



Will & Power of Attorney Planning Guide

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What is a Will?



A [Will](#) is a legal document that is prepared by you during your lifetime which takes effect upon your death. It directs the manner in which your various assets and possessions are to be distributed upon death. Simply put, the function of a Will is twofold.

Firstly, it appoints an executor/executrix (now also known as an Estate Trustee) to attend to the various matters in connection with the administration of the estate, and secondly, it specifies to whom the assets of the deceased are to be distributed.

What Effect Does a Will Have Prior to Death?

A Will is said to "speak" only at the moment of death. Therefore, by signing a Will, you do not in any way restrict yourself in connection with the disposal of your assets during the rest of your lifetime.

Is a Will Necessary for Everyone?

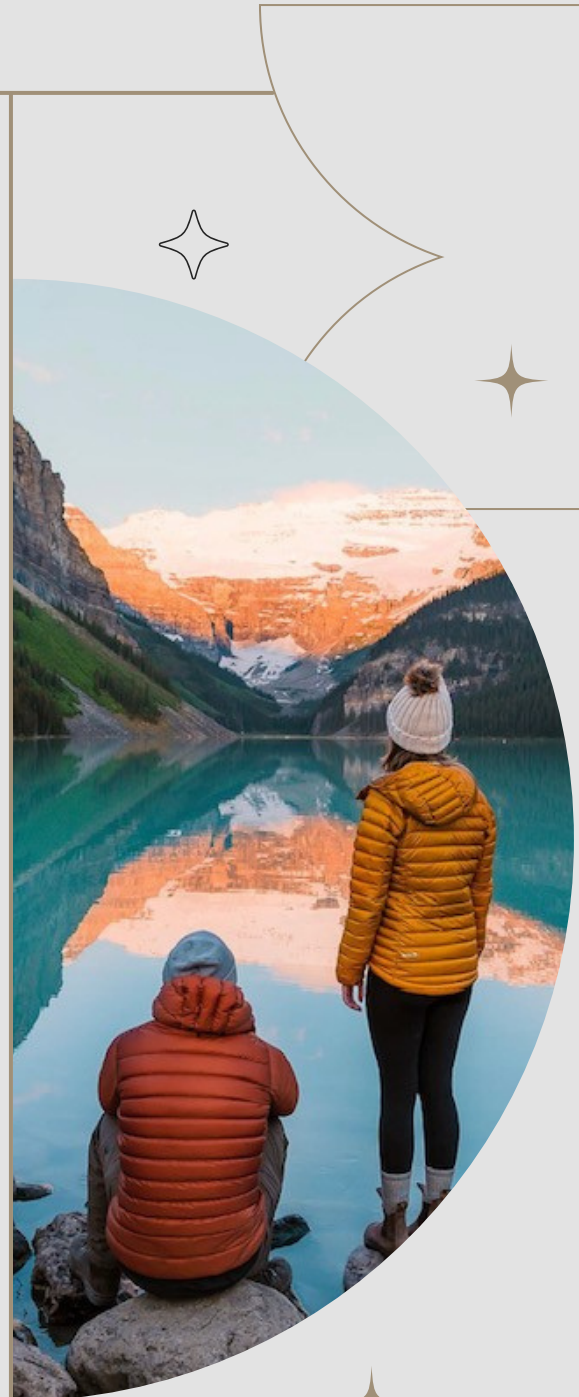
“If you don't plan to die there is no need for a Will. Otherwise, no Will means no choice in distribution of your assets at your untimely passing”

For those of who believe there is a possibility you may die sometime during your lifetime, the question whether you should have a Will can be answered by an emphatic YES!

Should you die without a Will, the administration of your estate is complicated by the fact that you would have not appointed an executor/executrix to manage your affairs.

More importantly, without a Will, your death may result in your assets being distributed to various heirs that you did not want to receive an inheritance.

On the other hand, dear friends and relatives or organizations that you wanted to be included in the distribution of your assets may inherit less than you intended or even nothing at all.





✦
✦ “The truth of the matter
is that you cannot afford
not to have a Will
prepared”

LEGAL FEES FOR WILL PREPARATION?

In general, to draft a Will with an average family or estate lawyer you could pay anywhere from \$500 to over \$1,000 for a basic Will. This makes it understandable why people tend to procrastinate going through the process of getting a Will even though it's relatively inexpensive for the value and security you feel knowing your affairs are in order.

[Blue Alpha Wealth](#) has partnered with experienced Estate Lawyer, Richard Wm. Chuback. He can provide you with a free consultation to get an understanding of your situation. Should you choose to draft a Will, the basic fee is \$175, with the fee increasing depending on the level of complexity for example if you're a business owner.

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IF YOU HAVE A WILL...

- The testator is free to distribute assets to beneficiaries of his/her choosing under terms and conditions they think best.
- Can ensure that all the assets pass to the testator's spouse and then on the spouse's death, to the children in equal shares.
- Can provide for the distribution of estate to children at an age when the testator believes it to be in their best interest e.g. after age 18.
- The testator is free to provide for the future administration and management of the estate assets vested in beneficiaries who are infants or individuals capable of managing the property.
- A provision can be made for the appointment of legal guardians in the event that both parties die while one or more children are under the age of majority.
- Provides flexibility to allow for specific bequests to particular individuals e.g. family heirlooms can pass to named individuals. Also, make provisions to various charities or hospitals.
- The executor takes his/her authority from the Will from the moment of the testator's death.
- Provides for quicker and more orderly administration of the testators' estate which can result in lower legal fees.
- Allows the testator to engage in tax planning and estate planning.



IF YOU DON'T HAVE A WILL...

- Assets are distributed in accordance with the laws of intestate succession which establishes an arbitrary and inflexible scheme of distribution.
- Under the laws of intestate succession, the ENTIRE ESTATE will not necessarily pass to the spouse. If there are children they will be entitled to receive a portion.
- As the distribution is in accordance with intestate succession, a child who has reached 18 is free to receive and spend his/her share as they wish.
- No provision is made for the future administration and management of the estate for such beneficiaries other than the payment into Court of such assets, or receipt of a Court Order setting the "rules" to be followed.
- Relatives will have to determine who the guardians should be in conjunction with the office of the Public Guardian and Trustee.
- Bequests to specific individuals/organizations CANNOT be made under intestate succession.
- An Estate Trustee is appointed by the Court.
- The Estate Trustee takes his/her authority from the Court and requires a court order to be granted before acting which can cause frustration for family.
- Estate Trustee MUST be bonded unless court decides to waive this requirement. Obtaining an administration bond can be expensive and time consuming.
- Does not allow for tax planning and estate planning.



THINGS TO CONSIDER BEFORE SEEING A LAWYER FOR A WILL...



Appointment of an Executor

A testator will usually appoint a spouse as executor and, if not married, a relative or close friend is often selected. It is usually best not to select an executor who is older than yourself or one who lives in another province. It's important that you discuss this with anyone you are thinking of naming as executor to ensure they are in fact prepared to take on the obligation.



Appointment of an Alternate Executor

This is in the event that the first named executor predeceases the testator or is unable or unwilling to act. Same selection process used as with an executor

Beneficiaries

Consider the individuals that you wish to benefit under your Will. Beneficiaries may receive a percentage of your estate, a specific sum of money etc.

Trust Provisions for Minor Beneficiaries

Consider at what age you wish for minor beneficiaries to receive their inheritance. A simple trust can be established wherein a minor beneficiary does not receive the full inheritance until a certain specified age. Receiving money prior to this age would utilize a power of "encroachment".

Guardian

Consider appointing a guardian to look after your children should you die while your children are still minors. It is equally important that you discuss this with anyone you are contemplating naming as a guardian to ensure they're willing and prepared to undertake the major responsibility.

List of Assets

Prepare a list indicating location and identifying characteristics. Account numbers and institutions should be specified. Examples incl. bank accounts, real estate information, investment accounts, life insurance policies etc.



"Probate fees can be viewed as a form of wealth taxation."



PROBATE PLANNING AND STRATEGIES

Estate and Death Taxes

The laws of Ontario do not presently impose estate or death taxes, however we do have probate fees. The process of obtaining what is still commonly referred to as Letters Probate involves submitting an original Will together with all documentation in support of the application for a Certificate of Appointment of Estate Trustee with a Will to the Ontario Superior Court of Justice. Probate certifies that the Will has been duly approved and declared valid and confirms the authority of the personal representatives (i.e. Executors of Estate Trustees) named in the Will.

Since June 1992, the fee structure has been two-tiered. The probate fee payable for the first \$50,000 of value in estate is at a rate of 0.5% or \$5 for every \$1,000 of value in the estate. The probate fee for the value of the estate over \$50,000 is calculated at 1.5% or \$15 for every \$1,000 in value.

To place this increase in perspective, consider as an example, an estate of \$500,000.

The probate fee payable is \$7,000! Note, however, that the administration process within the court remains the same whether estate is valued at \$50,000 or \$500,000. In addition, the vast majority of the paperwork to prepare and process the application is completed by law firms and not government employees



With the size of probate fees, estate planning should involve a review of your assets in order to minimize probate fees payable.



"Probate fees can be viewed as a form of wealth taxation."



PROBATE PLANNING AND STRATEGIES

Strategies & Solutions

Here are some ways to structure your affairs to reduce or possibly eliminate paying probate fees:

1. Joint Ownership of Property with Right of Survivorship

When real property is held with another person in joint ownership with the right of survivorship, upon the death of one individual, the property will automatically pass to the survivor by operation of law and not through the Will. The jointly held asset does not form a part of the estate of the deceased joint owner and thus, the requirement for probate on the jointly owned property is avoided.

2. Joint Bank Accounts

A joint bank account provides for the right of survivorship. This allows the survivor not to include the amount on deposit for probate purposes.

3. Beneficiary Designations

The value of investments and life insurance policies don't have to be calculated when administering an estate provided there is a named beneficiary for each plan. It is possible to change a named beneficiary prior to death and therefore some degree of flexibility is maintained for ongoing estate planning purposes. Asset distribution is based upon the last beneficiary on record.

4. Gifting Assets

Consideration may be given to gifting certain assets prior to death. These assets can range from cash to business or investment assets.



Powers of Attorney

In addition to drafting a Will, all individuals should consider executing two Powers of Attorney - "A [Continuing Power of Attorney for Property](#)" and "[Power of Attorney for Personal Care](#)".

Both are legal documents that appoint an individual (or individuals) to act as attorney for the individual giving the power ("the Donor") in order to allow the attorney to do anything in law that the Donor could do.

These documents become very important in the event the individual appointing an attorney suffers a subsequent physical and/or mental disability; however, they can also be utilized on other occasions as well.

Continuing Power of Attorney for Property

An unrestricted Continuing Power of Attorney for Property deals with all property (both real estate and personal property) owned by the Donor. Restrictions can however be placed on such a Power of Attorney as to either the time when it is in effect or for a limited purpose.

A Continuing Power of Attorney for Property must include a specific provision stating that it is intended to survive the incapacity of the Donor. In the absence of this statement, the Power of Attorney will automatically become invalid should a mental incapacity occur.

A Power of Attorney becomes effective immediately upon signing, however, it is permissible to provide that a Power of Attorney be made on a contingent basis. Thus, the Donor may specify that the Power of Attorney will not take effect until the occurrence of a specific event, such as the mental and/or physical incapacity of the Donor



Powers of Attorney

Power of Attorney for Personal Care

A person may now also grant legal authority to another person to make substitute decisions in connection with personal care. These personal care decisions may relate to food, living arrangements, health care, clothing, cleanliness and safety.

A person is considered to be unable to make personal care decisions if he/she is unable to understand information that is necessary making these decisions or is unable to comprehend the consequences of a decision.

A Power of Attorney for Personal Care may extend full authority or it may place limits on the attorney in regard to certain areas of personal care. Of great importance is the fact that the Power of Attorney for Personal Care may authorize the attorney to give or refuse consent to medical treatment on the Donors behalf.

Such a power of attorney may also contain specific details in connection with where the donor wishes to live or under what conditions he/she would consent to certain types of medical treatment.



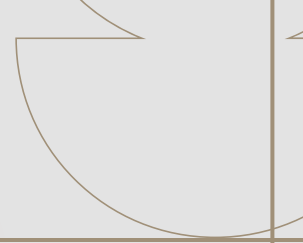
PERSONAL REPRESENTATIVES CHECKLIST

The following is a general list of some of the more common duties that a personal representative may be required to deal with:

- Complete all funeral arrangements and attend to the burial and cremation of the deceased.
- Locate the original Will.
- Meet with the lawyer that will represent the estate in all legal matters.
- Take all necessary steps to preserve and protect the assets of the deceased
Locate all of the bank accounts of the deceased and determine the balance on the deposit for each account. Notify the bank of the death.
- Locate all insurance policies, annuities and investments to determine the amount payable for each. Notify the necessary companies of the death.
- Notify the applicable pension offices of the death.
- Locate the key and prepare an inventory of the contents of the deceased's safety box.
- Completely review all personal papers of the deceased in order to locate all the assets and debts.
- Review all real estate documents including deeds, mortgages and leases.
- Prepare a detailed estate inventory of all the deceased's assets and debts. Open an estate account for depositing all the monies received.
- Arrange for the storage of assets requiring storage and advise insurers of any physical assets of the deceased. Arrange for any insurance coverage required.
- Pay all money bequests and distribute all other property to the rightful beneficiaries pursuant to the terms of the Will and obtain releases from all beneficiaries.
- Transfer or cancel any insurance policies on the house, car, boat etc.
- Obtain reimbursement for all necessary and reasonable expenses incurred in the administration of the estate (with receipts).



PERSONAL REPRESENTATIVES CHECKLIST (CONTINUED)



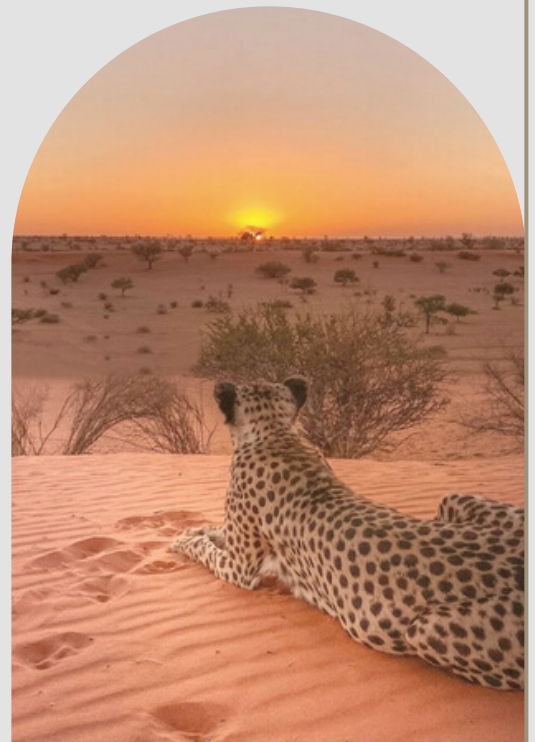
- Notify the beneficiaries named in the Will of the death and advise them of their entitlement under the terms of the Will.
- Arrange with the Post Office for mail to be readdressed, if necessary.
- Cancel any subscriptions or charge accounts and return or destroy all charge cards.
- Obtain all unpaid wages and other benefits from the deceased's former employer.
- Contact all service clubs and veterans clubs for death benefits that may be payable to the estate.
- Apply to the Ontario Superior Court of Justice for a Certificate of Appointment of Estate Trustee with a Will (if there is a Will) or for Certificate of Appointment of Estate.
- Trustee without a Will (if there is no Will) and pay all probate fees to the Court. Advertise in a local newspaper with a Notice to Creditors and others if necessary. Arrange for the filing of an income tax return for the year of death and for any former years that may not have been filed by the deceased.
- Apply for Canada Pension Plan benefits if the deceased qualifies for benefits. Apply for civil service, union and veterans' benefits, if applicable.
- Apply for any amounts payable to the estate under insurance policies.
- Sell any estate assets which must be sold and those which the personal representative chooses to sell provided this power is given under the Will.
- Pay funeral expenses, income taxes payable, charge cards, personal loans and any other debts of the deceased. Obtain an income tax refund if applicable.
- Pay legal fees and all other outstanding fees relating to the administration of the estate.
- Pass accounts before a Judge of the Ontario Superior Court of Justice, if necessary.



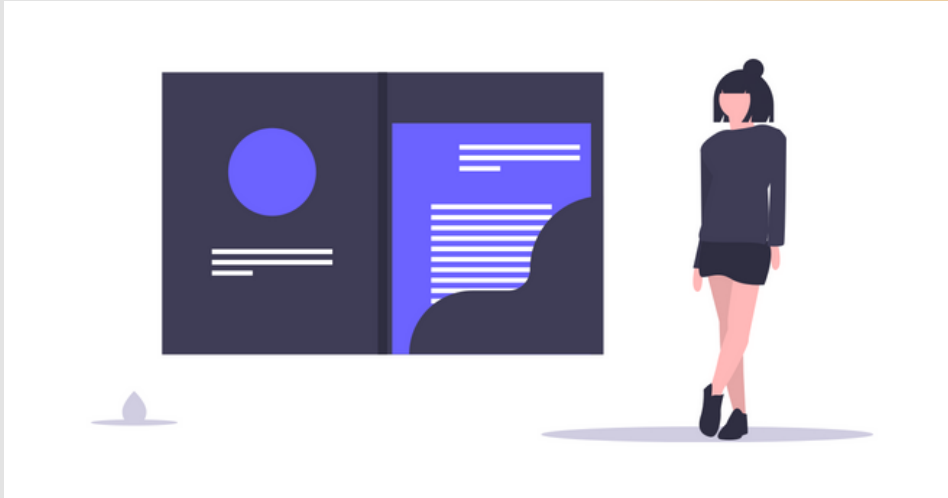
CONCLUSION



Death doesn't happen to an individual...it happens to a family. Prescribing the 'pill', a Will, is easy. Understandably it's the working through and thinking about the planning that's the difficult part



THANK YOU!



Updating your financial plan and thinking through your affairs and where you'd like to be is an important first step. Get in touch today if you'd like to know where you stand.

