

Wills 101

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UNDERWOOD GILHOLME Estate Lawyers
Ranked by Canadian Lawyer Magazine in the Top 5 in Trusts & Estates

Overview

- What is my "Estate"?
- No Will. No Problem?
- Will Power
- When to change Your will
- Enduring Power of Attorney and Personal Directive

Your Estate

An **estate** is the sum of assets and liabilities owned by a person at any given point, while alive or at the time of their death.

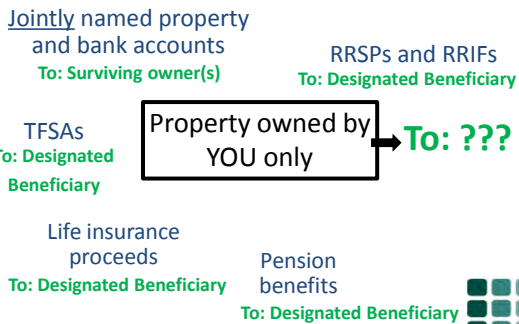
Questions:

- What falls INSIDE of your estate?
- What passes OUTSIDE of your estate?

Inside/Outside Your Estate



How Assets Pass on Death



No Will? No Problem.

Intestacy describes an estate of a person who dies without a valid will.

- The law takes over your estate distribution
- The Alberta *Wills and Succession Act* becomes your default will

No Will. No Problem?

A **beneficiary** is a person or legal entity who is entitled to the benefits of an estate.

- Limited to family and adult interdependent partners
- No opportunity to plan a trust for children
- Charities and friends receive nothing
- No tax planning



No Will. No Problem?

An **administrator** is the person responsible for administering an intestate estate.

An **executor** is the person chosen by the deceased to administering their estate according to their will.

- The law chooses your administrator
- No opportunity to choose your executor



No Will. No Problem?

- Burial or cremation?
- Family heirlooms – who gets them?
- Who will be the guardian of minor children?
- What if you and your spouse die at the same time – which side of the family benefits?
- Who will take care of your pets?



Will Power

Your power to choose

- Executor
- Guardian of minor children
- Beneficiaries*
- Trusts for: spouse, children, dependants, special needs persons, spendthrifts
- Charitable giving

* Consider Family Maintenance and Support claims from dependants



Choosing your Executor

Duties

- Arrange funeral
- Obtain legal title to all your property
- Pay your debts and income taxes
- Distribute assets to your beneficiaries
- Act as the trustee of any trusts

To obtain legal title to your property, the executor may need to apply for a Grant of Probate



Choosing your Executor

- Someone you trust
- Can be more than one person
- Does not have to be a family member
- Preferably someone younger than you
- Can appoint alternate executor(s)
- Get their approval



Choosing your Guardian

- Someone you trust
- Does not have to be a husband and wife; can be just one person
- Lifestyle
- Economic situation
- Religious beliefs
- Educational expectations
- Cultural considerations
- Compensation
- Get their approval



Personal and Household Effects

There three general ways to deal with these assets:

1. List them in your will
2. Informal memorandum
3. Leave it up to your executor



Bequests

A **bequest** is a gift given through a will.

- Can be specific items
 - “To my nephew, my entire Coca Cola bottle collection.”
- Can be cash gifts
 - “\$1,000.00 to each of my grandchildren.”
- Can be a cash gift to your favourite charity
 - “\$1,000.00 to Mount Royal University for their general use.”



Residuary Beneficiaries

Residue is what remains in an estate after debts, estate expenses, and bequests are paid.

- “Residual beneficiaries” can be family, friends, and charities
- These beneficiaries are the last to receive



Trusts

A **trust** is a relationship where assets are held by one party for the benefit of another.

- Trusts for: spouse, children, dependants, special needs persons, spendthrifts
- Executor can be the trustee; but not always
- Decide: when/if the trust is paid in full, income payments, discretionary payments
- Example: 50% at 18, 100% at 25, with discretionary payments throughout



Don't forget...

Family members may have a “claim” on your estate:

- Spouse
- Adult Interdependent Partner (“AIP”)
- Minor children
- Child, under 22 who is a full-time student
- Dependent adult children
- Minor grandchild or great-grandchild, where the deceased acted as parent at the time of death



Family Maintenance and Support

- Obligation to family members
- There may be more than one family member
- What is proper “maintenance and support”?
- Spouse or AIP has an automatic right to stay in the shared home for 3 months
- The law gives the Court the power to modify your Will



Charitable Giving

- Leave a legacy!
- Donor-advised funds: Involve your family
- Gift of stocks: No capital gains tax
 - Otherwise estate is taxed 50% on the gains
- Charitable gifts are tax deductible
 - New rules allow for maximum tax benefits



Formal Requirements of a Will

- *Wills and Succession Act, S.A. 2010, c. W-12.2*
 - Section 14
- Made in writing and contain signature
- Witness requirements
- Holograph Will
- Non-compliant Wills
- Codicils
- Will “kits”



When to Change Your Will?

- Change in marital status/living arrangements
- Birth/adoption of child
- Marriage of child
- Disability of a beneficiary
- Death of an executor or beneficiary
- Substantial change in assets
- Purchase of foreign assets
- Tax optimization



Planning for Incapacity

Two important documents protect you in the event that you become incapable:

1. Enduring Power of Attorney
Property and financial decision-making
2. Personal Directive
Personal and medical decision-making



THANK YOU

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