Five Reasons why you should have a Will

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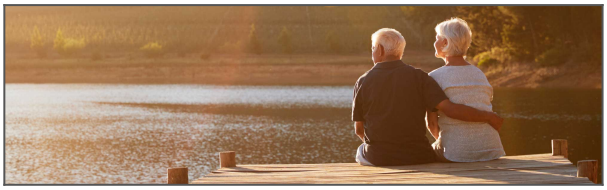

According to a **2019 Survey** by the Financial Consumer Agency of Canada, only half of all Canadians have wills. The number is even lower for Canadians under the age of 35 (only 22%!). Even if you do not think you will have a large estate, it is important to have an updated and properly drafted and executed will. Here are the top 5 reasons you should have an up to date will:

1. Choosing your Personal Representative

Your personal representative is the person who deals with the assets of your estate and is given the authority to make arrangements for your funeral and cremation or burial.

“Personal Representative” is an umbrella term for Executors (the person appointed in your will to deal with your estate) and Administrators (a person appointed by the court to deal with your estate where there was no will, or where the executor was not willing or able to act). At common law, individuals cannot direct any particular thing to be done with their bodies after death. It is the responsibility of your personal representative to make those decisions.

Your will “speaks from death” and gives your Executor authority to act immediately. If you die without a will, your next of kin will have to apply to the court to be appointed Administrator, and this process can take months. If it’s unclear who will have the authority to act, either because of your family structure or because your will is out of date, a funeral home may be reluctant to move forward even on prepaid funeral plans until a court order gives certainty as to who can confirm those instructions.

The delay caused by needing to obtain a court order appointing an Administrator can also cause issues with your assets, as no one will have the legal authority to deal with them until that order is granted.

2. Dying without a will leads to inflexible distribution

If you die without a will, you are said to have died “intestate”.

The Intestate Succession Act will dictate who in your family is entitled to your estate and how much everyone receives. This scheme is very rigid, and can mean that certain people are left

with nothing, or less than what you would prefer to give them. If you have a very close friend who has been caring for you, or you took in a child that you never formally adopted, a will is the best way to ensure that they are looked after.

3. Blended families

Divorce and second marriages are becoming more and more common.

The Intestate Succession Act provides for different distributions if your children are not also the children of your spouse. However, you may not be happy with this division. It is especially important to have a will in blended families.

4. Utilizing trusts

If you have minor children, children with disabilities, or children from a prior marriage, a trust can be a very useful tool.

A trust can be structured to give your children the benefit of your estate, while also ensuring the money is not lost to financial irresponsibility. Without a will, minor children will be entitled to their share at 18 years old. A trust can specify that an individual's interest be held until they reach a specific age, like 21 or 25, while also allowing withdrawals for things like college or university tuition.

Trusts can also be used to give your spouse the benefit of your estate during their life, while ensuring your children receive the assets after your spouse's death. Trusts are just one tool lawyers can include in your will to make managing your estate easier for your loved ones.

5. Avoid Court Applications

An improperly executed will or a will that does not account for all of your legal obligations can result in costly and time-consuming court applications.

The Wills Act sets out certain requirements that must be met for a will and its gifts to be valid, including requirements about who can act as a witness. While fill-in-the-blank wills can be cheap and convenient, you may not wind up with a valid will, or you may accidentally invalidate a particular gift in your will. A will drafted without the advice of a lawyer may invite a claim under *The Family Property Act* or *The Dependants Relief Act* if certain people in your life are not properly accounted for in your will.

Personal Representatives dealing with a will that is vague or which may not have been properly executed will have to apply to the court for directions or an order validating the will in order to protect themselves from liability. Such applications are costly and can deplete your estate assets.

Bonus point: Properly drafted Powers of Attorney are equally as important as we live longer.

At some point, even if you are still young and healthy, you may become incapable of managing your own affairs for a variety of reasons. A properly drafted and executed Enduring Power of Attorney will save your loved ones the stress and cost of a committeeship application. On June 1, 2023, amendments to *The Beneficiary Designation Act (Retirement, Savings and Other Plans)* will come into force. A further article will be released regarding these amendments and their impact on Powers of Attorney.

Conclusion

This list is not exhaustive by any means. There are a number of reasons you should have a will in place. Most importantly, it assists your loved ones in the immediate aftermath of your passing. Having a properly executed will drafted with the advice of a lawyer can save your estate money in court fees and taxes. While the cost of having a lawyer prepare a will may seem high, it almost inevitably costs more if your will is not properly drafted and executed.

For more information, please contact the writer. In the meantime, you may wish to read the following TDS article: **Things you need to know before you write your will.**

Learn more about the author(s)

Dell Dyck practises in Wills and Estate Planning and Administration, with a particular interest in First Nation Estates. She also practises in business law generally, with a focus on Privacy and Data Protection, Intellectual Property, and Technology. She is a member of the TDS Privacy and Data Protection Practice Group.

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would be pleased to provide you with our assistance on any of the issues raised in these articles.

