

Wills

Some of the benefits of making a Will include the ability to direct where your assets will go, the cost and time savings of dispensing with an administration bond and the speed in distributing assets to the beneficiaries, paying debts and fully administering the estate. Each is, in itself, a valid reason for having a Will prepared immediately.

If you decide to prepare a Will, the chances are it will be relatively uncomplicated. In order to instruct a lawyer to prepare a simple Will, you must be able to answer the following questions:

1. Who will be the executor and, in the event of that person's death, incapacity or unwillingness to act, alternate executor?

In other words, who do you want to hold or distribute your assets in accordance with the wishes set out in your Will? Who will make funeral arrangements and pay your debts? It should be somebody that you trust. That person should know enough about you to know what assets you have and what debts you may owe. Typically, your spouse would be the first choice as executor. A second choice might be a responsible child(ren) over the age of eighteen. Other family members might be considered as well. Unless your estate is complicated, you will not require the services of a Trust Company to act as a corporate executor. Keep in mind that your executor can administer your estate faster if he or she is located close at hand. An executor in Vancouver will not be able to administer the estate as quickly as an executor in Ontario if your assets are located solely in Ontario. Also, remember that if an executor is resident out of Canada, it is necessary for that person to post an insurance bond with the court incurring further expense to the estate.

2. Are there any special bequests (gifts) that you want to make?

These might be family heirlooms which are to be passed down from one generation to another or specific dona-

tions to charities. Generally you should avoid too many gifts of furnishings and the like. People tend to have changes of heart about one person or another and, as well, such chattels disappear or depreciate from time to time thereby necessitating Will changes and additional cost.

3. Who is your choice for the residue of your estate and the alternate if such person predeceases you?

The first choice would likely be your spouse. If your spouse had passed away, you might want to indicate that the estate is to be divided equally between your children. It is not necessary to name the children specifically unless not all the children are to receive equal treatment. Are grandchildren to receive the parent's share if a child dies?

4. If young children are potential beneficiaries, do you want the money held in trust until they reach a certain age, and what if they die before yourself or such age?

Most people do not want young children receiving substantial sums of money until they are old enough to handle the money responsibly. The most common ages used in Wills are eighteen and twenty-one years of age. Perhaps you want the ability of the executor to dole out money in advance of a given age in certain circumstances, if you think the parents cannot afford a certain type of expense.

5. Tie up loose ends.

It is essential to make sure that you do not create trusts and then have nowhere for the money to go if the beneficiary of that trust should die. Consider the situations that might occur. What happens if you do not have a child or a grandchild alive at your death? What happens if one child dies leaving children and a spouse? Or a spouse

and no children? Or no spouse and no children? In the final paragraph of the Will disposing of your assets, you should indicate how you wish to deal with these situations. Marriage or re-marriage in most instances revokes a previous Will. If there is no Will, all assets are frozen until an administrator is appointed. Charities or a favourite friend will not receive anything without a Will. A Will can ensure your assets are distributed according to your desires and make things easier and cheaper for your “family”. Disabled family members who are going to be beneficiaries may require special clauses or a “Henson Trust”.

Beware: A substantial amount of estate litigation is spawned by home-made or home-executed wills. This includes will kits. Your “savings” may end up being significantly more expensive.