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Why Do I Need a Will?

The law governing the area of wills and estates in B.C. determines how an individual's assets will be distributed upon their death. So why do you need a will? Because those rules only kick into effect when an individual has not personally determined their own wishes through the creation of a valid will.

A will enables you to determine the distribution of your estate, make gifts to charities and allocate money and treasures (to relatives and non-relatives) upon your death. In the absence of a will, the government will determine how your assets are distributed, according to legislation that guides this area. This may not align with the way you would prefer your assets to be allocated. Further, it might also require estate management and distribution that works against the best interests of your loved ones, or causes subsequent a lawsuit to be brought against the estate.

The existence of a will also makes it much easier for your loved ones – at a time when they are grieving and vulnerable - as the administration of an estate without a will may be far more challenging to deal with. The lack of a will may require more legal work to take the estate through probate, and sometimes at great cost to the estate leaving less for your loved ones to inherit.

Further, the lack of a will may open the door for involvement of outside individuals into your affairs. For example, if you have minor children then their interests in your estate will be overseen by the Public Guardian and Trustee, the organization established to protect the rights of minors and disabled persons. That involvement may cause delays in dealing with some assets, such as the mortgaging or sale of property or the selling of investments.

A will enables you to declare your wishes, but it can also help to protect your family against the conflict that can sometimes arise from carefully considered estate strategies. For example, if a will declares both your surviving spouse and your adult children as beneficiaries to your estate, then they must all agree before any major actions can be taken to the elements of that estate. This means that they would have to agree on whether to remortgage or sell the family home. Where this type of negotiation might threaten to cause rifts in families, it might make sense to handle the bequeathing of property in a different way.

In many cases people want to leave an item (such as a piece of jewellery) to a particular person as a precious memento or as a part of a family tradition. A will would you allow you to do so, whereas without a will it is unlikely that anyone outside of your immediate family would end up with anything in your estate.

A will also enables you to make decisions that would be different from the legislation in this area. For example under the law, all of your children are equal beneficiaries of your estate. However in your will, you can decide on an unequal distribution of your estate if that is your wish, for any reason.

Despite the cost and problems of not having a will, and the incredible benefits of having a will, it's estimated that half of Canadians do not have a valid will. Unfortunately, this suggests that a large portion of those estates will go into the hands of lawyers and the government before any loved ones see that wealth. Whether you create one to protect your wishes, ease the burden on your loved ones, protect your family from discord, allocate gifts to those outside the family, or determine a unique inheritance allocation, creating a will is the best way to protect your legacy.

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641 words.

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When Should I Update My Will?

Drafting a will can be challenging, as it forces us to think about our own demise. So the thought of having to review a will is as inviting as going to the dentist. Who would want to go through that a second time? Yet the reason we create a will is to protect our interests, and ensure that on our death, the closing of our affairs and the transfer of our estate is as easy on our loved ones as possible. So if circumstances change that might affect the ability of your will to achieve those goals, it makes sense to take the time to adjust your will.

A will should be reviewed whenever there has been a significant change to your life and your dependents. Such changes might include the acquisition of property, a change to your marital status, having children, losing a parent, a partner or a friend, or a change in status of your executor or the declared guardian for your children.

Sometimes, the rationale for a wills review can be more subtle. For example, one of your children might have taken on the burden of becoming your primary caretaker in illness whereas the other children have limited involvement with your care. . Or perhaps one of your children has greater wealth than the others, had received another inheritance or for other reasons, has a much lower financial need.

Changes in personal circumstances such as conversion to another religion may require changes in the will, in particular regarding the funeral arrangements, as some religions have particular rituals, prohibitions or requirements regarding the disposition of the remains.

Changing circumstances of your beneficiaries may also warrant a change in your will. For example a parent may decide to financially assist a child during the parent's lifetime. In such a

situation, it might make sense to adjust the will to reduce that child's inheritance by the amount already given.

A will should also be adjusted when an allocation is no longer valid as the item being allocated no longer exists, or the individual set to inherit that item has died or is estranged from you.

If you own a business or have become a shareholder of a corporation, it is also appropriate to review your will. Your will should outline how the shares will be distributed among your beneficiaries, which can depend on a corporate structure, specific rights attributed to specific types of shares and the Articles of the corporation. A consultation with the corporate lawyer as well as with the wills and estates lawyer will help to sort things out and structure your corporation and your will in most efficient and convenient manner, according to your wishes and desires.

It is generally advised to review your will every five years, or sooner if any major change occurs in your life. Incidentally, the legislation governing wills and estates in BC was substantially changed in March of 2014. If you have not reviewed your will since then, now might be a good time to do so.

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How to protect Minor Children in a Will

One of the best reasons to have (and keep updated) a will is for the protection of your children.

When children are minors,the death of one or both parents triggers many questions regarding their care and guardianship, and allocation to them of any of the estate of their parent or parents. If these questions are not answered in the wills of the parents, the care and future of those children may be determined by a branch of the government.

On death of a parent, the first issue is that of guardianship. A guardian is someone who manages a minor's legal and financial affairs, and provides the child with day to day care. Under the *Family Law Act* of British Columbia, both biological parents are generally presumed to be a child's guardians. This continues even when the parents separate or divorce, unless the separation or divorce agreement declares only one of the parents to be the guardian.

If both parents are guardians, then upon a death of one of the parents, the other one remains a guardian of the child and no additional actions, appointments, agreements or any other documents are necessary.

The problems arise when there is a single parent or a second biological parent of a child is not a legal guardian, or when both parents die at the same time.

In order to provide for the best interest of the child or children in the situations described above, a person may make a special provision in their will, appointing a person of their choice to be a legal guardian of the will-maker's minor child or children. The appointed guardian may be a relative, an aunt, an uncle, a grandparent or another relative; it also may be a friend, or a couple of friends (a wife and a husband). No special permission or action is necessary in order to appoint anybody as a guardian of a minor child in the will.

Guardianship of a child is a big responsibility and anyone contemplating such an appointment should give this considerable thought. The parent should seek to find someone they deeply trust will always have the best interests of the child at heart. The parent should also obtain consent from the person or persons they are considering, to ensure that the proposed guardian will take on this role willingly if need be.

If both parents of a minor are deceased, an agency called the Public Guardian and Trustee will step in to oversee the nomination and actions of a guardian. The Public Guardian and Trustee makes sure that the person nominated as a guardian is fit to take upon themselves parental responsibilities. Usually the determination of a guardian declared in the will is respected.

Coupled with a declaration of guardianship, a will often additionally includes provisions for money and property necessary for the maintenance, education, and other needs of the minor children, beneficiaries under the will. The guardian bears full responsibility for the disposition of such assets and funds provided for this purpose.

Protection for children isn't limited to minors. Parents may wish to create protection for adult disabled children, or children who for other reasons may need assistance in living and managing their affairs. In this situation the parent or parents determine their child's ability to manage money and other day-to-day tasks. In such situations a parent may establish a trust fund for the child, appointing a special trustee charged with the task of managing this trust fund to pay for the needs of such beneficiary and otherwise oversee their financial affairs.

It is always advisable to make or revise a will when a person or a family has a child, or an adult child becomes unable to manage their affairs for whatever reason. In order to determine the best way to protect interests of a minor or a disabled child the most efficient and practical way is to consult a lawyer, specialising in wills, estates and trusts.

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