



Do I Need a Will?

If you have a Will, you can:

- decide who benefits from your estate (if you have dependants at the time of your death, there are special considerations and possible limits);
- give items to certain individuals;
- provide for a common law spouse, step-children or children of a common law relationship, who are not related to you by blood;
- make special provisions for a handicapped relative;
- choose your Estate Trustee (formerly called an “Executor”);
- choose who will be the guardian of your minor children and who will look after their assets;
- decide the age at which children or others are to receive their share of your estate;
- ensure flexibility in the administration of your estate;
- reduce the cost of administering your estate;
- reduce income taxes, particularly if you die leaving a spouse behind.

- the person appointed to administer your estate may not be the person that you would have chosen;
- immediately after your death, no one will be able to handle your affairs until the Court has appointed someone to be the Estate Trustee Without a Will;
- your estate is divided into shares that may not be what you want;
- relatives that you do not want to inherit may receive a share of your estate;
- your estate will likely have to cover the cost of an Estate Trustee’s bond (a premium must be paid to an insurance company) which would not be necessary had you appointed an Estate Trustee in a Will;
- only your married spouse and children who are related by blood will receive anything from your Estate; step-children receive nothing; if you have no spouse or children, your parents will inherit your estate; if you are separated but not divorced and have not signed a separation agreement, your separated spouse will inherit from you;
- a common law spouse or same sex partner will receive nothing other than support but only if she or he was entitled to it at the time of your death and if a court approves the request for support;

What If I Don’t Have a Will?

If, at the time of your death, you do not have a Will, your estate will be distributed according to Ontario’s intestate succession law. A person who dies without a Will dies “intestate”. Under Ontario law:

- the shares of children under the age of 18 will have to be held and managed by the Public Guardian and Trustee; the shares will be

turned over to them when they reach 18, regardless of their ability to handle such assets;

- if you do not have any living relatives or if none can be found, your estate will go to the government.

Can I Avoid Making a Will by Owning Everything Jointly?

In some cases, this may be possible but there are a number of reasons why it may not work: some things cannot be owned jointly; the time and cost to change everything to joint names may be more costly than making a Will;

- if at the time of your death you are separated but there is no separation agreement, assets held jointly with your spouse will become your spouse's assets;
- if you are married and both you and your spouse die without children, the assets of both spouses will go to the family of the last spouse to die.

What About Handwriting My Will or Using a Standard Will Form from a Store?

A Will that is entirely in your own handwriting is called a holographic Will and is valid as long as it is completely in your own handwriting, signed and dated at the end. There is no need for witnesses. A holographic Will may be a short-term solution if there is not enough time to do a proper Will. However, you should be aware that such a Will can create problems.

If the Will must be submitted to Court for probate after your death, a sworn statement from someone such as your Bank Manager is necessary to prove that the writing and signature are actually yours. Often, a holographic Will does not address many of the issues which have been discussed in this brochure, sometimes with serious consequences.

The standard Will forms sold in stationery stores can create problems and provide a false sense of security. For example, a Will form which is partly pre-printed and not witnessed is not a valid holographic Will. Although there may be handwritten portions, any pre-printed parts will be ignored by the Court. In addition, such Will forms rarely provide enough information to address each person's particular situation. The result can be expensive legal bills paid by your estate, should your heirs be forced to ask a Court to determine exactly what you wanted done with your estate.

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