

YOUR LAST WILL & TESTAMENT

Each year thousands of Nova Scotians either make a will or revise their existing will. For most of us, the process of making the will is not complicated or expensive, provided we have given proper consideration to a variety of questions which normally arise. A lawyer can assist by ensuring that you address the right issues, as well as by answering your questions and seeing that your will reflects your intentions and is prepared in accordance with the legally required format.

WHO SHOULD HAVE A WILL

Anyone who wishes to be assured that their Estate (everything you own at your death including property, personal items & money) will be dealt with in accordance with their wishes and in an efficient manner, bills paid and assets and heirlooms left to family, friends, charities, etc. should have a will.

Anyone who would, if they were to die today, leave dependent family ought to have a will – TODAY! For many of us, the best insight into why we should have a will is to consider what would happen if we died today. What would happen to our family and our affairs if we do not have a will? Who would look after things? Who would get what? Who would care for our children? For how long? Under what guidelines? With what objective? Would there be any dispute?

Most of us take some time to answer those questions and then only after some consideration and discussion with our spouse, family and lawyer. Accordingly, it would likely be a serious mistake to assume our family would know what we would have wanted.

WHY SHOULD I HAVE A WILL?

Few things are more destructive and hurtful among family members than the complications arising from the death of a loved one and the disputes over what the departed “would have wanted.” Additionally, the fact is your Estate is almost invariably less expensive to deal with if you have a will than would be the case if you do not. The delays and expense associated with Estates where there is no will are frequently considerable and come at a time when the family is least able to deal with unnecessary

expense and complications. Lastly and most importantly, it may be that if you don't have a will, your families, friends, etc. will not be provided for as you would have intended had you given the matter the serious attention which it deserves.

WHAT DOES THE LAWYER NEED?

Your lawyer will want to be generally familiar with your family and financial situation, and will want to know:

- Do you own your own home?
- In whose name is it?
- Do you have life insurance?
- Who is the beneficiary?
- Do you have any significant liabilities?
- Do you have children?
- How old are they?
- What are their circumstances?
- Who is your Executor?
- Who should the Guardian for your children be?
- Do you want to make provision for grandchildren?
- Do you want to make provision for friends or other relatives?
- Do you want to make any special provision for any charity?
- Do you want to leave any specific items (family heirlooms, personal items such as jewellery or coin collections) to your children or others?
- Do you have any significant investment assets which may require special consideration from an income or capital gains tax perspective?

Your lawyer will review these questions with you in general terms so as to ensure your decisions take all the appropriate considerations into account.

HOW DO I MAKE MY WILL?

You should make an appointment with your lawyer at which time your lawyer will review relevant matters with you, advise you as required, explain the special role of the Executor, Trustee and Guardian, if applicable, and take your instructions when you are in a position to provide them. After that part of the process is done, your lawyer will prepare a draft will for your review, consideration and approval, following which any necessary changes will be made. Your lawyer will then arrange for the proper signing and witnessing of your will in accordance with the required legal procedure.

WHERE DO I KEEP MY WILL?

Where you should keep your will is for you to decide. However, it is important that your will be kept in a safe but accessible place. For this reason, many people have their wills

kept in a safety deposit box, along with other relevant information to facilitate your Executor in the completion of his or her work on your behalf.

WHAT HAPPENS TO MY ESTATE AFTER I DIE?

Your Executor will arrange to obtain your will and apply to the Probate Court for Proof (confirmation) of your will and his / her appointment as your Executor. Then your Executor is officially empowered and authorized to take control of your assets, pay your liabilities and deal with your Estate in accordance with your wishes as set out in your will.

WHAT ABOUT TAXES?

Your Executor would ordinarily deal with these issues, with or without the help of an accountant, depending upon the complexity of your financial affairs. In general terms, income tax liability arising from income earned or received by you before your death will require the filing of a return. A return or returns may be required with respect to any taxable income earned or received by your Estate after your death. Additionally, any asset upon which an unrealized and undeclared taxable capital gain has occurred will have to be dealt with as required under the applicable income tax legislation. Contrary to popular and mistaken opinion, there are no Death Duties and/or Inheritance Taxes in Canada. As a general proposition, when assets are transferred to your heirs or legatees, they are transferred free of tax because any taxes associated with the assets will presumably have been the responsibility of and paid by your Estate. There are some exceptions, but they are too involved to deal with here.

WHAT IS AN EXECUTOR?

An Executor is the person proposed by you in your will to deal with your wishes and the applicable law. The official appointment of your Executor is made by the Probate Court upon presentation of your will for proof and filing at the Probate Court and the Land Registration Office for any district in which you own real property, (land, buildings). Your Executor's function is to take control of your assets, sell them, if and as required, pay your bills, deal with your tax liabilities and deal with the balance of your Estate in accordance with your will and the applicable law.

Your Executor should be an individual who is competent and honest. It is not necessary to appoint a professional or a Trust Company as your Executor, although that may be advisable in some cases.

Your Executor is entitled to charge a fee based upon the value of your Estate and the complexity of the matters involved.

WHAT IS A TRUSTEE?

A Trustee is a person whom you propose hold the residue of your Estate (assets remaining after paying your debts, tax liabilities, gifts and bequest and Estate expenses) in trust for a future purpose as set out in your will; usually to provide financial support for your children or other dependants until they are old enough to require no financial supervision. The Trustee is often the same person as the Executor, although it could be someone different.

WHAT IS A GUARDIAN?

A Guardian is the person whom you propose be the legal authorized person to care for your children until they have reached the age of 19 years which is the age of majority in Nova Scotia. The appointment of a Guardian does not become official until it has been approved by the Courts in the event of your death.

LEGAL FEES

Basic legal fees and associated expenses including HST charged in connection with the review, advice, preparation and proper completion of your will range upward from \$200.00 for an individual and \$300.00 for a couple, depending upon the detail and complexity involved.

CONCLUSION

This is intended to provide general information only so that you will be aware of some of the issues which you should consider when dealing with this very important matter. For specific advice with respect to your own Last will and Testament, you should seek advice from your lawyer.