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# WILLS MEAN CHOICE AND BRING PEACE OF MIND

Consider this tragic scenario. You and your partner are returning from a dinner out and are killed in an automobile accident. Who will look after the children and administer their inheritance? Now consider this worst case scenario. You and the children die together in a common disaster. Who will administer and inherit the family's estate? When there is a will, these most important choices are made in writing and are legally binding on those left behind. Primary considerations when making a will are the choice of Executor, Trustee and last, but definitely not least, guardians for minor children.

An Executor's duties are outlined in the will. Their responsibilities are numerous and can be substantial. The main duties include probating (proving) the Last Will and Testament of the deceased and distributing the assets in accordance with the wishes outlined in the will. Fees in an amount not exceeding 5% of the gross aggregate value of the assets of the estate are payable to the chosen Executor or Executors. However, an Executor can elect not to charge any fees for this sometimes daunting task. Primarily the Executor must be honest, however, at times, 'thick skin' is also necessary to take control and remain unbiased. While family members are often a Testator's main choice for Executor, friends, legal professionals and trust companies are other options to consider, depending upon the circumstances.

The Trustee or Trustees of an Estate administer the assets which include the cash, real property and personal property until they are distributed to the beneficiaries in the will. Commonly, the Trustee will administer a minor child's inheritance until they reach the age of majority (19 in British Columbia) or until another time, in accordance with the terms of the will. Fees for the Trustee are also prescribed by law. Careful consideration should be made concerning the age of the Trustee and the age of the minor children. Most often the Executor and Trustee are the same person and again, complete trust for that person is essential.

Guardians are the person or persons that care for your most precious possession, your children. They have the power to provide for the supervision, care, control and custody of the children, including the power to make binding decisions as to their medical care, education, and religious upbringing. While trying to make this decision is sure to bring tears to a parent's eyes, it is most crucial. Relatives are a favoured choice, however, friends are also an option. Moral standards, parenting skills, thoughts and beliefs on education and religion should be considered, as well as where the guardians live, their age and the age of their children, if any.

A will can be designed to allow the Trustee to draw upon the young child's estate to be utilized for the child's upbringing, including medical, maintenance, and education costs. Therefore, it is not always prudent to name the same person to be the guardian as well as the Executor and Trustee. This puts the guardian in a conflict of interest position and the best interests of the child may not be served.

Parents often leave their entire estate equally to their children in the event the other parent is deceased or they are no longer together. However, consideration should be made in the event any or all of your children die before you or at the same time. Should the deceased child's share pass to his or her children (your grandchildren), to their spouse, to your remaining children or to a different beneficiary? If no alternative provisions are made in the will, the estate will be distributed by law, in accordance with the Wills, Estates and Succession Act (WESA).

In the event major family assets are only in one person's name, the result of the registered owner dying intestate (without a will) can be a disaster, particularly when there are surviving children. WESA dictates that the surviving spouse will inherit the household furnishings, and a preferential share of the estate defined as being the first $150,000.00 to $300,000.00 (depending on whether or not the deceased had children from a prior relationship), and half the balance of the estate, the other half being shared by the deceased's children. Imagine a divorced mother of two young children living common law with a new partner, who has all her assets in her name only, and then dying intestate. If her estate is worth less than $150,000, WESA dictates that the entire estate must go to her common law partner, and her children receive nothing. Or, imagine a married couple with children and the house is in the wife's name. The wife then dies intestate, leaving the father the first $300,000 and half the balance of the estate, the other half must be held in trust until the children reach legal age. Will the father be forced to sell the family home in order to accomplish this?

Time and energy on the part of the Testator (the person making a will) is needed to construct a clear and thorough will, however, this will be time and energy well spent. Once the will is signed and safely stored, there will be peace of mind. First, because the dubious deed is finally done and second because there is the knowledge that the will can be changed at any time. Life changes including divorce and deaths in the family are reasons to review and possibly alter the will. As well, when guardians or Executors move or their lives change substantially, the will should be reviewed and choices reconsidered. It is also wise to discuss your decision with your intended Executor, Trustee and Guardians. These people may not wish to carry out the tasks required of them, in which case alternate choices must be made.

A well drafted and unambiguous will makes life easier for those left behind. The existence of a will leaves less room for fighting and bad feelings and can save considerable expense. Couples can have "reciprocal wills" where they appoint each other as Executor, Trustee and sole beneficiary, however, each person must have his or her own will. The will must be signed and witnessed correctly in accordance with British Columbia law to be valid. The costs associated with the preparation of a will by legal professionals can far outweigh the potential pitfalls and undesired results of a self-prepared will or no will at all.

Now that the summer holidays are upon us, a time when families frequently travel together, making a will should be a major priority.

**My passion for this topic is obvious and I would urge everyone, of all ages, to have a properly drawn will. This should be done by a Notary or lawyer and once it's done, you can stop thinking about it though it should be reviewed every few years to be sure your wishes and circumstances haven't changed. Maybe it never has to be changed and the two hours it took to do it were very well spent providing you with peace of mind. MAKE IT A PRIORITY and GET IT DONE and then, well, it will be done and you can go on with living!**
**– Sabrina**