

Klein Law

So ... you're thinking of doing a will?

Amazingly, a shocking number of people have never taken the time to prepare a will!

What is a Will?

A will is simply written instructions, prepared before death, directing the disposition of one's assets and making provision if necessary, for the proper care and maintenance of one's minor children. The will must conform to the laws of the province in which the *Testator* (that's you) resides.

If no will has been written, your estate (assets and property) will be divided according to the provincial laws that apply and court costs will eat up what assets you really wanted to leave to your loved ones or charitable organizations.

Unfortunately, many wills are prepared in haste, often before a trip, when they really should be done thoughtfully.

Everyone -- even "singles" who have reached the age of majority, need a will if they have any property and want to have a say about who gets it.

If you die *intestate* (without a will) the distribution of your estate will be determined by the laws of your province. Your friends, relatives and charitable organizations who do not fall under intestate laws will receive no benefit from your estate, even though that would have been your wish and desire. Further, inconvenience and costly legal precautions and restrictions may delay distribution to your spouse and/or children and may unnecessarily reduce the amount they receive.

Even if you and your spouse own everything jointly you still each need separate wills. If you were both killed at the same time ("common disaster") one will is not sufficient. Depending on who died first, it could be treated as an *intestacy* (dying without a will), thus frustrating your carefully made plans.

More and more people, even with modest estates are discovering that it is often easier to give substantially to favoured charitable organizations through their will, after their death, than it was while they were alive. And it is possible to do this and still provide generously for dependents and close relatives at the same time.

Usual Reasons for not Preparing a Will

- Some put off the preparation of a will because of the reluctance to face the inevitability of death.
- Some are afraid the preparation of a will somehow hastens their demise.
- Some plan to do it eventually, but because it is their "last will and testament" they think it is the last thing to do just before their death.

Preparing Your Will

Making a will is not a difficult process. The following steps are suggested:

- Determine the value of your estate. (Make a list of all your property and debts).
- Provide for those who are dependent upon you (this includes naming a guardian(s) and alternate guardian(s) for your minor children).
- Decide upon gifts to special individuals and charities.
- Name an Executor and alternate Executor who will ensure that your instructions are followed.

NOTE: If you're redoing an old will -- have a lawyer examine it.

Administration of Your Estate

One of the most important decisions regarding your will is the choosing of an Executor. He or she is the one appointed by you to carry out the terms and provisions of your will (your wishes) and becomes the Trustee for your children's funds, unless a separate Trustee is named. If you do not name an Executor in your will, the Courts will appoint an Administrator. He or she may not be the person you would have appointed, so exercise the right to name the one you want NOW. To allow for unforeseen circumstances it is imperative to name alternate Executor(s).

Who Will Be Your Executor?

The Executor is a person, or persons, whom you appoint to "execute," that is carry out your intentions as set out in your will. He/she makes claims on behalf of your estate or settles outstanding debts. Above all, this person is one you trust and rely upon to see that all your wishes and desires are fulfilled after you die. It really is a

position of trust on the one hand, and on the other, this person must be dependable and have some sort of understanding of figures and organization.

It is highly recommended that the person you choose as Executor, be it your spouse or friend, be informed of your intentions of appointing him/her beforehand.

Criteria for Choosing Your Executor

- Resident in same province as deceased
- Same age or younger
- Willing
- Able
- Capable
- Available
- Honest and trustworthy!

A combination of an experienced Executor and a relative or friend, acting together as co-Executors may be preferable to either one acting alone.

While a co-Executor arrangement can work well, there may be disadvantages. There is the danger that disagreement between the Executors may make administration more difficult or delay decision making.

The Executor named in the will can also be a beneficiary of the estate. In that case he or she will not be reimbursed from the estate for his or her duties as Executor.

There is nothing wrong with naming your spouse as Executor or Executrix providing you have named an alternate in the event that you are both killed in a "common disaster" or for some other reason, the other is unable to serve.

Alternate or Successor Executors

It is important to remember that the Executor you name may be unable or unwilling to serve when the time comes to accept the appointment. Therefore, you must provide for successor or alternate Executors, all of whom should be chosen with the same care and by the same standards as the original Executor. If you do not name successor Executors and it becomes necessary to have one, the Court will appoint one. This could mean less effective performance and higher fees and costs.

Who Will Be Your Trustee?

Trusts are sometimes set up in a will. Mainly, they are used to hold property for a period of time and then to distribute it. Generally speaking, and unless your estate is complicated, your Executor acts as Trustee as well.

What Comprises Your Estate?

Everything you own, no matter how great or small, upon your death, comprises your "estate". Make a list of those things (assets) you own, from furniture to household ornaments; jewellery; to money in banks, bonds or stocks; to cars, boats and houses.

In your will, you will be able to make "specific devises," that is giving specifically described articles to specific people or organizations, or you may simply give all of your goods to a number of people to be distributed equally, in the form of a "general devise." The possibilities of the "ways to distribute" these articles are endless and up to you. You can also give money specifically to an organization or people, in the form of "bequests."

Who Will Be Your Beneficiaries Who Will Benefit?

Here, the choice is yours. Beneficiaries can be your spouse, children, grandchildren, friends, relatives and charitable organizations. The point is always: make sure that alternatives are provided for, in case one of your designated beneficiaries dies before you.

Care of Minor Children - Your Guardians

A Guardian is appointed to care for your minor children (under 18 years of age) should you and your spouse die in a common disaster. (Often because of age, parents are not the best choice.)

(a) CRITERIA FOR CHOOSING GUARDIANS

1. Same spiritual values as parents.
2. Similar lifestyle habits.
3. Similar economic circumstances to parents.
4. Similar "social" standing to parents.
5. Same age as parents.
6. Someone chosen in consultation with older children.

(b) **RESPONSIBILITIES OF GUARDIANS**

1. Raise minor children to the age of majority.
2. Provide housing, clothing, education and health needs from funds provided by the "Trustee."
3. Provide an atmosphere as close as possible to "home."

(c) **EXECUTOR & GUARDIAN BEING THE SAME PERSON**

1. Usually it is wise to nominate separate people for each function.
2. The person(s) raising the children will often find it easier if they do not have to make financial decisions as well.
3. Naming separate individuals safeguards against the unwise use of trust funds.

(d) **GRANDPARENTS NAMED AS GUARDIANS**

1. This is usually not a good idea.
2. Often do not have the strength, desire or ability to respond to all the needs of younger children.
3. Should be free to continue their role as grandparents.

It is not necessary to leave a bequest to Guardians of minor children. The "Trusts" set up for the children in your will, shall be made available to the Guardian (within certain guidelines) by the Trustee.

Burial Instructions

It is a comfort for some, and saves great aggravation for your Executor and loved ones, to spell out your intentions of where and how you want to be buried on death. Some people choose to be cremated, while others specify that they desire to be buried, for example, in a "closed casket, in the least expensive way". It should be drawn to your attention that pre-funeral arrangements, including the purchase of burial plots, can be worked out beforehand. This would ensure your place and style of burial or cremation, and also lessen the financial burden and last minute preparations on others.