

Preparing a will

"A WILL GIVES YOU THE LAST WORD ON WHAT HAPPENS TO YOUR ESTATE."

The Law Society of Upper Canada

Have you an up-to-date will? Has your spouse an up-to-date will? Will it accomplish what you wish it to do? When was it written? These are some of the questions you should be asking yourself about wills. The following information will attempt to clarify what a will does, what an executor does and provide a few helpful tips. It is important to realize that the use of a competent lawyer is money well spent in the drawing up and completion of a will. If you have more questions which remain unanswered by this article, check with your lawyer.

Why a will?

There are numerous advantages to having a will made.

1. Often payments for immediate assistance to a family can be made more promptly when there is a will.
2. With a will a testator (the person making the will) can determine the person who will take charge of her estate upon her death. If there is no will, an administrator is appointed by the court. A will can often be used for effective tax planning.
3. It is usually cheaper to administer an estate with a will than without.
4. With a will the testator has almost absolute control over who will be her beneficiaries whereas without a will the persons who take in her estate are dictated by the laws of the province.
5. With a properly drawn will an executor may hold property waiting for a sale upon favorable markets, may distribute the estate as it was at the time of the death rather than selling and possibly incurring a loss.
6. With a will a testator may delay the time at which beneficiaries can take under the will. For example, it may be felt that a child is not sufficiently mature to receive under an estate and any benefit that he or she might receive can be postponed until a later date. This is possible with a will; however without a will the child is entitled to take at age 18.

7. The main disadvantage to having a will is the time and expense involved in obtaining one. However, any cost in comparison to the problems that would result without one, certainly far outweigh the costs. Most lawyers' charges are very realistic.



Making a will

If you decide it is in your best interest to draft a will, then get as much information about your various assets, debts, etc. together so you know what you have. Also decide how you wish to have your estate passed on and to whom. Decide on guardians if children are under-age, as well as executors, before you go to your lawyer.

The executor's job

The choice of an executor is crucial when contemplating your will. The executor will be responsible for the carrying out of the wishes of the testator. The executor has numerous duties among which are: a) safeguarding the estate, b) obtaining proof of death, c) ultimate decision as to method of burial, d) taking charge of all title documents, share certificates, bank books and other assets of the estate, e) completing a full inventory including a list of assets and liabilities of the estate, f) gathering in the assets of the estate, g) notifying banks, post office, insurance companies, h) filing for probate, i) filing succession duty and income tax returns, j) carrying on business owned by the testator at the time of death k) seeking out creditors of the estate and settling and disputing any claims where necessary, l) keeping the accounts for the estate, m) distributing the estate.

Who should be an executor

Basically the only persons who cannot be executors of an estate are people of unsound mind, not of the legal age of majority, or are bankrupt.

1. *The spouse* — especially if the estate is straight forward, assets modest and the estate distributed to the spouse. If there is any doubt as to the spouse's ability to handle the duties in and about the estate, a co-executor might be advisable.

If a spouse is to receive a life interest in the estate only, the spouse should probably be a co-executor and not the sole executor so that the assets are properly managed for the persons to take the estate upon the death of the surviving spouse.

2. *The child* — this is advisable when the children are mature, capable, close at hand. Difficulties may arise, however, when there is an estate to a surviving spouse with the children to take, upon the death of the surviving spouse.

3. *Friends or business associates* — a close friend does not necessarily possess the qualities of a good executor. Such qualities might also include business and investment know-how, honesty, and understanding.

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