

Your Will

The foundation of your estate plan

One thing is for sure – you can't take it with you. So as long as you have to leave your assets behind, why not make sure they go where you'd like them to go? A Will gives you the power to do that. If you do nothing else about creating an estate plan, you should at the very least have a will.

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What to expect without a Will

It's very simple. When you have a Will, you decide how your wealth will be distributed. Without a Will, the provincial government decides. Plus when you have a Will, you can ensure your wealth is handed down in the most tax efficient way.

A Will lets you ensure your spouse and children will have sufficient income. And it allows you to use tax saving or deferral strategies to help minimize what the government takes and leave more for your heirs.

And if you have no heirs, you can use a Will to ensure that certain people or organizations are beneficiaries of your estate.

If there are people or favourite causes you'd like to leave something to, a Will can turn your good intentions into reality. But when you die without a Will, your intentions are replaced by provincial laws.

The consequences of dying without a Will

The legal term is "intestate" and there are major drawbacks. For one thing, when you die intestate, legal fees and taxes can take a sizable portion of your estate. It can also have serious financial consequences for your loved ones.

When you die without a Will, your assets are distributed according to provincial laws and generally divided among your surviving relatives in order of family ties. This may be very different from what you would have wanted.

For example, your entire estate could go to a distant relative you don't even know, while the dear friend or charity you had wanted to get everything gets nothing. Simply because you didn't make a Will.

Another problem area is the division between spouse and children. If for example you leave behind three children and a spouse, your spouse might receive only $\frac{1}{4}$ of your assets, the children $\frac{3}{4}$. This could be a serious hardship for your spouse.

How assets are divided among spouses and children varies from province to province. Even the definition of "spouse" varies from province to province.

If you have no living relatives, your assets go to the province. And that's such a wasted opportunity because your money could have instead gone to a favourite charity or friend.

In spite of all of the benefits of having a Will, an alarming number of people never get around to it. If you have a proper and up-to-date Will, good for you. If you don't, you really shouldn't put it off any longer.

It's a simple and inexpensive thing to do. And for the small amount of time and effort it takes, you get a great deal of satisfaction and peace of mind.

Types of Wills

There are 3 types of Wills: *Formal, Notarial, Holographic.*

A formal Will is a typed document signed by you in front of at least two witnesses (who cannot be a beneficiary or their spouse). It is wise to have a formal Will prepared by a lawyer or notary. The cost is well worth it when you consider the potential problems you'll avoid.

A notarial Will is similar to the Formal Will but only used in Quebec. It is prepared by a notary and signed before the notary and a witness.

A holographic Will is prepared in your handwriting and signed by you with no witness necessary. This is not a recommended Will to use because it is subject to misinterpretation and challenge and is not even recognized in some provinces.

There is another alternative which is also not recommended. These are the preprinted forms or computer programs to create a Will. They are inexpensive but the money you save is small compared to the legal fees your beneficiaries might have to pay in settling your affairs.

Simply stated, when you consider the consequences of not having a proper formal Will, it's just not worth doing it any other way.

Drafting your will: things to note

A Will is a highly flexible document. It can contain a wide variety of clauses and cover many issues. These are just a few.

Asset distribution – This is the main reason for having a Will – to spell out how you want your property to be distributed after your death.

Your Executor – Your Will should specify an executor. Choosing an executor* is one of your most important decisions because they will take over control of your assets when you die. (More on executor in the section, [Choosing your executor](#))

*In the province of Quebec, an ‘executor’ is called a ‘liquidator’, and in the province of Ontario, an ‘estate trustee’.

Guardian – If you have minor children, your Will can name the person you want to be the guardian should something happen to you and your spouse. Although this clause is not legally binding, the courts generally carry out the request.

Legacies – If you would like to leave something to certain people or organizations, the legal term for your gift is a legacy. It’s possible that a legacy to a charity could result in a tax benefit for your estate. And if you’d like to give to more than one, your Will can have as many legacies as you like.

Trusts – A trust lets you transfer ownership of assets but still retain control of how the assets are distributed. For example, if you have an heir who spends money carelessly, you could create a trust that gives them their inheritance over time rather than in one lump sum.

Power Clause – Many actions of the executor and trustee require court approval. A power clause gives them the authority to do certain things in managing the estate without court approval, for example, to make investments on behalf of the estate.

Life Interest – Use this clause when you want to give someone the income or enjoyment of an asset without giving the asset itself. For example, a cottage or piece of art that’s been in the family for years. Or a trust fund that generates income. A life interest clause protects the asset to ensure it will be there for future generations.

Choosing your executor

You should think carefully about who you want to be your executor. They will be responsible for dealing with all your legal and financial matters and finally, for seeing that the provisions of your Will are carried out. They may even be responsible for arranging the funeral. It can be an enormous amount of work.

It should naturally be someone you trust, such as spouse, adult child or close friend. And they should be able to get along with all your family. For example, if you have children who are not on good terms, appointing one of them could be a serious mistake.

Whoever you choose should be of an age that they will be around when needed. And it's generally wise to appoint someone who lives in the same province, preferably nearby, since most of the many duties must be carried out in person.

Since much of what they do requires both financial and administrative skills, you have to be sure they have the expertise, the time and the interest to take on the job. Before you name someone in your Will to be your executor, you should always get his or her permission.

Because of all these considerations, many people, especially those with complex estates, appoint a professional executor, such as a lawyer, trust officer or accountant, rather than choosing a friend or relative. This is often a wise decision. And if you want to have a relative involved along with a professional, you can name more than one person to be executor.

Family heirlooms and Personal property

If there's one area that can lead to problems and disputes among family members, it's deciding who gets what of the personal property and family heirlooms.

Who of the three daughters gets that beautiful diamond ring? Which of the children gets that painting over the mantelpiece? Who gets the grandfather clock that's been in the family for 3 generations? And on and on.

Think about it. Are there things you own that you'd like to pass along to someone specific when you die? Or that you know your children would like to receive?

Provisions for passing things along are called bequests and there are various ways of making them. Verbally, written notes, a tape recorder, even labeling instructions right on the objects themselves. But the safest way is to include the bequest in the Will – that way it's legally binding.

It's also a good idea to discuss these things with the people involved. Sometimes an item that you think is very important to someone may actually mean very little to them. And vice-versa. Something you place little value on could be treasured by one of your children for sentimental reasons.

The important thing is to at least think about these things when you're preparing your estate plan. If you want to avoid disputes, hard feelings or disappointments among your family, it's the wise thing to do.

Please keep in mind that this information on Wills is in no way complete. It is simply an overview and does not deal with many of the legal issues involved in creating a Will.