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Wills & Estates

Plan Ahead: Get Your Will Done Now!

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Your last will and testament ("will") is an important legal document that directs how you want your assets distributed to your heirs in the event of your death, as well as providing other instructions such as the appointment of an executor. An executor is defined as the person responsible for carrying out the last wishes of the person who has made out the will.

While some assets, such as bank accounts, may already have a beneficiary attached to them, allowing for passage outside of the estate with no need to be included in a will, it becomes critically important when someone owning real estate passes away without a joint right of survivorship. This is especially true when seeking to avoid probate tax by claiming the first dealings exemption, which is only available in cases where the deceased has made a will.

When beneficiaries are not recorded on large bank account holdings or when real estate is not jointly owned with a right of survivorship, the absence of a will does require the survivor to apply to court to be appointed executor, which will cost the estate time and money. Having a will lets you to choose the person who you trust the most to administer your estate, rather than leaving this decision it in the hands of a judge. Most importantly, with a will in place, you get to decide who will inherit your bank account proceeds, should there be no beneficiary designation on the account. In Ontario, when there is no will, the *Succession Law Reform Act* (the "SLRA") determines who inherits your assets.

Under the rules of the SLRA, when you die and are survived by a spouse but no children, your spouse inherits the entire estate. If you leave a spouse and children, your spouse will receive the first \$350,000, followed by the spouse and children splitting the remainder of your assets equally. Where there is no spouse, your children divide the estate equally; if there are no children or spouse, your parents inherit your estate; if no children, spouse or parents, your siblings will divide the estate equally between them. In cases where there are no children, spouse, parents or siblings, the children of your siblings – nieces and nephews -- will divide everything equally between them; if you have no children, spouse, parents, siblings or nieces and nephews, your estate is divided equally by all other next of kin; and, if there is no next of kin, the estate will pass to the Ontario government.



Having a will offers you greater flexibility when making important decisions about the disposition of your assets. For example, if your spouse is already deceased and you do not wish your financially independent adult children to inherit your assets equally, you can specify how you wish to split your wealth, such as disinheriting an adult child, or deciding to leave shares of assets to your grandchildren. And, with a will, you can leave a share of your assets to a common law spouse, who would not automatically inherit under Ontario's laws of intestacy.

In addition, there may be other good reasons for making a will. These include:

- Making special arrangements for your family. Where there is no will, beneficiaries who are children receive their inheritance when they turn 18, which can be a young age to inherit a large sum of money. With a will in place, you may direct a minor beneficiary's share to be held in trust until the child is a little older, such as when they turn 25;
- Appointing a guardian for your minor children; and
- When leaving to charity, you can also set aside a legacy with instructions for your executor to make a donation to a charity or charities of your choice.

Choosing to draw up a will is one of the best decisions you can ever make. Don't hesitate to make the right choice and be sure to divide your assets in the way you choose so that your loved ones are provided for. Contact De Francesca Law today and talk to us about making arrangements for drafting your will.

