

Your Estate Plan and Your Legal Will

This information is provided, without obligation, by the Spencer Home Foundation and written with a Christian perspective on stewardship, to assist you in:

- Planning your Estate**
- Preparing your Will**
- Distributing your Estate**

This material is written based on the current CRA guidelines and the laws pertaining to them. It is general information and should not be considered as the direction for the writing of your will. **Professional personal advice must be sought out specifically for your estate.**

Introduction:

Exposure from childhood to the term **Last Will and Testament** causes many people to subconsciously reflect on the idea that making a will is the **last** task they need to perform. Although their intentions are good, they put it off too long. Also, since a will does not become effective until the death of the person who made it, many people look upon a will as an instrument of death. But **a will is for the living**. It makes life better for those you love the most.

If you do not make a will, the court will dispose of your estate according to the laws of your province and the law says your estate consists of everything you possess...clothing, books, household furnishings, car, furniture, jewellery, paintings, manuscripts, pets...as well as real estate, business, securities, savings accounts and anything else you own.

A **husband** needs a will to protect his wife, his children, his parents or any other dependents.

A **wife** needs a will to protect her husband, her children, her parents and any other dependents.

A **single** man or woman needs a will to stipulate the disbursement of his or her property

The following information is designed as an informal guide, to assist you in working through your estate plan. It will help you organize your thoughts as you develop your formal will.

THE ADVANTAGES OF MAKING A WILL

1. CONTROL

- Your will assures the distribution of your estate according to YOUR wishes. Someday someone will inherit your property. You can determine who that will be.
- It gives you the privilege of naming your executor - the person you can trust to settle your affairs and manage your estate according to your direction.
- A will protects your family and other dependents from legal entanglements and costly red tape.
- It enables you to set up trusts to further protect them from inexperience, inadequacy, outside influence or other disadvantages.
- You can designate certain loved ones to receive family heirlooms so these items would not need to be sold and the proceeds divided.
- Through your will you can make a gift to a person who is not related to you and you can include provisions for those charitable causes which have meant so much to you and your loved ones.
- You can extend your influence and make an investment in the future! Without a will your friends and favourite charities would receive nothing from your estate.
- A will permits you to state your wishes regarding funeral arrangements and interment. (As a will is usually not read until after the funeral, it may be wise to prepare a separate document for these arrangements and give it to your executor.)

A new will is necessary on remarriage. In most provinces remarriage nullifies a current will.

- A new will is necessary after one marries for the first time. A current will written before marriage is null and void, if not made in “contemplation of marriage.” (Perspective spouse should be named and identified as such.)

2. YOUR CHILDREN

- If you have children, and there is no will, your spouse will probably be appointed guardian of any property you leave to them. Your spouse will need the court’s approval to use any part of the children’s share of the estate, including any money used for their support and education. He/She could need to file an accounting each year with the court showing exactly what was done with the children’s share of the estate.
- If there is no surviving parent, you have the right to appoint someone in whom you have absolute trust to be guardian of your minor children in the event of your death; someone with whom you can discuss your plans for them and who would be willing to undertake this responsibility.
- If you have minor children, this right to choose the person(s) who would provide the best environment and training for your children is the most important reason for you to have a will. Your will can also contain special provisions to help ensure that your adult children’s financial needs are met and funds for them are spent wisely. This is your right, only if you make a will.

3. ASSETS HELD JOINTLY (it may not be the answer)

Some people believe that if their major assets are held in joint tenancy with the person(s) who should ultimately receive them, a will is unnecessary. However, joint tenancy identifies the property as jointly owned, if one of the parties to this agreement dies, title transfers to the other party(s).

- It ignores the possibility that the joint tenants could die at the same time or that the survivor may not have the opportunity to make a will or other plan.
- It also ignores the fact that all assets of the estate may not be jointly held or there are substantial assets in one’s estate as legal settlements paid after death.

Without a legal will a Public Trustee will distribute these assets according to Provincial law.

PLANNING:

Age is not the determining factor **when** planning your estate (obviously, the older you are the less time you have to fulfill your plans). Age will be a factor in how you **view** your estate.

- Young adults are concerned about having enough **income** to provide for the necessities of life.
- Middle age people are planning for **retirement**.
- Retirees concerns shift to the **preservation of capital** and the distribution of the estate.

During all of these cycles of life there is a common thread; that of **maximizing the estate while minimizing taxes**.

1. “ENDURING” POWER OF ATTORNEY

The Power of Attorney is authority you (the donor) can give to another attorney (not necessarily your lawyer), which allows the other person to act on your behalf in conducting your financial affairs. The term “enduring” means that the authority given will not terminate at the most critical time –when the “donor” becomes incapacitated. It is important to check with your lawyer; each province has legislation governing Enduring Power of Attorney, or its equivalent.

You do need this document completed correctly; it is as important as the will document. It is NOT part of the will. IT IS A SEPARATE DOCUMENT. A will does not take effect UNTIL you die. A Power of Attorney is effective while you are LIVING.

2. HEALTH CARE DIRECTIVE

This document has many titles depending on the province in which you reside. Its purpose is to allow you to give direction to a designated individual, should you have a major health challenge and your quality of life deteriorates. Consideration should be given to this document, as this decision will reduce the stress within a family when facing this crisis. Some provinces have laws providing direction in the writing and execution of this directive. Check with your advisor to determine how these laws will affect you.

3. NAMING THE GUARDIAN FOR YOUR CHILDREN

Many people have written wills and named guardians of their children without considering all the implications of guardianship. Being a guardian is an awesome responsibility and could be a financial drain on the family. It is important to consider carefully the compatibility of the guardians to the children.

- Is the lifestyle and moral standards of the guardians similar to those of your family?
- Have you provided financially (trust) for adequate care and education for your children or are you going to impose a financial burden on both the guardian and your children?
- Have you asked permission **before** naming them in the will as guardians?

4. NAMING YOUR EXECUTOR

It is essential that you have a competent executor for your estate. Your executor must inventory and have appraisals completed on all your assets, pay all your bills, convey legal titles, settle with CRA and distribute your assets according to your will. This is a time consuming process involving accuracy and competency. Your executor should know where to find your will and the location of your assets. When seeking out an executor, you should pay as much attention to detail as you would do in finding a guardian for your children. You should be thoroughly satisfied with your choice and you should have asked permission of the person/ business named. One of the most important benefits of making a will is that you are able to specify who you want to administer (or settle) your estate.

- You may appoint one person to serve as sole executor of your will.
- You may appoint more than one person to serve as co-executor of your will.
- You may appoint an alternate executor, if the first person named is unable or unwilling to act, the second person named will act.

There are always questions regarding the naming of an executor. Should it be a family member, should there be more than one or should a trust company be given this responsibility? There is no simple answer to these questions.

A family member could probate a simple estate without any serious difficulty. On the other hand, a complicated estate may need the assistance of qualified professionals. It is advisable to consult your lawyer when contemplating this decision. Some estate planners advise that the same people should not be named as both executors and guardians though the law does not forbid it.

5. SPOUSAL TRUST

Assets are placed in a trust whereby your spouse receives income from the trust. This is an effective way to provide for other beneficiaries after the decease of the primary beneficiary. Take advantage of the **spousal rollover** or **spousal trust** provisions in the income tax act. These provisions allow for the transfer of assets to your spouse or spousal trust on a tax-deferred basis. It is especially effective in protecting and providing for children from a first marriage should there have been a second marriage. Utilize the **Spousal Trust RRSP**. This vehicle allows for the remaining spouse to draw income from the RRSP for life and to donate the residual to a charity (there are some significant tax advantages to the estate). If there is a desire to benefit a charity at some point, this Spousal Trust or RRSP Spousal Trust becomes an effective tool. The beneficiary of the trust at the death of the spouse becomes the charity. You should consult your advisors when contemplating this procedure, as there are many variations to this concept.

6. DOCUMENTS

As these documents are your final directions to your executor and/or guardian of your children, they must be kept secure, but at the same time easily accessible. It is not wise to keep these documents in a location where they could be accidentally destroyed. If they are being kept in a safety deposit box at the bank, you must advise the executor and guardian the location of these documents and provide access to them.

Consider the following when planning your estate:

1. Disability Insurance:

- To protect your family should you be unable to work.

2. Critical Illness Insurance:

- To protect your family and your assets while you are living, if you should be diagnosed with a terminal illness.

3. Family Life Insurance:

- Provides cash for your family should you die prematurely.
- Supplies tax-free cash to pay estate obligations.
- Benefits charities through bequests and legacies.

4. Wealth Replacement Insurance:

Many gift strategies result in a significant portion of the donor's estate being removed from his or her estate, which can leave less to be distributed to the donor's heirs. For people who want to combine philanthropy with leaving an estate for their heirs, wealth replacement insurance is an attractive option. Simply put, an insurable donor can use a portion of the tax credit arising from a large gift or allocate part of the tax-free income from a charitable gift annuity to pay premiums on a life insurance policy which will give the designated beneficiaries a non-taxable and probate-free inheritance of a value equal to or greater than the charitable donation. Wealth replacement insurance can be acquired on a joint second-to-die basis when parents are interested in ensuring that their children receive their inheritance when both parents have died. The premiums will usually be lower for this policy as they are based on their joint life expectancy.

Life insurance is not taxable when paid out as a death benefit. Besides being a good vehicle to offset taxes or debts owed in the estate, it is also a good planning instrument to use to provide cash to a charity at a very low cost. The policy is assigned to a charity (or owned by it). The donor receives a tax receipt for premiums paid (or any cash value from an existing policy). In some cases it is **more tax effective** for the beneficiary of the policy to be the charity. The tax-free proceeds will now be available for a tax deduction **against any taxes in your estate** (at your death) rather than the premium while you are living (no tax receipt would be available for the premium paid if the beneficiary is the estate).

Gift to a Charity with Wealth Replacement Life Insurance

Donor gives an item of value or cash to a charity while still living.

- The Charity receives the gift
- The Donor receives a donation receipt

Donor used tax saving from the donation to purchase life insurance policy benefiting children. As a result of this:

- The Charity benefits from immediate donation
- The Children receive insurance proceeds at death of donor (parents) replacing the asset that was donated to the charity.

5. Insured Annuities

Individuals, at some point in life, become more concerned about having adequate income than in having a large bank account. A common procedure is to purchase a guaranteed income (annuity). When the owner and the annuitant are the same person and other criteria are met, a prescribed annuity can be issued. This type of annuity is subject to level taxation over the lifetime of the annuitant. Depending on the interest rate on the annuity, the after-tax income from a prescribed annuity can exceed the after-tax return on GICs and similar investments. This makes a prescribed annuity contract an attractive income vehicle for many individuals. In this strategy (insured annuity), an insurable annuitant can use a portion of the increased after-tax income to finance the premiums on a life insurance policy. The policy is assigned to the donor's selected charity and as a result of this assignment, the donor gets tax receipts for the premiums. This is advantageous for the donor by the resulting gain of **increased after-tax income** from the prescribed annuity and a **tax receipt** for the insurance premiums. Sometimes it is more beneficial to give up the current donation receipt (from insurance premiums) in favor of the estate receiving a receipt for the proceeds of the policy at your death. **It is important to get professional advice when considering these strategies.**

Do you need a lawyer? **YES! Making a will is not a do-it-yourself undertaking. While not required by law in many provinces, it is rather essential that your will be drawn by a member of the legal profession. Avoid a homemade will if at all possible, as such a document often contains errors that can render it void or pervert the desires of the testator.**

Note: This guide is not intended to give legal advice. The purpose is to point out the need to have a will and to show some of the things that could happen if you died without a will. Necessarily, the information contained in this material is general.

DETAILING YOUR PERSONAL INFORMATION

The following information will be helpful for your professional advisor to properly access your current situation:

Full Legal Name _____ Date _____

Address _____

P.O. Box/Street _____

City Prov. Postal Code _____

Telephone: Home _____ Business _____

Date of Birth _____ Place _____

Day/Month/Year _____

Citizenship _____

Canadian Other _____

Retired _____

Yes No _____

Present Employer _____

Address _____

P.O. Box / Street _____

City Prov. Postal Code _____

Marital Status _____

Single Married Widowed Separated Divorced

If married, state legal name of spouse _____

Address (if different from yours) _____

P.O. Box/Street _____

City Prov. Postal Code _____

Date of Birth _____ Place _____

Day/Month/Year _____

Citizenship _____

Canadian Other _____

Retired _____

Yes No Present Employer _____

Address _____

P.O. Box/ Street _____

City Prov. Postal Code _____

If previously married please give name and address of former spouse.

Name _____

Address _____

Is title of any property owned by or with former spouse now in your name only?

Yes No

(Please give necessary details on last page)

Do you have a will? Yes No

List names of children (including legally adopted), predeceased children, and any children by other marriages, children of predeceased children. (If no children, please list your parents and/or brothers and sisters)

Name, Date of Birth, Address

PERSONAL PROPERTY INVENTORY

The information contained in this section is extremely confidential. The inventory is important. In order to determine the value of the estate and a percentage proportion in a bequest, this type of exercise is necessary. An up-to-date listing of the location of assets will help the Executor quickly and efficiently locate all the assets of the estate at the time of probate.

**For Probate purposes:
AN INVENTORY SHOULD BE KEPT WITH YOUR WILL.**

1. REAL PROPERTY

Please indicate whether in:

Husbands' name (H), Wife's name (W) or Joint (J) _____

Address (principal residence) _____

Mortgage remaining _____ Today's value less mortgage _____

Other properties _____

Total Net Estimated Value of Real Property _____

2. LIFE INSURANCE BENEFITS

(including mortgage and group insurance)

Please indicate whether in:

Husbands' name (H), Wife's name (W) or Joint (J) _____

Company Name _____

Type of Policy _____

Beneficiary _____

Amount _____

Husbands' name (H), Wife's name (W) or Joint (J) _____

Company name _____

Type of policy _____

Beneficiary _____

Amount _____

Husbands' name (H), Wife's name (W) or Joint (J) _____

Company name _____

Type of policy _____

Beneficiary _____

Amount _____

3. PERSONAL USE PROPERTY

Special items (\$500 or more) _____

Balance of household furnishings/personal effects _____

Value of automobiles, boats, trailers, etc. _____

Total _____

4. CASH (checking and/or savings account)

Please indicate as follows: your name joint account

Name of Bank _____

Address _____

Approximate Amount _____

Please indicate as follows: your name joint account

Name of Bank _____

Address _____

Approximate Amount _____

Please indicate as follows: your name joint account

Name of Bank _____

Address _____

Approximate Amount _____

**STOCKS, BONDS, MUTUAL FUNDS, MORTGAGES,
RRSPs, PENSION FUNDS**

Item: Today's market value

Total Estimated Value _____

TOTAL ESTATE ASSETS

1. Real property

2. Insurance

3. Personal Use Property

4. Cash (checking and/or savings account)

5. Stocks, Bonds, Mutual Funds, Mortgages, Pensions

6. Other Assets (include business assets)

Total Estate Assets _____

Less Total Debts _____

Estate Value _____

Add: Total Insurance Death Benefit (see question 2) _____

Total Estate Value _____

Less Estimated Taxes Owed (inc. Capital Gains Tax) _____

Net Estate Value _____

DISTRIBUTION OF THE ESTATE

(This is **not** your will; it is a workbook to assist you in planning your will.)

NAMING AN EXECUTOR

1. FOR SINGLE PERSON

Whom do you wish to have as executor?

First choice _____

Address _____

Relationship _____

Alternate _____

Address _____

Relationship _____

2. FOR MARRIED PERSONS

In the eventuality that one of you should predecease the other:

a) Do you wish to leave all your estate to your spouse? Yes No

b) Do you wish to appoint your spouse as your executor? Yes No

c) If answer to above questions is "No," how do you wish to benefit your spouse and whom do you wish to appoint as executor of your estate?

d) When both you and your spouse have passed away, whom do you wish to have as your executor?

Executor _____

Address _____

Relationship _____

Co-executor _____

Address _____

Relationship _____

Alternate _____

Address _____

Relationship _____

It is wise to obtain the consent of the executor(s) before naming them in your will.

3. IF CHILDREN ARE LIVING - or if you anticipate having children

a) Do you desire your children ultimately to share equally in your estate?

Yes No

If "No," indicate special provision to be made for each child.

b) Unless your children and recipients from your estate are the age of majority, their share of your estate will be placed (by law) in a testamentary trust administered by a court appointed trustee unless you give other directions in your will.

3(a)]. Do you wish your child to receive his/her entire share of your estate at the age of majority?

(Any under age recipient) Yes No

If no, do you wish a portion of the fund principal to be paid to the beneficiaries prior to final distribution, e.g. half at age 21, balance at age 25.

Amount _____ Age _____

Amount _____ Age _____

Balance Amount _____ Age _____

Or all at age _____

c) Special needs children, name(s) _____

d) Special instruction on distribution to children _____

e) Do you wish the share of any child who dies before you to pass to his/her children if he/she should have any?
 Yes No

f) Naming a guardian

If there are children under the age of majority who may benefit under the terms of the will, a guardian should be named in the will along with a trustee, to act in the event both husband and wife are deceased. Guardians and trustees should be Canadian residents. Although the court reserves the right to approve the guardian, the courts usually respect this nomination.

The guardian has charge of the children, provides for their care, maintenance and education in accordance with the funds available to him. In such case it is usual to establish a trust under the will for the children and set out the terms of the trust, including payment by the trustee to the guardian for the benefit of the children.

Guardian _____
Address _____
Relationship _____
Alternate Guardian _____
Address _____
Relationship _____

It is wise to secure the permission of your guardian(s) before naming them in your will(s).

NOTE: Your just debts, funeral, and testamentary expenses must first be paid before any of the bequests in the will can be distributed.

BEQUESTS (Bequests can be used to establish a trust).

Specific bequests

Name a certain sum of money or a specific asset that is left to a charity or an individual.

Residual bequests

Gives the remaining assets, or a percentage of them, to a charity after final estate expenses are paid and any specific bequests made.

Contingent bequests

Provide for changing circumstances. It is possible to specify that your assets be left to your spouse when you die. However, should your spouse predecease you, you can name other beneficiaries, including your favorite charities.

PROPERTY

If you wish to designate a specific piece of property (real or personal) or a specific amount to people, then the property as well as the person or organization to which the gift is given should be named.

Name of organization _____
Address _____
Amount or percent _____
Name of organization _____
Address _____
Amount or percent _____
Name of organization _____
Address _____
Amount or percent _____

RESIDUARY CLAUSE AND/OR COMMON DISASTER CLAUSE

If neither your spouse nor children survive you, or if you are single, or if (for any reason) a portion of your estate remains un-disposed of, what would you want done with it? (Please be specific in naming persons and/or organizations and stating the amount or percentage to be distributed to each. Also include the address).

Name of individual or organization _____
Address _____
Amount or percentage _____

Name of individual or organization _____
Address _____
Amount or percentage _____

Name of individual or organization _____
Address _____
Amount or percentage _____

OTHER INFORMATION

1. Do you wish to have a paragraph in your will that allows you to make a handwritten list (at a later time) of personal belongings to be given to specific persons?

Yes No

2. Do you wish to instruct your executor with regard to funeral arrangements?

Yes No

3. Have you prepared a Power of Attorney that would allow someone to care for your personal matters if you were ill or otherwise indisposed?

Yes No

4. Do you wish a trust clause to allow the continuation of a family or business?

Yes No

Details _____

5. Do you wish to provide any further instructions or special information the lawyer may need to prepare will(s) that express your specific desires and interests?

Yes No

Special Instructions _____

FINAL INSTRUCTIONS

Lawyer's Name _____

Address _____

Signature(s) _____ Date _____

Spouse _____

When husband and wife are completing this guide, both should sign if this is used to give direction to a lawyer to draft your will. **(This is not a will and should serve as a guide only)**

NOTES

INFORMATION FOR EXECUTOR

1. PERSONS OR ORGANIZATIONS TO BE NOTIFIED

Name/Address _____

Contact Person _____ Phone _____

Name/Address _____

Contact Person _____ Phone _____

2. DONATION OF BODILY ORGANS

I wish to donate bodily organs or parts as follows _____

To be included in will: Yes No

Note: Be sure your executor and any close friend or relative responsible for your funeral arrangements has a copy of this information on funeral plans or donation of bodily organs.

3. LOCATION OF PERSONAL DOCUMENTS

Birth Certificate _____

Marriage Certificate _____

Social Insurance Card _____

Health Insurance Card _____

Will _____

Income Tax Returns _____

Tax Advisor _____

Medical and Dental records _____ (medications, vaccinations)

Personal Valuables (art, jewelry, etc.) _____

Doctor _____
Dentist _____
Divorce Decree or Separation Agreement _____
Passport _____
Title(s) to Real Estate _____
Titles to Vehicles _____
Loan Records _____

4. FUNERAL ARRANGEMENTS To be included **separate from the will** as the will is not normally read before the funeral.

Director (name and address) _____
_____ Phone _____
Place of service _____
In charge of service (pastor or other) _____
Favourite Hymns _____
Friend or relative responsible? _____
Minister _____
Church Membership? _____

5. BURIAL ARRANGEMENTS

Prepaid funeral arrangements _____
Cemetery _____
Cemetery Plot number and Location _____
If no plot is owned, choice of cemetery _____
Other Instructions _____

6. BANK RECORDS

Check Book _____
Savings Accounts Passbook(s) _____
Certificates of Deposit _____
Safety Deposit Box Location _____
Key _____

7. STOCKS AND BONDS

Name and address of Broker _____
Certificates _____

8. INSURANCE POLICIES

Life _____
Agent _____
Auto _____
Agent _____
Health _____
Agent _____
Homeowners _____
Agent _____
Pension: Profit sharing plans _____

NOTES

If you need clarification on how any of the preceding information would apply in your situation, please call or write. A qualified representative from Spencer Home Foundation would welcome the opportunity to assist you.