Financial foundations

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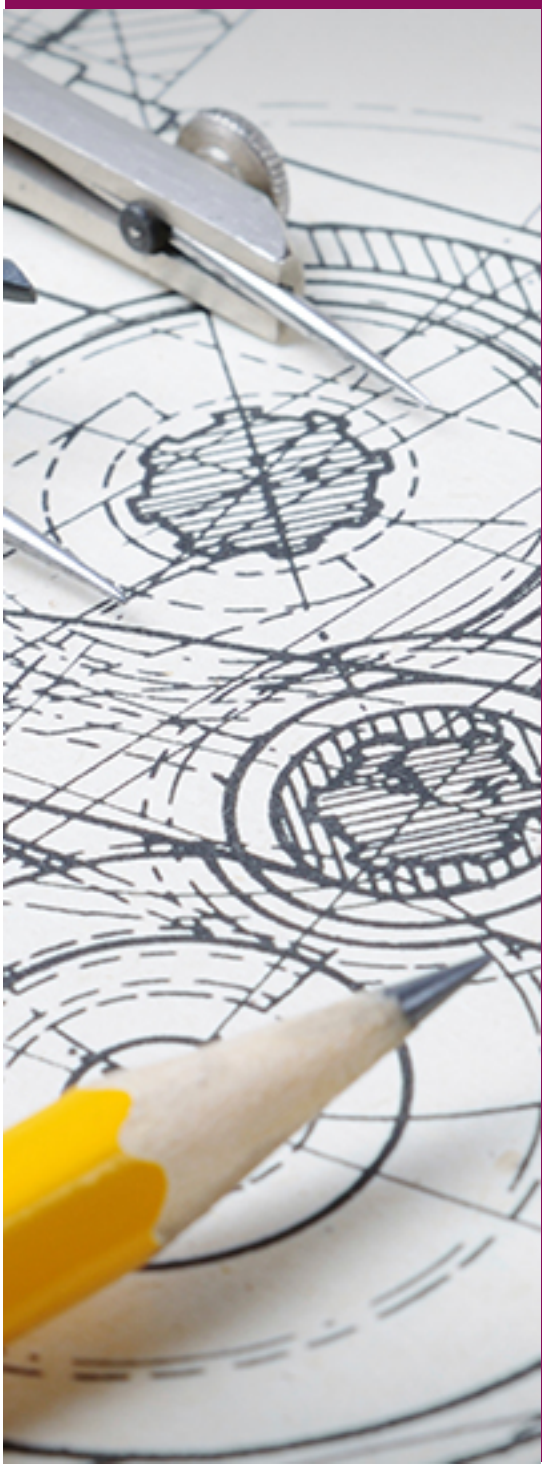
Do you need a will?



Early in your working career, will and estate planning is usually considered a pretty low priority. If you have not yet accumulated many assets it may be tempting to ignore estate planning, but there is a very good case to be made for taking the time to consider how you would like your affairs to be handled and how you want your assets distributed if you should die.

If you are working and have some form of group benefits, for example, there is a pretty good chance you have some amount of group life insurance attached to your benefit package. If you named a beneficiary when applying for the insurance, those moneys would be paid directly to that beneficiary upon your death. If you name the estate as beneficiary and do not have a will, life insurance proceeds are paid to the estate and paid out according to your province's succession laws.

The province of Alberta amended its wills and succession act in February of 2012. As part of this amendment it made modest changes to the parentelic distribution plan. If you die without a will and are single, all your assets would be assigned to your parents. If both parents are dead, then those assets are assigned to your siblings and their children. If you have no living parents or siblings, the chart assumes assets are divided equally with paternal and maternal grandparents. If those grandparents are not alive, it drops down to paternal and maternal cousins.

If you are married and die without a will, all assets are assigned to your spouse, even if you have children. If a married couple without a will dies at around the same time, the assets from the first partner to die are deemed to have transferred to the spouse. The assets of the spouse who dies shortly thereafter are deemed to follow the parentelic chart and go to his or her family.

The common theme in the above scenarios is that the provinces have clearly defined law for handling estate distribution if no will is present. These distribution methods do not consider your wishes at all. There may be siblings, friends or charities that you want to benefit from your estate. The uncertainty and lack of control may add anxiety and stress during an already sad and difficult time for your family and settling your estate may take much longer and cause family conflict if you have not named an executor to handle all matters regarding your estate. Creating a will also expresses your wishes on matters other than the distribution of money. Guardianship of young children and allocation of the assets for the care of those children is one important issue a will addresses. Assigning an individual to act as your power of attorney and listing healthcare issues your wish addressed would protect your interests should you become physical or mentally incapacitated.

The Ontario Securities Commission investor education site lists 5 key things the will should cover.

1. Basic information about you.

Name, address and the date of the will is important. The most recently written will before death is the will which stands.

2. Name an executor.

Your executor should be available and have the time to perform all tasks relating to securing assets, tax reporting and filing as well as distribution of the estate. You should have a conversation with your potential executor about these responsibilities before they are named in the will.

3. Your executor's right to manage the estate.

An executor with a financial disposition would be preferred, since he or she will be dealing with payment of funeral expenses, final debts and taxes. You can also put a clause in your will that allows the executor to hire out help from lawyers, accountants and trust companies.

4. How you want your assets distributed.

Most people are rather diligent in listing the distribution of financial assets in their wills. A letter or an attachment to your will may allow you to distribute gifts of personal items such as jewelry, art or items with sentimental value.

5. A guardian for your children.

If both parents die without a will, the court will appoint a guardian for their children based on who applies for guardianship. The person who applies may not be the person you and your spouse want to raise your children. Naming an appropriate guardian and making funds available for raising the children is very important.

One of the misconceptions about creating a will is that it is very expensive. In most cases, a simple handwritten "holograph will" is legally binding in Alberta, but there are a number of pitfalls associated with them. If someone else has written the will, or if the will is not entirely in your handwriting or if the wrong wording is used, the validity of the will may come into question. There are a number of estate attorneys who specialize in will planning and many keep charges reasonable for simple wills, power of attorney and personal directives. Lawyers are very transparent with their fees and can give you an estimated cost before you even begin the process. The guidance and advice you receive from your lawyer during the will planning process is also likely more valuable than the execution of the document itself.

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