

Will you or won't you?

November not only finds us imminently knee deep in snow, it also finds us in the middle of Make a Will Month. And, like the snow, it's probably the last thing you want to deal with right now. But alas, with knowledge comes power and peace of mind, so here are a few things to consider when deciding if you **will or won't** make a Will...

Did you know?

Approximately half of Canadian adults do not have a Will. So, if you do not currently have a Will, you are certainly not alone. Misery does love company, but what happens when the company dies? Without a Will, it can be misery!

What happens when you die?

Well, that all depends on your choice of faith, but it's safe to say no one really knows for sure! What we do know for sure is what happens to your assets when you die without a Will. You would then have to rest your faith in the Government. If you die without a Will, Ontario law, specifically the *Succession Law Reform Act*, will kick in and make your Will for you. This Will varies with different situations and will not likely reflect your wishes or your family's best interests. We also know that the process to wind up your Estate if you were to die without a Will usually takes longer and might be costlier than if you had your own Will – and it is your loved ones that will absorb this cost. The bottom line is, you leave everything you have worked for your entire life to the discretion of Ontario law. This may or may not sit well with you. If it does not, then do read on.

Why do you need a Will?

The answer is simple:

- To prevent your Estate from defaulting to a Government distribution of your assets
- To make sure that the people you want to leave specific belongings to actually receive them
- To avoid leaving your loved ones with costly issues and family disputes after your death
- To allow you to choose people to act immediately as your child(ren)'s custodians
- To have a smooth transition of your assets to your beneficiaries
- To properly control your assets
- To maximize the net worth of your Estate, and
- To effectively manage any tax consequences and costs arising upon your death.

How do you make a Will?

It is possible to make a Will yourself with the use of a generic Will kit. But unless you have a very small Estate, it is generally recommended that you seek professional advice in preparing your Will. If your Will is not properly prepared, the law can deem it to be invalid and treat your Estate as if you had never made a Will. You will want to ensure your Will is clear, legally valid, and that it considers all likely and relevant possibilities.

What should your Will address?

Your Will should, at a minimum, include the basics:

- How your assets are to be divided
- Who will manage your Estate (executor). You should ensure this is someone you trust, and who has the desire, skill and ability to carry out the executor's duties.
- Who will be the custodian for your minor child (ren)

In addition to the above, your Will should include, where relevant and advantageous, structures which would:

- avoid family law claims on inheritances;
- eliminate family disputes;
- encourage your children / grandchildren to save their inheritances;
- establish a legacy by ensuring charitable organizations are properly designated and reap the tax advantages of this generosity;
- minimize taxes. For example, Wills and power of attorneys can save 50-100% taxes on inheritance income, if structured properly.
- ensure your Estate windup is simple, quick, and hassle-free. If structured properly, Wills can reduce probate and Estate windup costs.
- determine how second marriage is dealt with;
- identify your executor and attorney and their backups;
- avoid probate. Probate is the legal proceeding in which a court determines the validity of your Will. The mere act of having a Will does not avoid probate. To potentially avoid probate and the fees related thereto, there are probate-saving inspired Estate planning strategies which can be used.
- Consider using testamentary trusts. Including trusts in your Will separates income earned on inherited assets from the inheritors' regular income. This can reduce taxes from 50% to 100% as well as claw backs— because separate trusts in a Will are taxed as separate taxpayers. Consider setting up testamentary trusts in your Will for your spouse (a "Spousal" trust for capital assets, a "Life Insured" trust and a "Family"

trust for everything else) and also, for when your spouse dies, for each child or relative who will ultimately inherit the residue of the trusts.

It is critical that you understand the wording of your Will as well as all the options that are available to you. Working with your team including a lawyer, tax accountant and/or a financial planner will ensure this is effectively done.

When should you make a Will?

When you reach a point in your life where you have established a family, a business, or have accumulated significant assets, including life insurance policies, this is the time to make your Will.

Who needs to be involved?

When making Estate planning decisions, you should involve your professional advisors, including tax, accounting, and legal experts. You should also ensure that family members, your executor(s), trustee(s), and power of attorney(s) and their backups are informed of their designated roles.

Where do you keep your Will?

Your Will, as well as other important documents, should be kept in a place where it can be found quickly and easily by those who survive you, particularly your executor(s). Duplicates can be made and kept in your home, safety deposit box, with your lawyer or with your executor(s). Ensure, at a minimum, that these individuals are informed of the whereabouts of your Will and other important documents.

Are we done yet?

Yes, but here is a final note to take with you: If your personal situation or wishes change significantly, you should ensure your Will stays current by having it updated according to your ever-changing circumstances—at least every few years.

Let us know what you think

Logan Katz is pleased to offer complimentary periodic informative workshops with an Estate planning lawyer and a Logan Katz representative to discuss selected topics in regards to Estate planning. If you are interested, please let us know (dchaine@logankatz.com) and we will keep you informed of upcoming workshops.

This 'n That at Logan Katz...

Logan Katz is pleased to welcome the newest addition to our firm, Janeta Odstrcilik. Janeta holds a Bachelor of Commerce from Carleton University and will be assigned to our Financial Reporting Services team. Janeta will serve several clients with periodic book-keeping requirements and will provide software training and follow up to new businesses.

