



Thompson Law Professional Corporation

Barrister & Solicitor, Notary Public, Registered Trade Mark Agent, Paralegal

Your Will & Estate Planning

The contents of this Memorandum relate, generally, to the Wills and Estates law in the Province of Ontario, Canada. It is not intended to be relied upon to provide legal advice for any particular set of circumstances, and liability for any such use is disclaimed. Always consult a lawyer qualified to practice law in the Province of Ontario, Canada, for legal advice with respect to Wills and Estates law generally and specifically with respect to the creation of a Will or administration of an Estate.

WHY SHOULD I MAKE A WILL?

By making a Will, you can:

- dispose of your Estate as you choose (within limits);
- give items of special significance to specific beneficiaries;
- provide for a common-law spouse and/or step-children who would not inherit anything on an intestacy;
- make special provisions for a handicapped or disabled child;
- name the executors who will manage your estate;
- name temporary guardians of minor children and appoint trustees to manage their inheritance until they reach the age of majority;
- delay distribution of your estate until your beneficiaries attain an age you think is appropriate as opposed to the age of majority;
- provide guidance for the administration of your estate and specify powers you wish your executors to have to allow more flexibility in the administration of your estate;
- in many cases, reduce the cost of administering and distributing your estate;
- plan for and reduce taxes that arise as a result of your death.



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DOES A WILL HAVE TO BE IN WRITING?

A will *must* be in writing!

People will often express their wishes to family members that certain items are to go to specific people or that their property be dealt with in a certain manner.

In most cases, such statements have no legal effect and may be ignored or one or more family members may dispute the voracity of the wish with the result that the wish will not be honoured. A properly designed Will insures gifts go where you want them to go and can avoid bitter and costly disputes as between your beneficiaries.

WHAT TYPE OF WILL DO YOU NEED?

In Ontario there are three types of Wills that you can use: a formal Will, a Holograph Will and an International Will.

A formal Will is type written and may be prepared by a lawyer or by an individual using a prepared Will kit. The person signing the Will initials any minor handwritten changes, initials each page of the Will and signs the Will at the foot of it. Two witnesses, who must be present at the time the testator/testatrix signs the Will, then initial and sign the Will.

A Holograph Will must be entirely in the testator/testatrix's own hand writing and be signed and dated by the testator/testatrix at the foot of the Will. There is no requirement for any witnesses to sign a Holograph Will.

An International Will (a Will made pursuant to a United Nations Convention that will make it valid in all countries that subscribe to the Convention) is similar to a Formal Will but requires three witnesses, one of whom must be a lawyer.

WHAT ARE MIRROR WILLS?

Most married/common law couples, with or without children, consider all their assets to be one estate that is to be used for the benefit of the whole family. They want all the assets of the family to go to the spouse who survives the longest or, after the death of both spouses, they want the family's wealth to be divided based on their common intentions.

This intention is usually carried out by a pair of Formal Wills that reflect, or *Mirror*, the same common intention that if one spouse dies, everything goes to the surviving spouse. On the death of the surviving spouse or, in the case of simultaneous deaths of both spouses, everything goes in equal shares to their children or in the event of there being no children to commonly agreed upon beneficiaries.

The Mirror Wills will also normally provide that if one spouse dies, the surviving spouse will be the executor/executrix of the deceased spouse and all other provisions of the Wills will also be mirrored to reflect the common intentions of the spouses.

WHAT ARE POWERS OF ATTORNEY?

Unlike your Will which only comes into effect upon your death, a Power of Attorney is a document that allows another person to act on your behalf or make decisions for you while you are alive. The person who is given the power to act or make decisions for you is called your “Attorney”. In Ontario you may have two different types of Attorneys, one that manages your property and one that makes your personal care decisions.

A Power of Attorney for Property can be prepared:

- to allow your Attorney to manage your property on a temporary or on an ongoing basis;
- to come into effect only upon the happening of a future event, such as a loss of capacity to manage your own property;
- to allow your Attorney to do specific things, such as sign an agreement of purchase and sale while you are away on a vacation.

A Power of Attorney for Personal Care:

- allows your Attorney for Personal Care to make decisions related to your health care, nutrition, shelter, clothing, hygiene or safety in the event that you are at some future time incapable of making one or more of these types of decisions;
- may also contain within it a health care directive or provisions related to what some people call a “living will”, these being provisions giving your Attorney for Personal Care directions on the types of treatments you may wish to receive or not receive and the circumstances under which you may wish to be permitted to die.

Powers of Attorney for both Property and Personal Care are important components of any estate plan in that they entrust the management of your property or personal care while you are alive to individuals that you specifically name based on your trust of them. In the absence of a proper Power of Attorney your estate or personal care would be subject to management by the Ontario Public Guardian and Trustee (a government agency) while applications are made to the Courts for the appointment of a Guardian of your property or person. Such an application may also result in the court appointment of a guardian that would not have been the person of your choosing.

DO I HAVE TO USE A LAWYER?

In a word, “no”. You are entirely free to prepare your own Will and/or Powers of Attorney. There are now a number of self-help kits and packages available to assist you in this should you decide to take this route. In making your decision you should consider some of the following points:

- the legal requirements for a valid Will and Powers of Attorney are very specific. Deviations from these requirements may invalidate part or all of your document, resulting in a partial or complete intestacy or no Attorney being authorized to act.
- lawyers are trained to interview you to determine what your specific needs are. While in many cases, a simple do-it-yourself Estate Planning kit may be suitable, one of these kits may not be right for you. Identifying your needs and determining what documents are right for you is an important function of a lawyer.

- should a question about part of your Will or a challenge to your Will arise after your death a lawyer will be able review instructions and notes from meetings with you and testify as to your capacity and to clarify what your intentions were. This is particularly important if any part of your Will is potentially contentious, such as the exclusion of a child from the Will or a unequal distribution between children.
- Your Will and Powers of Attorney may only be one part of an estate planning process which may also involve the creation of trusts, transfers of property while you are alive, beneficiary designations of life insurance or RRSP's, tax planning, etc. A lawyer will be able to assist you in dealing with a range of issues related to your property and the consequences of your death.
- Once you establish a relationship with a lawyer for the preparation of your Will, you will be able to discuss new or ongoing concerns with your estate planning and/or any changes you wish to consider making to your Will or other estate plans.
- Your lawyer, being familiar with your estate and intentions, may also be able to assist your executors in the efficient administration of your estate after your death.

HOW MUCH DOES IT COST AND WHAT IS THE PROCEDURE?

We, like most law firms, have basic fees for both a single person Will package and for a couple's Will package. Each package includes the preparation of a Will, a Power of Attorney for Property and a Power of Attorney for Personal Care. In the case of a client with minor children, we also prepare one additional document which we refer to as a Declaration re. Child Guardianship.

In order to determine if a basic Will package is suitable for your circumstances, we conduct a detailed interview with you to insure that we understand all of your specific circumstances and what your intentions are. You may expect that this interview will require at least an hour to be conducted. Once we have a clear understanding of your specific circumstances and what intentions you wish to be embodied in your estate documents we can advise you of whether a basic Will package is the correct package for you or not.

In most cases, the basic Will package will be suitable but in some cases it may not be suitable. If we believe that a basic Will package will not properly address your circumstances, we will discuss the issues with you and provide you with an estimate based upon the time which we anticipate it will take to properly draft provisions dealing with your circumstances.

After the interview is completed, we will undertake the preparation of your draft documents and forward same to you for your review. This is your opportunity to read your Will package and insure that you understand and are satisfied with the contents. Should you not understand any part of the package, we will be happy to discuss it with you and make any changes that are necessary to finalize the documents. Once you are satisfied that you understand the documents and that they accurately reflect your wishes, we will arrange for a signing meeting to occur. While we prefer to hold signing meetings in our office, we will accommodate home/hospital visits for client's who are unable to visit our offices.

Once your documents are fully signed and witnessed, we will make a copy of them for our file and deliver the originals to you with our report that includes instructions on the storage and use of your documents.