

A Practical Guide For Planning Your Will

Many people delay the decision to have a will prepared because they do not know what is involved or what information they should be considering. The following is intended to be a practical guide to assist in the planning of your will.

Simplicity

Simple works. For most of us, there is no need to complicate our will. Your primary objective should be to provide for your spouse and your children. You should not be concerned with providing for your siblings, your nieces and nephews, or anyone else. That is someone else's job. By including people outside of your immediate family you will, in most cases, complicate the job of your executor. This will result in delays and additional expenses in the administration of your estate.

Estate Trustee

The executor of your estate is called an Estate Trustee. The Estate Trustee is responsible for carrying out the terms of the will. He or she must make funeral arrangements, collect the assets of the estate, pay all the debts of the deceased, distribute the assets of the estate and file final income tax returns. In addition, the Estate Trustee will be the trustee for any trusts that may be required by the terms of your will (e.g. money for minor children). Selecting an Estate Trustee may be the most important decision in your estate planning.

You should select someone you trust and who is capable of making the necessary decisions required in administering your estate. It is sometimes helpful to name a person who has some business sense although someone with common sense is, in most cases, a good choice. Trust is extremely important because you will be giving your Estate Trustee broad, discretionary powers in the will, which are required for the authority and flexibility to do what is in the best interests of the estate.

It is very important to name someone who resides, preferably, in or near the municipality in which you live. Even simple estates can take 18 months or longer to complete, so it is not practical to name an executor who lives a considerable distance away from the assets of the deceased. If your Estate Trustee resides outside of the province in which you reside, the estate will take longer to administer and will be more expensive. An out-of-province Estate Trustee may have to post a bond with the court before the court will authorize him or her to administer the estate.

In most cases it is better to name an estate trustee who is younger than you and who is in good health. Administering an estate can be an onerous task and any person undertaking the job must be healthy enough to complete it. There may be considerable delays in administering the estate and the stress of the job could further jeopardize the health of an Estate Trustee.

You will likely name one of your beneficiaries as your Estate Trustee. If your entire estate is going to your spouse, he or she should be your Estate Trustee, unless there is some reason for not doing so (e.g. poor health).

Your Estate Trustee is entitled to be paid for administering your estate, as much as five percent (5%) of its value, depending on the complexity of the job. So, if you select an Estate Trustee who is not one of your principal beneficiaries, you are reducing the size of your estate by an amount equal to the Estate Trustee's compensation. Estate Trustee's compensation is taxable, and must be included as income in the Estate Trustee's personal tax return. For this reason many Estate Trustees, especially those who are also beneficiaries, elect not to take any compensation for administering the estate.

Alternate Estate Trustee

It is important to name an Alternate Estate Trustee, in case your principal Estate Trustee predeceases you, dies at the same time as you, or becomes incapable of completing the administration after it is started. Failure to name an alternate will, in any of these circumstances, cause delays and considerable expenses for the estate. And the person administering your estate may end up being someone you would not have selected to do the job!

For example, if your Estate Trustee dies or becomes incapable during the administration your estate, and if you have failed to name an Alternate Estate Trustee in your Will, the Estate Trustee named in your Estate Trustee's Will takes over the administration of your estate. Even worse, if this occurs and your Estate Trustee does not have a Will, someone must apply to the court to be appointed to administer your estate, causing more delay and more expenses.

Number of Estate Trustees

There is no minimum or maximum number of principal Estate Trustees or Alternate Estate Trustees that may be named. However, there are some practical considerations involved in naming more than one person. Generally speaking, the more Estate Trustees that are involved, the longer it takes to administer the estate, as it is more complicated to get documents signed, decisions made, etc. The location of the proposed Estate Trustees may necessitate the elimination of those living far away. You must ensure that multiple Estate Trustees are able to work together, because Estate Trustees usually must operate by unanimous decisions. In some cases it may be more desirable to have more than one Estate Trustee. For example, it allows you to treat your adult children equally by naming two or more of them, and it ensures that different talents and viewpoints are brought into the decision-making process.

Guardian for Children

One of the most important and often the most difficult decisions in your Will planning is to name a guardian for your minor children, should something tragic happen to both you and your spouse. Quite often the Estate Trustee is also named as the guardian of the children. In most circumstances, if you trust someone enough to leave your children under their care and guidance, you would be comfortable allowing them to administer your estate. There is, however, nothing to prevent you from naming a guardian that is someone other than your Estate Trustee. The guardian named in your Will can be changed at any time, and this occurs in many cases, for many reasons. The needs of your children change over the years, as do people's lifestyles and attitudes. Many circumstances may necessitate naming different people to act as guardians of your children from time to time.

The CAW Legal Services Plan is here to help you with all matters related to your Wills, and the Plan benefit can be used as often as you need, to change your Will and your spouse's Will, as circumstances change in your lives.

Contact the CAW Legal Services Office nearest you, to ensure your estate planning is up to date.

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