

WILL INFORMATION PRIMER

1. Why Do I Need a Will?

First and foremost.... A Will facilitates the passing of your estate or closing of your assets and liabilities, and eases the burden on your loved ones, at a difficult time.

What if I don't really have much? No matter what the size of your estate, whether large or small, all estates must be closed when a person passes away. Having the original Will enables the person appointed as your Executor to do this. Without an original Will the court steps in and appoints a person, called an Administrator. This is a costly and time consuming process and would have been someone you likely would or should have appointed in the first place!

If you have children, under the age of 19, you will need to appoint a Guardian and as a Will is the authority document for the appointment - this is one of the most important reasons for having a will.

If you are having difficulty deciding on the Executor or Guardianship appointment the following guidelines have been provided to assist you.

2. What Information Do I Need To Prepare For The Appointment?

i) Executor Appointment:

Providing the full legal name and address of the person appointed as your Executor/ Trustee, and ideally, an alternate or backup Executor/ Trustee should the first appointed Executor/Trustee be unable to act.

Ideal criteria to consider when selecting a person to be your Executor / Trustee:

Usually people appoint someone they know or are related to. In selecting the person to be your Executor, who may also have to act as a Trustee, there are three criteria I recommend:

- **Trustworthiness** – this is probably the most important as being an Executor gives the person access to your assets.
- **Capability** – the person should be at least 19 years of age, and be responsible. They will be accountable to various agencies and to the beneficiaries.
- **Availability** – while not as crucial as the above criteria, being available does lessen potential expense if the Executor is in the same vicinity. However, they can still hire professionals located closely to the estate.

Another option is to hire a professional Executor. Many banks have trust divisions that offer this service. Also, both lawyers and some Notaries, including my office, offer this service. When you appoint a professional there is peace of mind knowing a member of the organization or society they represent will be there when the time comes to ensure your estate is managed. You should expect to enter into a Fee Agreement with that professional. If you are interested in having my office act in this capacity please call my office to discuss this further.

ii) Appointment of Minor Child(ren) Guardian:

If any of your children is a minor, under the age of 19, you need to include the appointment of a guardian. Usually, the surviving parent is in first position and the guardian becomes the alternate person(s) should anything happen to the surviving custodial parent. For this criteria, it's ideal to choose a person, whether family member or friend who shares in the same values about raising children as you do. If you're 'stuck' in deciding this appointment, there is the option of appointing a person to help make that selection in your absence. This option can be explored more thoroughly during the appointment.

There will also need to be a decision made about the minor trust provision. In other words: when your child(ren) will receive the monies under your estate and how the Executor/Trustee should hold the monies in trust.

This is an area that requires some discussion and my office usually offers three options for consideration in determining how you wish to have monies held for a minor.

There are times when a minor may benefit under your estate and not be your own child. For example, a grandchild, niece or nephew. When this occurs a minor trust provision will also need to be included. I will discuss this further during the Will appointment and outline the options that can be written into your Will to allow for the Executor / Trustee's authority in this area.

NOTE: Under the current Notaries Act, Notaries are restricted to writing minor trust provisions whereby the monies can only be held in trust until each child turns 19 or the youngest of the class or family group of children turns 19. Keep in mind, that when a minor turns 19 if they can prove to the court that they are mature enough to handle the money they can challenge the Will provision if the stipulated age given in the Will is older than 19.

iii) How Do You Hold Your Assets?

Making an inventory of your assets is a useful and important exercise. In addition to being useful for preparing for the Wills appointment ultimately it can be invaluable for your Executor! Just keep it up to date and store it with your original Will.

What type of information should you include in an inventory?

State of Title Certificate (STC) to your home (real property) – from this document I can confirm your name on title, and most importantly: legal form of ownership, whether solo, joint tenancy or tenant in common. Also, the current year BC Assessment statement is helpful.

Recent financial and insurance policy statements, including RRSP's, RIF's, TFSA's. Many of these types of assets have "designated beneficiary entitlement" policies attached to them. If you have these types of assets double-check the status of this information with the policyholder. Assets with designated beneficiary policies operate like "mini Wills". The beneficiary receives the value of the asset immediately and the value does not trigger probate. If you're not sure what this means we can discuss it in more detail in the appointment. However, it is useful if not crucial to understand "what you have and how you hold it"! Conducting an inventory is a good place to start. If you are still uncertain you may need to contact your financial or policyholder to seek further clarification.

The virtual account – if you have these, and who doesn't these days! While appreciating the security requirements, consider referencing this in the inventory of your assets.

iv) How Do You Wish to Distribute Your Estate?

Note: Under British Columbia law spouses and children of a deceased have the right to contest an estate on the basis that the deceased parent or spouse failed to "make adequate provision for their proper maintenance and support". Therefore, while it is your prerogative to do so, my office will not draft your Will if it is your intention to "disinherit" either your spouse or child. If you have questions or concerns about this please call to discuss further.

My office also does not write wills for estate involving blended families. A blended family is when a person is in a marital relationship and also has a child, that has not been adopted by another parent, with a former partner. You may discuss this with me but I will likely refer you to a lawyer who practices both estate and family law.

Essentially, when it comes to distributing your estate you usually are looking at gifting to either people and/or charitable organizations.

With charities we appreciate it if you can be specific about the name and, if applicable, the branch of the charity and also the charitable registration number. Most charities can provide this to you if you require it.

I usually will write bequests of money represented as a per cent of your NET estate that will come through your Will. In other words, if you have \$50,000.00 in an RRSP (designated beneficiary) and you are the sole owner of a property, net worth \$500,000.00 – the actual value that will "come through your Will" is the value of the property. This is the number against which cash bequests can be calculated for example, you could say: \$100,000.00 to my sister Sally or 20 per cent whichever is less..... it's one approach I can take. The key for you is to have the full legal names and addresses of each of your beneficiaries. I can always discuss your intentions during the Will instruction appointment.

3. How Much Does It Cost?

My office charges the following fees to draw a Will. Please note, the fees are based on average client requirements. An increase may occur subject to a client's needs in time and work involved.

Single Will: \$371.00 (includes gst/pst; copy storage fee; Vital Statistics registration.

Couples Will: \$839.00 (includes gst/pst; copy storage fee; Vital Statistics registration of each Will.

(Note: under BC Law two people are considered a couple if they have been living together for two years in a marriage like relationship).

For an appointment or further information please contact:

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