

“What is the Importance of a Will in Your Life?”

For understandable reasons, many people are reluctant to make a will. However, there are many good reasons to do so and no good reasons not to. When you make a will you will have the satisfaction of knowing what will happen to your property after death, and you will lessen the strain on your loved ones who will have to deal with your estate if you do not make a will.

Why Make A Will?

A will is a legally enforceable document in which the person who makes the will sets out how his property is to be distributed after death. Unless restricted by the terms of the will, the will can deal with all of the maker's property anywhere in the world.

If you decide to make a will, you get to choose who will receive your property. For example, you may decide to give all of it to your spouse or part of it to your spouse and the rest to your children. You can make gifts to your grandchildren or to great-grandchildren who have not been born. You can make gifts to friends or charities.

If your children are under eighteen, you can name guardians in the will. These are people to whom you would like to entrust the care of your children if they are not adults at the time of your death.

You can also make special provisions setting out rules for when children under eighteen can get your property if they are under eighteen at the time of your death. If you don't make such provisions, they would have the right to get the property when they turn eighteen.

If you have married children there is another reason to make a will. If your child separates from his or her spouse, Ontario law requires your child and the spouse to equally share all the property they acquired during the time they lived together. If you were to die before the separation, your child's inheritance would not have to be shared, but any income your child earned from the inherited property would have to be shared. You can avoid this result by stating in your will that you do not wish the income to be shared.

Still another reason to make a will has to do with the role of a person called the Estate Trustee (formerly known as an Executor or Executrix). This person, whom you get to choose, is responsible for carrying out your instructions, gathering all your property, paying your debts and distributing your property in accordance with your instructions. Because a will comes into effect at the moment of death, the Estate Trustee has the power to deal with your property immediately.

One final reason to make a will has to do with Ontario's estate administration tax (probate fees). When a person dies, the executor will normally submit the will for probate. When this is done, the Province of Ontario charges a tax on the total value of the property owned by the person at the date of death. However, it is often possible for the executor to deal with some of the person's property without submitting the will to probate. In this situation, the person can make more than one will. The first will deals with property for which probate is not needed and the second will deals with property for which probate is needed. In this way the estate administration tax can be reduced.

If you make a will you can make changes to it or cancel it at any time so long as you are

mentally competent to do so.

What Happens If You Don't Make A Will?

When a person dies without making a will, the persons who get your property and the amount each person takes is determined by law. You have no say.

Because there is no Estate Trustee there is no person who has the power to immediately deal with your property. It is necessary to apply to the court for the appointment of an Estate Trustee Without a Will (formerly known as an Administrator or Administratrix). This takes time and costs money. These costs are paid by your estate. They go to the Province of Ontario and the lawyer preparing the application. This is money that could have gone to persons named in your will.

The law sets out rules for determining the persons who may apply to become an Estate Trustee without a Will. The person who is appointed is required to post a bond. The bond is not cancelled until the estate has been completely administered – that is when all debts paid and all property distributed.

If you choose to make a will you get to control what happens to your property on your death. If you do not make a will, the laws of the Province of Ontario control what happens. The costs you save by not making a will could be far less than the costs your family will have to pay to administer your estate if you do not make a will.

The choice is yours.

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