

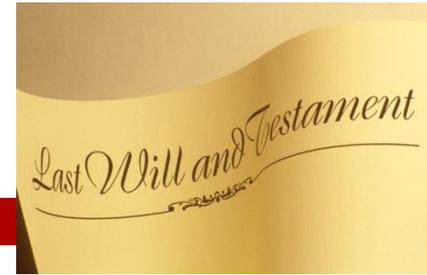


# LAST WILL & TESTAMENT

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# 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.

# Three Key Objectives of a Will



- ❑ 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.

# Why Should I Make A Will?

## With a Will

- Having the peace of mind your loved ones will have the necessary instructions to carry out your wishes.
- Takes effect immediately upon death & executors are able to deal with the assets right away.
- Able to nominate a “personal guardian” to take care of your minor children if both parents die.

## Without a Will

- A person who dies without a will is said to have died “intestate.”
- An administrator must be appointed by the court before the deceased’s assets may be dealt with.
- Distribution of assets is made in accordance with the *Succession Law Reform Act*, R.S.O. 1990

# Revoking a Will



- Marriage revokes all existing Wills by law.
- Wills made in contemplation of marriage are not revoked.
- When new Wills are prepared, there is usually a revocation clause in the new will.
- When making multiple wills, the revocation clause must be left out of the Secondary Will.

# Multiple Wills

- Identified as “Primary Will” and “Secondary Will.”
- A Will may cover some but not all of the testator’s property.
- One will includes assets that will require probate, a separate will is prepared for assets that may not require probate.
- The *Granovsky*\* case approved the use of multiple wills as a means of probate planning.
- Has become common in Ontario for people who own significant assets which may not require probate.

\* *Granovsky Estate v. Ontario*, (1998) 21 E.T.R. (2d) 25, 53 O.T.C. 375, 156 D.L.R. (4<sup>th</sup>) 557 (Ont. Gen. Div.)

# Assets that are not Intended to be Submitted for Probate

- Land registered under the Registry Act.
- Land registered under the Land Titles Act if the transmission application following death will be the first transaction involving the land after conversion to the Land Titles System.
- Land registered under the Land Titles Act which is worth less than \$75,000.
- Shares of private corporations.
- Shares of public corporations with low values.
- Personal effects.
- Canada Savings Bonds within certain dollar limits.
- Unsecured loans.

# Intestate Succession



- Without a will, 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 located to inherit your property, it will go into your province's coffers.
- A court will determine who will care for your children & their property if the other parent is unavailable or unfit.

# Role of the Executor



- Choosing an executor is one of the most important decisions in estate planning.
- The executor ensures that your wishes are carried out exactly as stated in your will.
- The duties are complex, demanding and time consuming, as well as the emotional strain .
- The executor must remain completely impartial during a very stressful time.

# How Often Should I Update My Will?



- Your Will should be reviewed every three to five years.
- A change of executor or beneficiary can be made by a codicil to an existing Will.
- If there have been significant changes in your circumstances, you may want to review your Estate plan and have a new Will prepared.

# Common Mistakes with Wills

## Execution of Wills

- Two (2) witnesses must be present at the same time to witness the signing of the Will.

### Witnesses cannot be:

- The Executor or the spouse/partner of the Executor named in the Will;
- The spouse or child of the Testator; or
- A beneficiary or the spouse/partner of a beneficiary named in the Will.

# Common Mistakes with Wills, continued

- Witnesses must be eighteen (18) years of age or older.

## Holograph Wills

- A Will prepared completely in your own handwriting.
- Does not require witnesses.
- People make the mistake of using printed forms and just filling in the blanks.

# Does Your Existing Will Protect You?

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

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If you have answered yes to one or more of these questions, it is time to update your Will.

# Income Tax Considerations



- Capital Gain Taxes
- Applicable Court Fees



## Safekeeping

Once your will has been signed and witnessed, you should keep it in a safe place, such as with my firm, or if you have named a trust company as executor, at its office.

You should supply your executor with a true copy of your Will for his or her records. Inform your executor where your original Will is located as the original Will is required to establish the executor's authority to obtain probate and distribute your assets.