



## The Importance of a Will

There are two things in life that are certain; death and taxes.

If a person living in Ontario dies without a Will, their estate will be divided in accordance with the *Succession Law Reform Act*. The Act provides that the first \$200,000 will be paid to the spouse (does not include a common-law-spouse), and then 1/3<sup>rd</sup> of the residue will be paid to the spouse, and the children will share the remainder 2/3<sup>rd</sup> equally. This division fails to address a common situation where the spouses are not legally married. Without a Will, a common-law-spouse will not automatically receive money from his/her spouse's estate. The common-law-spouse would need to apply to court for an order to receive his/her share of the estate, if any.

Some property, such as jointly owned property, bank accounts and life insurance proceeds pass outside of the Will, but only if they have beneficiaries designated under those plans. Life insurance trusts and other plan trusts can be created in your Will, but their tax treatment is somewhat of a grey area. When property passes outside of the Will, it is not subject to Estate Administration Tax (also known as probate tax). It has been argued that life insurance proceeds that are contained in a Will by way of a trust are subject to Estate Administration Tax.

You can appoint a guardian for your minor children under your Will and you can appoint a person to hold their inheritance in trust until they have reached a certain age. The guardian appointed under your Will would have custody of your children for a period of 90 days and then would need to apply to court for an extension.

If you have a Will that was prepared prior to a marriage and your Will was not prepared in contemplation of your marriage, your Will is automatically revoked. If you separate from your spouse, your estranged spouse may inherit under your Will unless he/she has waived their rights to your property by way of a separation agreement.

Inheritances are not considered family property upon separation unless they are comingled (e.g. the money is placed in a joint account with a spouse). However, the income from the inheritance is considered family property unless the Will specifies that all capital and income from the inheritance is not to be considered property to be shared between spouses.

A Will provides you with the freedom to decide how your property will be distributed and is less expensive for your beneficiaries. Without a Will, someone will need to apply to court to be appointed the Estate Trustee (the executor and manager of your estate) and may be required to post bond as security. A Will prevents additional steps being required to distribute your estate among your beneficiaries and may also reduce the potential disagreements between your beneficiaries.