasts one of the highest estate administration tax rates in the country. The current rate is \$250 on the first \$50,000 and \$15 for every \$1000 on the balance of the value of the estate. To help minimize the amount of estate administration tax payable, it may be possible for you to execute both a Primary and Secondary Will which effectively separates your assets into two categories. The Secondary Will is prepared to govern assets which do not require that the Secondary Will be probated, such as shares of a privately-held company. The Primary Will governs all other assets. The premise is that upon your death, only the Primary Will will be probated and the estate administration tax will be calculated only on the value of the assets governed by the Primary Will.

What to do with the old Will

Once your new Will has been signed, we recommend that any pre-existing Will(s) be physically destroyed to avoid any confusion when you pass away. It is also important to advise your Executor(s) that a new Will has been executed and where it can be located.

One mistake that individuals often make after signing a Will is to store it in their safety deposit box at the bank for safekeeping. Once you pass away, the first thing your bank will do is freeze all access to any bank accounts and safety deposit boxes not held jointly until the Executors can show they have the authority to deal with the estate. Proving this authority becomes extremely difficult when the document that gives this authority (your Will) is

locked up in the bank! We offer safekeeping facilities, which will prevent any delays or hassle when it comes time to administer your estate.

Do you have a Will?

Many people believe a Will is unnecessary, sometimes because they don't think they need one until they are much older, because the size of their estate is not significant or because they have discussed what they want done with loved ones and therefore do not need one. Nothing could be further from the truth.

Having a Will prepared not only allows you to plan for your loved ones, but also protects you in the event of a marriage or divorce, can help to minimize

both income and estate administration taxes, can help prevent costly court actions, is a good exercise in compiling an accurate inventory of your assets and will permit you to specify that funeral arrangements are carried out according to your wishes.

If you die without having made a Will, you are said to have died intestate. Provincial law, not you or what you told your spouse or relatives you wanted done with your estate, dictates who is entitled to your estate and in what proportions.

The following is a chart which outlines, in order, how your estate will be distributed if you have not made a Will:

DISTRIBUTION OF INTESTATE ESTATE	
<i>Descendant/Relative</i>	<i>Inheritance</i>
Spouse and no children	entire estate to spouse
Spouse and 1 child	\$200,000 to spouse, and spouse and child split the balance of estate equally
Spouse and 2 or more children	\$200,000 + 1/3 of estate to spouse and the children split 2/3 of estate equally
Children and no spouse	entire estate split equally among children
No spouse and no children	estate divided between grandchildren and if none alive, great grandchildren or to parents of deceased if no great grandchildren
No parents	estate divided between siblings
No siblings	estate divided among nieces and nephews
No nieces or nephews	estate divided among next-of-kin of equal degree of consanguinity
No next-of-kin	entire estate to the government

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Other Considerations

Still think you do not need a Will? Consider this:

- Without a Will, the court will choose who the guardian(s) of your minor children will be without the benefit of your wishes being known.
- Without a Will, any minor children entitled to share in the distribution of your estate will receive the money at age 18 regardless if they are responsible or not.
- Without a Will, the court chooses who the administrator (Executor/Estate Trustee) of your estate will be.
- Without a Will, both income and estate administration tax payable will likely be higher.
- Without a Will, assets that you may have wanted to go to particular individuals (i.e. antiques, jewellery or real estate) may need to be sold in order to distribute your estate to the beneficiaries entitled.
- Without a Will, common law or same sex partners may not be entitled to share in your estate.
- Without a Will, the husband or wife of any child of yours who has predeceased you will not share in your estate.

More Information

If you would like to discuss if your existing Will meets your objectives or would like to have a Will prepared, please do not hesitate to contact either:

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