



LAFRENIÈRE SANNA
— ESTATE LAW —
A B O U T I Q U E F I R M

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Do I Need a Will?

Some people think that because their affairs are simple or their assets are modest, they don't need a Will. Actually, everyone over the age of 18 should have a valid Will.

There are many benefits to having a Will. If you have a Will, you can:

- decide who benefits from your estate (if you have dependants at the time of your death, there are special considerations and possible limits);
- give particular possessions to certain individuals;
- provide for a common law spouse or step-children who are not related to you by blood;
- make special provisions for a loved one with a disability;
- choose who will act as your Executor (also referred to as an Estate Trustee);
- choose who will be the guardian of children under the age of 18 and who will look after their inheritance;
- decide the age at which children or others are to receive their share of your estate;
- ensure flexibility in the administration of your estate;
- reduce the cost of administering your estate; and,
- reduce income taxes, particularly if you die leaving a spouse behind.

What Happens if I Don't Have a Will When I Die?

A person who dies without a Will dies "intestate". If, at the time of your death, you do not have a Will, your estate will be distributed according to Ontario's intestate succession law. What this means is that:

- the person appointed to administer your estate may not be the person that you would have chosen;
- immediately after your death, no one will be able to handle your affairs until the Court has appointed someone to be the 'Estate Trustee Without a Will';
- your estate is divided into shares that may not be what you want;
- relatives that you do not want to inherit may receive a share of your estate;
- your estate will likely have to cover the cost of an Estate Trustee's bond (a premium that must be paid to an insurance company and which can be thousands of dollars) which would not be necessary had you appointed an Estate Trustee in a Will;
- only your married spouse and children who are related by blood will receive anything from your estate. Step-children receive nothing. If you have no spouse or children, your parents will inherit your estate;
- if you are separated but not divorced and have not signed a separation agreement, your separated spouse will inherit from you;

- a common law spouse or same sex partner will receive nothing other than support but only if she or he was entitled to it at the time of your death and if a court approves the request for support;
- the shares of children under the age of 18 will be held and managed by the Public Guardian and Trustee and turned over to them when they reach 18, regardless of their ability to handle such assets; and,
- if you do not have any living relatives or if none can be found, your estate will go to the government.

Do I Still Need a Will if I Own Everything Jointly?

Although in some cases, this may be possible, it is not advisable. There are a number of reasons why it should be avoided:

- some assets cannot be owned jointly;
- the time and cost to change everything to joint names may be more costly than making a Will;
- if at the time of your death you are separated but there is no separation agreement, assets held jointly with your spouse will become your spouse's assets; and,
- if you are married and both you and your spouse die without children, the jointly-held assets will go to the family of the last spouse to die.

I've Heard That I Can Handwrite My Own Will Or Use One of Those Will Kits That I Keep Hearing Advertisements For. Is This True?

A Will that is entirely in your own handwriting and is signed and dated is valid. This is called a holographic Will. It may be a short-term solution if there is not enough time to do a proper Will. However, you should be aware that such a Will can create unintended problems and possibly huge expense for your estate.

If the holographic Will must be submitted to Court for probate after your death, a sworn statement from someone such as your Bank Manager is necessary to prove that the writing and signature are actually yours. Often, a holographic Will does not address many of the issues which have been discussed in this brochure, sometimes with serious consequences. If there is any ambiguity and it becomes necessary to apply to Court for guidance, huge costs may be incurred. This may also cause undue hardship for your loved ones as they will likely not have access to your assets until the issues are resolved by the Court.

The standard Will forms sold in stationery stores can create problems and provide a false sense of security. For example, a Will form which is partly pre-printed and not witnessed is not a valid holographic Will. Although there may be handwritten portions, any pre-printed parts will be ignored by the Court. In addition, such 'one-size fits all' Will forms rarely provide enough information to address each person's particular situation. The result can be expensive legal bills paid by your estate should your heirs be forced to ask a Court to determine exactly what you wanted done with your estate.

We encourage you to seek the advice of a professional who specializes in the area of Wills and Estates to guide you through the estate planning process. Nothing compares to the peace of mind which comes with knowing that your estate planning has been done thoroughly and that your loved ones will be well provided for after your death.

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