



**Paquette  
Travers**

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# LAST WILL & TESTAMENT

DO YOU NEED A WILL?



Most Common  
Questions Answered

## What is a Will?

A Will is a document which records the instructions of a person, known as the “testator”, for the disposition of the testator’s property at his or her death. A Will deals with all property owned by the testator to which the testator has a right whether acquired before or after the making of the Will.

### MAKING A WILL IS NOT TO BE CONFUSED WITH GIVING POWER OF ATTORNEY

“Powers of Attorney are only effective while you are still alive but you are unable to act for yourself.”

**\*Ask for our Brochure on Powers of Attorney**

Your Will is a legal document that fulfills three key objectives:

- It names an executor to be responsible for the administration of your estate
- It gives the executor power to deal with your estate assets
- It directs the distribution of your estate to your beneficiaries or to trusts for their benefit

Generally a formal Will is signed in the presence of two witnesses who are not beneficiaries or the spouse of a beneficiary or yourself.



## Why should I make a Will?

There are several reasons for making a Will, not the least of which is the comfort of knowing that your loved ones will have direction as to the way in which our wishes will be carried out upon your death. A person who dies without a Will is said to have died “intestate.” If a person dies intestate, an administrator must be appointed by the court before the



deceased's assets may be dealt with. Distribution of the assets is then made in accordance with the *Succession Law Reform Act*, R.S.O. 1990.

Simply put, by making a Will you appoint the person(s) you wish to administer your estate, and you select the beneficiaries of your estate. Without a Will, these matters are left to the court to decide, in accordance with governing legislation, and it is possible that neither the beneficiaries nor the executors may be the persons you would have chosen.

Another advantage is that a Will takes effect immediately upon death, and therefore the executors named in the Will are able to deal with the assets of the testator immediately. Where there is no Will, appointment of an administrator by the court must be made.

## Who can make a Will?

If you are over the age of eighteen (18) years you can make a Will. You can also make a Will if you are under the age of eighteen (18), and are or have been married.

## What happens if I die without a Will?

If you don't make a Will or use some other legal method to transfer your property when you die, legislation law will determine what happens to your property. This process is called "intestate succession." Your property will be distributed to your spouse and/or children or, if you have neither, to other relatives according to a statutory formula. If no relatives can be found to inherit your property, it will go into your province's coffers.

**IN THE ABSENCE OF A WILL, A COURT WILL DETERMINE WHO WILL CARE FOR YOUR YOUNG CHILDREN AND THEIR PROPERTY IF THE OTHER PARENT IS UNAVAILABLE OR UNFIT.**

## How often should I update my Will?

As a rule of thumb, a Will should be reviewed every three to five years. A simple change of executor or beneficiary can be made by a codicil (a legally binding amendment or addition) to an existing Will. If there has been a significant change in your circumstances, you may want to review your estate plan and have a new Will drawn up. Examples of a significant change in your circumstances are a change in your marital status (marriage, separation, or divorce), and the birth or death or change in marital status of a beneficiary.

## Are funeral or burial instructions part of a Will?

If you have a preference about your funeral or burial arrangements, include instructions in your Will. While not legally binding on your executor(s), your instructions will help make these decisions easier.

## What is the role of the executor?

One of the most important estate planning decisions is choosing an executor to ensure that your wishes are carried out exactly as stated in your Will.

While being named executor is an honour for a family member or friend, the duties are often complex, demanding, and time consuming. To avoid delays or added costs to meet all legal and financial responsibilities, your executor must be knowledgeable in many disciplines. If not, specialists in law, income tax, investments, and estate management may have to be retained at the expense of your estate.

There is also the emotional strain of being an executor. A relative or friend can be held liable if errors are made and must remain completely impartial during a very trying time.

## How do I deal with monetary bequests and my personal mementos?

If you wish to leave monetary bequests, you must include them in your Will. But if you change your mind, you'll need to add a codicil or make a new Will.

If you wish to leave personal mementos, we add those items to a memorandum, which is attached to your Will. While not legally binding, such memorandum will provide a guide for your executor(s). It is easy to amend should you want to change the list of items included, and there is no fee for such memorandum.



## Can I use my Will to name somebody to care for my young children, in case my spouse and I both die suddenly?

**YES.** If both parents of a child die while the child is still a minor, another adult – called a “personal guardian” – must step in. You and the child’s other parent can use your Wills to nominate someone to fill this position. To avert conflicts, you should each name the same person. If a guardian is needed, the court will appoint your nominee as long as the court agrees that it is in the best interest of your child(ren) and no one contests the application of your chosen guardian. The personal guardian will be responsible for raising your children until they become legal adults at the age of eighteen (18). Of course, you should have complete confidence in the person you nominate, and you should be certain that your nominee is willing to accept the responsibility of raising your children should the need actually arise.

### Income tax considerations

Ontario removed succession duties some time ago. The federal government eliminated estate taxes as well. The only taxes currently incurred on death are capital gain taxes on your property (other than your principal residence) and applicable Court fees. When you die, Revenue Canada treats you as if you had disposed of all your assets at their fair market value. This may trigger a capital gain.

However, if your assets are left outright to your spouse or exclusively in trust for your spouse, the “rollover” concept applies. This results in a postponement of capital gains until your spouse either disposes of the assets or dies, at which time the capital gains, if any, will be triggered. Your principal residence is usually free of any capital gains tax.

Some things that may trigger capital gains if the property has appreciated value (again, unless left outright / in trust for your spouse) are a second family home, such as a cottage, ski chalet, or a condominium in the sunny south.

## Review your Will regularly

Does your existing Will protect you? Your Will should be routinely reviewed to reflect your changing needs.

### ASK YOURSELF THESE QUESTIONS:

- 1. Has my financial situation changed?
- 2. Has anyone named in my Will died or become disabled?
- 3. Have changes occurred in the law affecting my Will?
- 4. Has my Will dealt with family community property laws?
- 5. Has a divorce, marriage, separation or birth of a child occurred?

**IF YOU ANSWERED YES TO ANY OF THESE QUESTIONS, IT IS TIME TO UPDATE YOUR WILL.**

## Safekeeping

Once your Will has been signed and witnessed, you should keep it in a safe place – such as with us, or if you have named a trust company as executor, at its office. Make sure your executor knows where your Will is and how to obtain it when it is needed. The original Will is required to establish the executor's authority to obtain probate and distribute your assets.



This document is provided for information only and is not intended to be construed as advice.



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