

Your Employee Assistance Program is a support service that can help you take the first step toward change.

Will and Estate Planning

The following provides and introduction to will and estate planning. Wills and estate planning are governed by both provincial and federal legislation. As a result, the law, as well as policies and practices vary depending on the province where you live. If you are preparing a will, living will or power of attorney, consult your estate planner and lawyer.

Everyone should have a will. A will is a legally binding declaration of a person's wishes dealing with the division of his or her estate after death. A will doesn't operate until the testator's—or person who made the will—death. It may be revoked or amended at any time, as long as the testator is mentally capable to do so.

Why do I need a will? There are many important reasons for having a will:

- A will lets you make specific bequests to specific beneficiaries.
- A will permits you to establish trusts to assist in the financial planning of your beneficiaries.
- A will allows you to select a specific individual or corporation to administer your estate; i.e., your executor. It also lets you grant broader powers of administration to your executor than what might otherwise be available to a court appointed administrator.
- A will gives you the ability to appoint a guardian if you have minor children.
- A will lets you to create a trust for your children. It gives your trustee broad powers to manage the assets of the trust for your children, until they reach the age of majority.
- A will permits your affairs to be dealt with in a timely and efficient manner.

What if I don't have a will? If you have no will, your property will be disposed of in accordance with the laws of intestacy in the province where you live. These laws are inflexible and your estate may pass to beneficiaries you did not intend to benefit.

Also, in most provinces the court dictates who will administer your estate. This person may not have been an acceptable choice to the deceased. The same holds true for guardians of your minor children. A court appointed guardian could be a person who the deceased would not otherwise personally select.

Delays caused by court appointment of an administrator may be costly to the estate. On top of this, a court appointed administrator must secure a bond before he or she can act. And your estate might have to pay this expense. An executor appointed under a will can serve without a bond.

What is controlled by a will? Except as stated below, all real and personal property owned solely by you will be controlled by your will:

- Life insurance or RRSPs payable to a named beneficiary, however, do not form part of your estate and are not controlled by your will.
- Joint ownership of property, including real estate, also does not form part of your estate and passes automatically to the other joint owner if the joint ownership is with rights of survivorship.

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Can I deal with my property as I wish in my will? In most cases, you can distribute your property freely. Some provincial laws, however, may place certain restrictions on you.

Family maintenance legislation tries to ensure that your dependents are left with adequate resources and support when possible and if necessary. Matrimonial property legislation also recognizes the contribution of both spouses to the marriage.

Are there any estate taxes, succession duties or other taxes on my estate upon my death? In most provinces, there are no estate taxes, succession duties or gift taxes at present.

Federal tax is levied on capital gains. The deceased is deemed to have disposed of all capital property at fair market value as of the date of death. The difference between cost base and market value results in the gain.

How long does my will remain in effect? Your will is valid until you change or revoke it. If you marry or remarry, your will is automatically revoked unless it was made in contemplation of the marriage. You should consider re-examining your will if:

- Your marital status changes.
- Your family status change (e.g., birth or death of a child).
- There is a significant change in the value of or type of property in your estate.
- You change residence.
- Your executor or alternate executor dies.
- One or more of the beneficiaries named in the will dies.

What laws apply? The laws of the province where you live at the time of your death govern the disposition of your personal property. Real estate is governed by the laws of the province where the property is located.

Powers of Attorney—Living Wills

A *power of attorney* authorizes another person to act as your agent or attorney during your lifetime. It becomes void upon your death.

If you haven't prepared and signed a power of attorney, and become incapable of handling your financial affairs, a court can appoint a trustee/guardian to act on your behalf. This is a restrictive and expensive process you should avoid.

Who should act as my attorney? An attorney can be either a person or a corporation. As in the case of executors, there may be situations where it's better for a trust company to act as your attorney. These reasons may include, experience and expertise, impartiality and understanding, and permanence and availability. Your lawyer can help you decide what's best for you.

When should the power of attorney be acted upon? Identify the circumstances where you want your attorney to begin acting on your behalf. Typically, you specify that the holder acts only when you become incapacitated or unable to act on your own behalf.

What should your attorney's powers be? Your attorney's powers can be all encompassing or limited to a specific purpose. Your attorney's powers may also include the right to provide consent or directions around your medical treatment and to provide for the appointment of your guardian. Your lawyer can detail the advantages of each approach.

Drawing up your will and power of attorney. Some people try to draft their own will using a stationary form or by copying an existing will. Although such a will, if properly executed, can be legally binding, it's not advisable. Your estate is unique to you so your lawyer should prepare your will and

power of attorney to ensure that all legal formalities are met and that documents properly reflect your wishes.

Creating a will can help prepare yourself and your loved ones for the unexpected and relieve some of the stress during a difficult time. Contact your estate planner, lawyer or a professional for assistance and guidance during this important process.