



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

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Should I Have Two Wills?

You may be surprised to learn that the answer for many of our clients is 'yes'. Having two Wills can make things easier for the executor while saving the estate time and money and leaving more for loved ones.

To avoid the additional cost and delays to your estate and to make things easier for your executor, an effective solution is to have two Wills – a Primary Will and a Secondary Will. The Primary Will includes assets that usually require a court-issued *Certificate* (called probate) before the executor can deal with them such as real property in Ontario (with a few rare exceptions) and publicly-traded shares.

The Secondary Will includes assets that are not expected to require a *Certificate* before the executor can deal with them. This includes cars, household goods, shares in a private corporation, and bank or investment accounts jointly held by the deceased and a surviving adult child (more below). Since a *Certificate* is not necessary to administer these assets, no probate fees will be payable on the assets and the executor will not be required to include an Estate Information Return (EIR) with respect to these assets. This means that formal appraisals are not required and the asset values will not be subject to an assessment. The savings in the cost of appraisals alone can be significant.

For assets such as investments, bank accounts and the like, values will be relatively easy to prove based on financial statements and other paperwork from financial institutions.

Many other assets such as furniture, china, artwork, paintings, sculptures, coin and stamp collections, vehicles and boats, and shares in a private corporation are not as easily valued. Written formal appraisals are strongly recommended;

however, these can be costly and time-consuming to obtain. Since estate asset values must be stated in the court application for a *Certificate*, there can be delays while the executor waits for appraisals. The cost of the appraisals reduces the estate value.

About Jointly Held Assets

Although many people believe that jointly-held accounts belong to a surviving joint owner, the Supreme Court of Canada in a case referred to as *Pecore* decided otherwise. For example, a joint bank account held jointly by a deceased parent and an adult child will no longer be kept out of probate, without specific written indent by the parent. Unless there is evidence to the contrary, the joint bank account will be considered part of the parent's estate. By including the joint bank account in the Secondary Will, the value of the account will not be subject to probate.

In some cases, there may be no need for a *Certificate* even for assets included in the Primary Will. An EIR is not required and no assessment can occur. This is usually the case if one spouse dies and the surviving spouse is named as a beneficiary of registered plans and life insurance and the remaining assets were jointly owned by the spouses.

After considering the information in this brochure, we encourage you to meet with a knowledgeable professional to review your unique estate planning needs to determine whether having two (or more) Wills makes sense for you.

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