

Financially Speaking

Why You Should Have a Will

1. Unless you have a will, you will have no say in who administers your estate and in how your property is distributed.
2. Someone will have to apply to the courts for permission to act as your administrator (i.e. executor/estate trustee). This takes time, costs money and can create friction between family members.
3. Your estate will be wound up more slowly without a will.
4. Not having a will means it will cost more to administer your estate.
5. A will is the best place to name a guardian for your children.
6. Without a will, your children will inherit everything at 19. With a will, you can have trusts set up to provide for your children until they receive their full inheritance at an age of your choice (perhaps age 25, or older).
7. In most provinces, if you have beneficiaries with special needs, you can preserve their right to receive government benefits with a properly drawn will. Without one, they may probably lose their government benefits when they receive their inheritance.
8. If you are in a second marriage with children from a previous marriage, you can arrange a fair division of your choice between all parties.
9. Joint ownership is not a solution; the two joint owners may die together.
10. Beneficiary designations may also not always work. The beneficiary may die and change is not made, or the beneficiary may be too young to inherit.
11. A spouse may not receive as much on intestacy as you might expect.
12. In most provinces, common law spouses do not have the same rights as married spouses and may not be entitled to any property upon the death of the other common law spouse.
13. You could provide for elderly parents in a will.
14. If you have relatives you want to exclude from any inheritance, you can do so in a will. If you die without a will, and have only distant members of your family alive, they may inherit pursuant to provincial legislation.
15. The cost of doing wills and powers of attorney is not prohibitive. The cost, both financially and emotionally, of not having a will is much greater.

"There are risks and costs to a program of action. But they are far less than the long-range risks and costs of comfortable inaction." John F. Kennedy

Main Duties of Executors

1. Locate and review will.
2. Contact family members and beneficiaries; hold preliminary conference with them.
3. Make funeral arrangements.
4. Meet with lawyer, determine if probate is necessary; if it is, get the process started.
5. Protect assets until distributed or sold: (a) Check insurance on all property; (b) Collect and safeguard valuables; (c) Protect business interests.
6. Keep financial records of all estate activities.
7. Consult with accountant:
 - a. File tax returns for the deceased and the estate as required.
 - b. Get tax clearance certificates from Revenue Canada before distribution, to avoid personal liability for taxes.
 - c. Invest and deal with trust funds as required by the will.
 - d. Make wise decisions as to the use of money for the needs of under age children.
 - e. Pay debts and taxes payable by the estate.
 - f. Provide beneficiaries with a full report of estate financial activities.
 - g. Distribute assets as provided in will and as required by law and obtain release from each beneficiary.

Choosing Executors

Choose reliable people with sound judgment and skill. In most cases, your surviving spouse is the best first choice. In the event of both you and your spouse are gone, appoint two other executors to act either together or alternatively. This will protect against a vacancy should one be unable to act. If possible, choose people who live in the same province as you do in order to decrease the cost and inconvenience.

Provision for your Spouse

Your first option may be to pass the entire estate to your surviving spouse. This can generally be done tax-free. This approach frees the assets to be used as your spouse considers wise in the raising of the children.

Provision for your Children if you and your Spouse are gone

1. Guardians need to be appointed to provide a home and physical care. They will be the primary training resource for your children. Alternate guardians are an important safety provision in case your first choice cannot see them into adulthood.
2. Trust funds administered by your executor can provide resources for their care and upbringing until adulthood. You may choose either a pooled trust or a separate trust approach. You can set the age at which the children receive the remainder without restrictions.
3. Trust funds may be used to provide for the needs of adult children who are unable to handle their own affairs.
4. Division among adult children can include the transfer of business or farming assets in a way which will maintain overall fairness.
5. A deceased child's share may be distributed to the child's surviving spouse, or to grandchildren, or both.

What is Probate? Probate is the process by which the executors deposit the original will with the Probate Court, prove it to be your last will, and receive a court order confirming it to be such. The court order also confirms them to their duties as executors. The probate process takes generally from one month to a year depending on the complexity of the estate, and may cost between 3% and 7% of the estate assets' gross value.



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