

What Is a Will?

A Will is a written document that outlines how, when, and by whom, your estate is to be distributed when you have died.

To be legally binding, a Will must follow the procedures as set out by the *Wills Act* of Nova Scotia.

What Happens If You Do Not Have a Will?

If you die without a Will, (dying “intestate”) your assets (everything you own) will be distributed according to the *Intestate Succession Act*. This statute may have the effect of distributing what you own in a very different way than you may have wanted.

For example, the *Intestate Succession Act* states that if you die without a will and have children, your spouse is entitled to either the first \$50,000.00 of your estate or to the family home. After that, your spouse and your children share in the rest of your estate on a proportionate basis. If your children are under the age of 19, and you have other assets than the family home, their money can be tied up in trust for years. A Will leaving everything to your spouse would prevent that from happening.

Further, if you die without a spouse or children, the *Act* dictates a series of relatives who become entitled to a share in the rest of your estate. First, all would go to your parents, and if they are not living, all would go to your brothers and sisters, and

so on.

If your estate is intestate, there can be added expense, grief, and confusion for the family, and a distribution of your estate that you may not have intended.

This can be avoided with a little forethought, and planning, all at a minimal cost with a properly prepared Will.

What Can You Do In a Will?

YOUR EXECUTOR

You can choose who will distribute your estate (your “executor”). Choosing an executor is of the utmost importance; this is the individual you are trusting to follow through with your wishes after you pass away. You have the option of choosing one executor or joint executors, where two or more persons will act together.

It is also recommended that you choose someone to be an alternate executor, should the initial executor be unwilling or unable to act when the time comes.

If the person you have chosen is unable to act as your executor and there has been no other person chosen as an alternate, then someone (usually a member of your family, but possibly the Public Trustee) will be required to make an application to Probate Court for a grant to administer your estate. Your Will is still valid in this scenario and will be given effect, but it may not be administered by a person you would have chosen.

DIVISION OF YOUR ESTATE

A Will allows you to choose how and to whom your estate (what you own) is to be distributed. There are certain laws that place some restriction on what you are able to do with certain property and you should discuss these possibilities thoroughly with a lawyer before finalizing your Will.

Do You Have Children?

A child cannot directly inherit anything while under the age of majority (19 years in Nova Scotia); however, a trust can be established so that the funds left to the child are invested and protected (by the executor) until the child reaches whatever age you set (19 or over).

A Will is able to designate a guardian for your children. If you die without a parent to the children alive, and a guardian was not chosen by you, a guardian may have to be chosen by a judge, after an expensive court application.

Specific Gifts of Items

Through your Will, you are able to give specific gifts either in the form of identified items, property, or cash to specific people, or to a charity.

Disinheriting

It may be your intention to leave specific dependant family members out of your Will. You should have a full discussion with a lawyer if that is your intention. Special consideration should be given to the *Testator's Family Maintenance Act*, which may enable a dependant to contest your Will, regardless of

your wishes. Your lawyer will want full details as to why you are disinheriting your dependant and it may be advisable to set out the reasons in your Will.

ESTATE PLANNING

Determining the best way to draft your Will begins with a solid knowledge of what your current assets are and what your current liabilities are. Does your estate have enough assets to cover your liabilities? Do you have any life insurance policies to help pay off your debts? Are there assets that could pass outside of the estate, thus avoiding probate taxes?

It is best to meet and discuss these issues with a lawyer and possibly other professionals to determine what steps can maximize what you leave to your loved ones.

If You Already Have a Will

It is important to periodically review your Will to determine if it still reflects your current circumstances, intentions, and estate plan.

Your Will should be reviewed at least every two years and any time you have a change in life circumstances. Certain circumstances, such as an unanticipated marriage, will automatically revoke a Will. Other life-changing events, however, will not revoke a Will, for example, a

subsequent separation or divorce, but may change how the will is interpreted. Your lawyer can explain this further.

Power of Attorney and Health Care Personal Directive

It is also recommended that you have as part of your estate plan a Power of Attorney to assist you and your family when you are not able to make your own decisions. See our information brochure entitled "Power of Attorney: What You Should Know and Why You Need One", for further discussion on Powers of Attorney. The Power of Attorney can also appoint someone to make health care decisions on your behalf, or this can be done with a separate document (a "Personal Directive")

Contact Us

We will be happy to discuss your estate and Will planning and assist with the proper drafting and execution of your Will, for a flat fee.

Remember, a little forethought and planning can ease an already emotional event for your family and maximize the gift you leave for them.



IMPORTANT!!

This brochure is not intended to be legal advice and is only for general information purposes. Parkland Law Inc. can accept no responsibility for any reliance on this information without legal advice appropriate to your own situation. If you are contemplating drafting or revising a Will or Power of Attorney specific legal advice is suggested.

Why Do I Need A Will?



Make the Right Decision for Yourself and Your Loved Ones



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