

The Why and When of Wills

Why is it important to make a Will? It is estimated that one third of Canadians do not have a Will. Many other Canadians have out-of-date or inadequate Wills because their assets or family situation has changed since the Will was drawn up.

Without a Will, you are said to die *intestate* and provincial law dictates who will receive the assets of your estate.

If you die intestate, there is no executor to administer your estate and someone must apply to the court to get permission to administer your estate. The application to court is costly and time consuming. The person asking the court for permission to administer your estate (the Applicant) may have to post a bond equal to twice the value of the estate, as security. Distribution of your assets to your heirs cannot take place until the court grants authority to the Applicant. All legal fees will have to be paid by the estate, leaving less funds to be distributed to your heirs.

Further delays occur if you die intestate and there are minor children or if there is a dispute among family members or others as to who should be appointed to administer your estate. Where there are minor children, the provincial Children's Lawyer will be involved. Once the estate is distributed, the share of a minor will be invested by the Children's Lawyer and paid in full to the child when he/she reaches the age of majority whether the child is mature enough to manage the money or not.

The provincial formula for distribution on an intestacy provides for a preferential share to a surviving spouse, and the balance to be divided between the surviving spouse and children whether they are minors or adults. Where there is no surviving spouse, no children or grandchildren, remote relatives may be entitled to a distribution. If, after an exhaustive search, no surviving blood relatives can be found, your estate will go to the government.

Having a Will can save your estate money and save your family a lot of anguish and frustration. Having a Will is the only way you can have control over who will administer your estate, the manner in which your estate will be distributed and to whom.

Note: Some terms are capitalized for purposes of greater clarity in the context of this discussion only.

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Indicators That a New Will May Be Needed:

- Marriage* or other change in marital status
- Move to a new province
- Sudden wealth – i.e. lottery win or inheritance
- Increase or decrease in wealth
- Passage of time
- Change in family members or circumstances
- Sale of a business
- Retirement or severance

*Revokes a Will in all provinces except Quebec

If You Have a Will, When Did You Last Review It

Chances are that if your Will has not been reviewed with a professional within the last five years, it is time for a review. One potential problem with an old Will is that the executor choice may no longer be appropriate. A Will may also need to be changed to accommodate new family members, separation or divorce, or a significant increase or decrease in wealth since the old Will was made.

Wealth brings opportunities and adds complexity to your estate. Make sure your estate plan adequately protects your estate and beneficiaries' rights.

For more information, speak with your BMO financial professional for an introduction to an estate planning lawyer who can assist you in preparing or updating your Will or with any other aspects of your personal estate plan.

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