

Your Will Planning Workbook



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Preparing your Will

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Glossary of terms

All these words will appear in **bold** the first time they're used in this Will Planning Workbook. References may vary from Province to Province.

Personal representative

A personal representative who is appointed by the court to settle your estate if you die without a Will, and therefore do not have an executor/estate trustee.

Assets

All the property that you own, including your house, cottage, RRSPs, car, savings account deposits, etc.

Beneficiary

A person named in your Will, who you want to receive property from your estate or under a trust after you die.

Bequest

A gift to a beneficiary stated in your Will.

Capital gains (losses)

The difference between what you paid for certain assets and what the assets are worth when you sell them or die.

Committee

The court appointed manager assigned to handle your affairs if you become physically and/or mentally incapable of doing so yourself.

Estate

The trust to which all of your assets are transferred when you die.

Executor/Estate trustee

A personal representative, appointed by you in your Will, who is responsible for settling your estate when you die.

Heirs

The people you leave behind who will inherit your property after your death.

Intestate

If you die without a valid Will, you die intestate.

Living trust

A trust created during your life.

Mandate

The Quebec equivalent of a power of attorney.

Minor

A person who has not reached the age of majority (18 in many provinces).

Power of attorney (property)

A written document that allows a person to act as your legal representative (to do your banking, pay your bills, etc.) A power of attorney for personal care can also be appointed in a separate document.

Probate

The process of having a court declare your Will valid.

Probate fees

The amount paid to the court as a fee for having your Will probated.

Trust

A relationship naming or establishing a trustee to manage one person's assets for the benefit of another person, the beneficiary.

Trustee

The person responsible for managing a trust (this may be the same person as the executor of the Will).

Introduction

A great deal of thought and planning needs to go into preparing your Will. Not only should you consider what your **estate** is currently worth, you should also consider your future sources of wealth. In addition, your Will should be flexible enough to include unborn, as well as living, **beneficiaries**. It is a task that should not be handled alone. Discussions with your family and professional advisors will help you make decisions best suited to your needs and wishes. This workbook contains information to help you prepare your Will. However, you will still need to meet with a lawyer when you are ready to put it all together.

Your estate

Keep records of all your **assets** – your house, pension, savings plans, insurance and investments.

A questionnaire has been provided at the back of this workbook to assist you with this.

There are many questions you will need to answer regarding your estate. For example:

- Is the title to the house in your name or your spouse's name, or both? This is important in determining whether the house will form part of your estate to the named beneficiaries.
- Who are the beneficiaries named in your insurance and pension plans? If anyone other than your estate is named, then the proceeds will flow outside your estate.
- What is the approximate value of your assets?

- If you are a partner or a shareholder in a private business, are there any arrangements for selling your share to your family or to the other people in the business when you retire or die?
- Have you loaned money to family or friends?

You should also keep records of what you owe, such as the mortgage on your house, bank loans, private loans, etc. If you have assets (such as investments or a second residence) which may be taxed in the future, how much will the tax be? (More about this under the heading "Income Tax.")

It costs money to administer an estate. As a rough figure, this can be from two per cent to six per cent of the estate value.

By noting what you have and deducting what you owe, including your taxes and your estate administration costs, you will see what is left for your beneficiaries.



Beneficiaries of your estate

Your spouse

Many couples leave everything to their surviving spouse. Some people leave assets in a **trust** for their surviving spouse, providing them with income to meet their future needs. An **executor/ estate trustee** is authorized to distribute the capital to the spouse if the income is not enough. When the spouse dies, the trust assets go to the children.

Life insurance, pension plans and RRSPs allow for a beneficiary to be named. This means proceeds flow directly to the named beneficiary and by-pass the estate. This avoids probate, attacks from creditors of the estate and generally simplifies the administration of the estate.

Your children

After you and your spouse have died, you may want what is left of the estate to be divided equally among your children. If your children are too young to receive their share, you can appoint a **trustee** to hold each child's share in a trust until they reach a certain age. Before they reach this predetermined age, you may specify that the trustee use the trust assets for the benefit of that child.

If you have several children, each child's share may not be enough to get the child through school. You may wish to specify in your Will that what is left for the

children be kept in a single trust until the youngest reaches an age that you choose. In the meantime, the trustee can use the income from the trust for your children, unequally if necessary. Then, when the youngest reaches the age specified in your Will, what is left is divided among the children.

On the other hand, if a child's share will be substantial, some people direct that it be given in stages – part at one age and the balance at a later age.

In deciding shares for your children, your Will should also deal with these questions:

- How much flexibility will you give the trustee to use the income and capital of the trust for the children? (In smaller trusts, the trustee is usually given a lot of flexibility; in larger trusts, the trustee may be directed to give the income directly to older children and to use the capital as necessary.)
- If the child dies before the age when the balance is to be received, who will receive what is left? His/her children? His/her spouse? As he/she directs in his/her Will? Your other descendants?

If your child needs special care and won't be able to look after what you leave him/her, you can leave assets with a trustee to hold in trust for the lifetime of the child. The trustee must use the assets for the benefit of the child. When the child dies, what is left of the assets within the trust would go to his/her descendants or to your other descendants.



Parents of young children often ask, “Who will look after our children if we both die?” Usually, families or friends step in to help. If there is a dispute, the courts decide. In your Will, you can name someone to be guardian of your children. The effect of such an appointment differs from province to province. The appointment may only be for a set period of time (e.g. in Ontario the appointment is good for 90 days). Thereafter, the guardian will need to be appointed by the court. However, it allows you to state your intention as to who should be a guardian. This provides evidence should a dispute arise as to the proper appointment. You may want to appoint a separate guardian and executor/estate trustee to avoid any possible conflicts of interest.

If you have named a **minor** as beneficiary under a life insurance policy, the proceeds would normally be paid to the court until the child attains the age of majority. The guardian would have to apply to the court to obtain the funds. There are two ways to avoid the situation – first, you can name the estate as the beneficiary and explain your intentions in your Will or, to avoid probate and potential claims by creditors of your estate, a separate insurance trust can be created in your Will. Second, the guardian or trustee could be named as beneficiary to hold the life insurance proceeds in trust for the minor beneficiary.

Others

If you want to make a specific **bequest** to someone – i.e., a relative, friend or charity – you can do so outright or within a trust, either as a set amount or a percentage of your estate. If you have no immediate family, careful consideration should be given to those you want to share in your estate and to what extent.

Personal and household effects

You may want personal items – jewelry, furniture, art – to go to certain people. In your Will, you can specify which items you want each person to have. However, this can lead to difficulties later if the personal items cannot be found or you wish to change your mind as to who receives the personal item. Alternatively, you can ask that these items be distributed as the executor/estate trustee decides. A common practice is to make a list of these personal items, including who you would like to receive them in

memorandum form, and keep it with your Will. The memorandum is not binding but can be a useful tool for your Trustee. Your **heirs** are not bound by this list since it is separate from the Will but your executor/estate trustee can use it as a guide when distributing your property.

Dependants

Most provinces require that you make plans for the support of your dependants in your Will. Your dependants are those you support, or should be supporting, when you die. This may include your spouse (including common-law and same sex partner depending upon the jurisdiction), former spouse, children (this may include adopted children and children born inside or outside marriage depending upon the jurisdiction), parents, brothers and sisters.

Federal Child Support Guidelines exist to determine support obligations for children when separation or divorce occurs. There are also Support Guidelines for spousal support, where a spouse is determined to be a dependant. It will depend on your circumstances and the needs of your dependants. Upon your death, if what you provide isn't adequate, the dependant may apply to the court to obtain more support.

Choosing executor/estate trustee

In your Will, you name one or more executors to carry out your instructions. Alternate executors should be named. As well, thought should be given to an executor within the same jurisdiction or living area. This simply makes it easier for your executor to deal with your affairs. It may also avoid the need for an executor who lives out of the jurisdiction to be bonded.

- Your executor(s) finds out what your assets are and what they are worth. They look after them until they are sold or distributed to your beneficiaries.
- They find out what you owe, including income tax.
- As soon as they can, they plan how to pay your debts and taxes, how to provide money for your dependants while the estate is being organized and how to complete the estate administration. There are tax returns to be filed, accounts to be kept, assets to be looked after, money to be raised and reports to go to beneficiaries.

You should choose an executor who will be sensitive to the needs of your family, will be able to do the job and will know when and where to get advice. You should try to choose people who will not have a conflict between their job as executor and their personal interest in your estate, such as a beneficiary or possible purchaser of an asset.

Choosing the executor(s) is as important as deciding how the estate will be divided. Your choice will depend on many factors. Many couples, who leave everything to the surviving spouse and then to their children, name the surviving spouse as the sole executor and then name others as alternative executors to handle matters for the children in the event the spouse is not living. Some people choose a professional trustee – a trust company – or authorize the executors to hire a trust company to do the administrative work. This usually occurs when the estate is quite large or there is a lengthy period of time for the distribution of the trust(s) contained within the Will. Others choose one or more people and a trust company as co-executors.

When there is a trust set up under a Will, the executor(s) could become the trustee(s). Executors and trustees are basically the same but they need not be the same people. You could have different trustees for different trusts. For example, if you are going to put assets in trust for your grandchildren, you could have the parents of each grandchild act as the trustee.

Inheritance tax and death duties

Currently, there are no inheritance taxes or death duties in Canada. (For information on **probate fees**, which some consider a hidden form of estate tax, see the section of this workbook entitled “probate fees”.)

Many countries, such as the United States and England, have estate or inheritance taxes. If you have property in countries where there are death duties or estate taxes, some special planning may be needed and a professional in that jurisdiction should be consulted for advice.

Income tax

There are special rules when a taxpayer dies. Your capital assets are said to be sold when you die and any **capital gains or losses** are included in calculating your final income. Also, your RRSPs and other tax-favoured

investment plans and accounts are brought into your final income. So, while there may not be any inheritance tax, there may be a large income tax liability resulting from your death.

You may be able to defer payment of this tax liability if you transfer your assets to your spouse through your Will. The tax liability will be deferred until your spouse sells the asset or receives the proceeds from the RRSP or until your spouse dies. At that time he or she will pay the tax. This also applies to a spouse trust – where you leave assets in trust for your spouse and he or she alone will receive all the income from the trust for the duration of his or her life.

There may be other planning opportunities that can reduce your tax liability on death. You should consult a professional advisor who can help you minimize the taxes your estate will owe. Often, it is appropriate to have life insurance to cover the potentially large tax liability at death.

When to review your Will

You should review your Will whenever your circumstances change: marriage (normally, marriage revokes a prior Will), death of a beneficiary, separation or divorce; birth of children or children growing up; disposing of assets given in your Will to someone; assets, debts or tax position changing substantially. A Will should also be reviewed after a change to income tax laws or other relevant legislation. Ideally, a Will should be reviewed every three to five years even if there has not been a significant change to one's assets or personal situation.

If you don't have a Will

If you don't have a Will, you will die **intestate**. Without a Will, provincial law decides how your estate will be distributed and that may be very different from what you want. Usually, your spouse receives a certain amount of your estate, (in many jurisdictions this is referred to as the “preferential share”) and the balance is then divided among your spouse and children. Portions for children under 18 will probably have to be paid into court. If you don't have children and if you aren't married, everything will usually go to your parents, brothers or sisters. For many people, this is not what they want.

Also, when you die intestate, the court will appoint a **personal representative** to settle your affairs. A personal representative will have many of the same duties as an executor, however, he or she will be restricted to handling your property in the manner set out in provincial law. The process of appointing a personal representative can be expensive and will delay the distribution of your estate. For these reasons, it is important to have a Will.

What if you become incapable of handling your affairs?

If you become incapable of managing your affairs and your assets need to be looked after, the court will appoint a **committee**. This could be a relative, friend or perhaps a trust company. The committee manages your assets and pays your expenses under the direction of the court. This takes time to organize and it costs money. When you die, the committee's role is terminated and your appointed executor takes over.

Powers of attorney

If you give someone **power of attorney** for property, you give them authority to deal with your assets – to sell, mortgage, manage and pay expenses. It can be a general power, meaning they can do anything you can legally do, or it can be special, meaning you authorize them to do only specific things.

In most provinces, provided that specific wording has been used, the power of attorney may continue to be effective even after incapacity.

Many couples give powers of attorney to each other, as well as appointing the other as executor/ estate trustee of his or her Will. We recommend that you consider giving power of attorney in conjunction with the preparation of your Will.

A power of attorney can also be done for personal care. The attorney in this instance, will determine what life-sustaining measures can be taken as well as the nature of care to be provided to the grantor.

An alternative to a power of attorney is a **living trust**. If you anticipate a serious illness, you can place all your

assets in a trust which is managed with co-trustees (spouse, friend or both). The trust can continue to provide for you and your family until death. After death, the trust can be distributed in the manner set out in the trust, or it can simply continue to provide income to your heirs, thus effectively replacing a Will and avoiding many of the delays and costs of estate administration. Most living trusts are revocable so that if you recover you can get all your assets back and terminate the trust.

Mandates in Quebec

Under Quebec law, the equivalent of a power of attorney is called a **mandate**. A mandate is set up to administer your assets if you become incapable of doing so yourself. The person named in the mandate will be able to make personal care decisions for you as well as manage your assets during your illness. You can draft your own mandate. However, a mandate only comes into effect if a court recognizes that you are not able to perform your duties (i.e., if you become incapacitated).

Probate fees

Probate fees are essentially a form of tax based on the value of your estate. When you die, your executor will probably need to have a court declare that your Will is valid in order to deal with certain assets. For example, banks and trust companies will often require that a Will be **probated** before they will allow an executor to get access to funds on deposit. Your executor will need to apply to the court for letters of probate and will have to pay the probate fees set by your province.

Currently, every province (except Quebec) charges probate fees. Probate fees may be higher in some provinces over others. These fees are applicable not only to the probating of Wills but also for approving the administration of the intestate estate. If you plan your affairs so that your assets pass directly to your heirs rather than through your estate, you can minimize the cost of probate fees. However, it is also important to remember that probate planning may cause other issues to surface that are not related to probate tax. You should keep these fees in mind as you work with your lawyer in structuring your Will.

Conclusion

Preparing a properly drawn Will is a very important task. Your insurance advisor would be pleased to assist you in discussing issues that should be reviewed with a lawyer at the time of drafting your Will. He or she can also provide you with information on the uses of life insurance in estate planning.

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Will Planning Questionnaire

Balance Sheet

Date: _____

| Assets: | You | Your spouse |
|---------------------------------------|-----------------|--------------------|
| Personal residence | \$ _____ | \$ _____ |
| Other real estate (list on next page) | _____ | _____ |
| Personal property | _____ | _____ |
| RRSPs | _____ | _____ |
| RRIFs | _____ | _____ |
| RPPs | _____ | _____ |
| TFSAs | _____ | _____ |
| Stocks and bonds (list on next page) | _____ | _____ |
| Life insurance (list on next page) | _____ | _____ |
| Business interests | _____ | _____ |
| Bank accounts (list on next page) | _____ | _____ |
| Liabilities: | You | Your spouse |
| Credit cards | _____ | _____ |
| Personal loans (list on next page) | _____ | _____ |
| Business loans (list on next page) | _____ | _____ |
| Mortgages | _____ | _____ |
| Total assets: | \$ _____ | \$ _____ |
| Total liabilities: | \$ _____ | \$ _____ |

You

Your spouse

Real estate:

Bank accounts:

Stocks & bonds:

Personal loans:

Business loans:

Life insurance:

Beneficiary/beneficiaries:

Policy loans:

Instructions:

By answering the following questions, you will be well on your way to planning a Will which will help ensure that your wishes are respected when you die. The next step is to take this information to your professional advisor who can assist you in making a valid, comprehensive Will.

1. Who do you wish to be your executor?

You: _____

Your spouse: _____

2. Do you wish to appoint someone to assist your executor? Who? (co-executor)

You: _____

Your spouse: _____

3. Do you wish to name someone to replace your executor in the event of death? (contingent executor)

You: _____

Your spouse: _____

4. Do you wish to leave any personal property to anyone? (Bequest e.g., jewelry, collections, clothing)

You: _____

Your spouse: _____

5. Do you wish to leave a sum of money to anyone?

You: _____

Your spouse: _____

6. Do you wish to leave the remainder of your estate to your spouse?

You: Yes _____

Your spouse: Yes _____

No _____

No _____

7. If not, do you want to create a trust for your spouse, with the trust assets going to your children when your spouse dies?

You: Yes _____

Your spouse: Yes _____

No _____

No _____

8. Do you wish that any bequests to your children go directly to them or be held in trust by the executor?

You: _____

Your spouse: _____

9. Do you wish to have your business managed by trustees until your spouse and / or children are capable of doing so?

You: Yes _____

Your spouse: Yes _____

No _____

No _____

In the event that children are left alone while minors:

10. Who do you wish to name as guardian or guardians?

11. Do you wish your estate to be held in one trust until your youngest child reaches a certain age (usually age of majority) with income from the trust paid to children according to their individual needs? (sprinkler clause)

You: Yes _____

Your spouse: Yes _____

No _____

No _____

OR

Do you wish your estate to be divided equally on your death and held in separate trusts with income paid to each child from his or her own trust?

You: Yes _____

Your spouse: Yes _____

No _____

No _____

12. If, at any time because of inflation or special needs, the income is not sufficient, do you wish to allow the children to use part of their capital? (capital encroachment)

You: Yes _____

Your spouse: Yes _____

No _____

No _____

13. At what age should each child receive his or her share?

(date of final distribution e.g., age of majority, age 21, half at age 21 and remainder at age 25)

14. If a child dies before the date of final distribution and leaves children of their own alive, do you wish your grandchildren to take your child's share?

Yes _____ No _____

15. If a child dies before the date of final distribution and leaves children of their own alive, do you wish that child's share to go to your other children still alive?

Yes _____ No _____

16. If none of your children survive to the date of final distribution, to whom do you wish to leave the rest of your estate? (gift over)

You: _____

Your spouse: _____

17. Do you wish to leave money to a charity?

You: _____

Your spouse: _____

If yes, which charities?

You: _____

Your spouse: _____

Other provisions:

18. Are there any special clauses you want in your Will?

You: _____

Your spouse: _____

19. Are there any special funeral instructions? (e.g., cremation, closed casket, burial plot)

You: _____

Your spouse: _____

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MK1990E (09/2010)

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