

The Importance of Wills as an Estate Planning Tool

1. Why is having a Will so Important?

A Will allows us to express our final wishes and let our loved ones know that we took the time to think about and provide for them after we have gone. Everyone's situation is unique to their personal circumstances, but the following are some common issues to look for in a well drafted Will:

a) Dying without a Proper Will ("Intestate")

Where there is no Will or a Will has failed (i.e. due to incomplete execution or ambiguous wording), our government has imposed a process for dealing with your estate. For example, assume that you are currently living in Ontario, have both a spouse and children, and the value of your estate is over \$200,000. The legislation dictates that your spouse will receive the first \$200,000, with the remaining value of your estate being divided between your spouse (who would receive 1/3) and your children (who would receive 2/3). If your children are minors, they may not receive their share of your estate until they reach of age of majority or until the minor's guardian is granted custody of the assets. **Either way, it becomes a more difficult process which can be avoided by simply having a Will which clearly outlines your wishes.**

The complications of dying intestate are compounded if you are in a blended family situation, or a common law relationship, or are the owner of a private company, or hold assets in other jurisdictions and/or hold dual citizenship with another country. These are only a few of the obvious issues to consider.

b) Taking Care of Children

This is rightfully a big consideration for many parents. **The only place where you can express who you would like to take care of your young children in the event something happens to you is in your Will.** If you die intestate and your children are entitled to a share of your estate, their share is paid into court and held for them until they attain the age of 18 years or until the minor's guardian is granted custody of the assets, which can take a significant amount of time. Perhaps of even greater significance is the fact that there are no restrictions or guidance provided to your child when they receive their share at the age of 18 years. Many people are concerned at the thought of having their children receive a large sum of money (for use at their absolute discretion) at a very young age.

c) Tax Planning

There are two different types of taxes that are payable at death, income taxes and estate administration taxes. As a general rule, one is deemed to have disposed of all of their property immediately before death, which commonly results in the triggering of capital gains. **Under a properly structured Will, capital gains can be deferred upon death.** There are also other tools that can be utilized in particular circumstances to minimize the payment of income taxes and/or estate administration taxes, such as the use of various testamentary trusts or the use of multiple Wills.

2. How is a Will an Estate Planning Tool?

During our lives we focus on how to gather and manage our assets so that we have enough wealth during our lifetime. However, we also need to focus on preserving those assets on death and ensuring that the wealth is transferred to the next generation. **A properly planned Will is a critical and integral component of your estate plan.**

3. What Are You Really Paying For?

A properly drafted Will can save your loved ones grief and aggravation during a sensitive and difficult period. Some people are taken back at the cost of properly drafting a Will when there are pre-printed forms and computer programs available on the market for a fraction of the cost. So why use a lawyer? You are paying for someone to think through the maze of legal and practical issues surrounding death to ensure what is written in your Will reflects **your wishes** and works for **your particular circumstances**. You are paying for the **analysis, planning, critical thinking and drafting** which is behind the paper that the Will is written on, not the paper alone.

Pre-printed forms, computer programs, or a poorly drafted Will may seem like a good way of saving money on legal fees. However, there is a risk that these forms could be completed incorrectly or could include ambiguous wording. This may end up costing your loved ones significantly more in court and legal fees than the amount you would have paid to have the Will properly drafted by an experienced lawyer in the first place.

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