



A Guide to Your Will

*Ensuring Your Wishes,
Leaving Your Legacy*

YOUR WILL

The sands of time are marked with good intentions—and with wills that were never finished. Making a will is something we all know we should do but often put aside until it is too late. Sometimes we begin the process but don't finish it: the will is written but not signed.

Whatever the reasons, the lack of a proper will can have painful consequences. Treasured personal possessions are distributed in accordance with impersonal laws. Heirs experience needless expense and emotional distress. Opportunities to express one's values and convictions through special bequests are lost.


Fortunately, preparing a clear and effective will is not difficult. In less time and with less expense than you think, you can have the satisfaction of knowing that you have ensured your wishes and eased the way for those you love. Let this brochure be your guide as you do what you have so long intended.

PROPERTY COVERED BY YOUR WILL

Your estate consists of everything you own, but everything you own is not transferred through your will. Your will governs property that is:

- ◆ In your name alone,
- ◆ Owned by you and others as tenants in common,
- ◆ Payable to your estate because of your death, and
- ◆ Proceeds from life insurance policies and retirement plans payable to your estate.

Other property interests pass to beneficiaries outside of your will, namely: real estate and bank accounts held in joint tenancy, life insurance proceeds paid to the named beneficiaries, pension benefits paid to a spouse or children, shares held subject to a shareholder's agreement, and property held in trust.



Some people think they don't need a will if their home and investments are in joint tenancy and their spouse and children are named as beneficiaries of their life insurance and pension benefits. They are mistaken; for a will makes provision for any solely owned property they may have overlooked and also provides an opportunity to give directions about final arrangements and care of minor children.

Moreover, if a husband and wife were to die as a result of a common disaster and neither had a will, both would have died intestate, necessitating court-appointed executors and guardians (if they left minor children), additional expenses, delays, and division of property by provincial law.

A trust created during one's lifetime can serve useful estate planning purposes and preserve privacy, since property transferred to a trust, like property in joint tenancy, is not governed by the will. A trust does not replace a will, however, because in most cases only selected assets will have been transferred to it.

ENSURING YOUR PROPERTY GOES TO THE PERSONS AND ORGANIZATIONS YOU CHOOSE

If you have no will or comparable instrument, you forfeit the right to choose how your property will be distributed. The court will decide for you in accordance with provincial law, and the court will also decide who administers your estate.

It is possible you would be satisfied with the court's choice of administrator and the division of your property by law. It is possible you would not. You may have:

- ◆ Wanted your children to receive your property only after your spouse's death, not a fraction of it now as law dictates.
- ◆ Preferred to give some children a larger portion because of special needs—not equal shares, as provincial law requires.
- ◆ Chosen to leave legacies to special friends rather than distant relatives stipulated by rigid rules for next-of-kin succession.

- ◆ Intended to leave a bequest to a church or charity that played an important role in your life, but the laws of intestacy make no allowance for churches or charities—except the province itself in case you have no surviving relatives.

In making a will, you exercise your fundamental right to choose what to do with the accumulations of a lifetime. Nevertheless, if your will is not part of a general estate plan, your wishes could still be frustrated – even to the extent of disinheriting those you most want to help.


An asset you intend to divide equally among all your children could instead be passed entirely to one of them because, years ago, it was placed in joint tenancy with that child and is therefore beyond the scope of your will. A charitable bequest you intend to make could go unmade because your will specified particular securities which have since been sold and replaced by other property.

Good intentions are not enough to ensure that property goes to the ones you wish. Make sure your estate plan integrates property governed by your will, property in trust, and property that passes to a beneficiary under a joint tenancy agreement. Revise your will and make necessary changes when you acquire or dispose of major assets. And, of course, select as your executor someone who is trustworthy, competent, and understanding of your wishes and values.

ENSURING EACH HEIR IS TREATED APPROPRIATELY

The first step is to specify whom you want to receive your property, and how much each is to receive. The next step is to determine when and in what form each receives it; leaving a lump sum to each heir may not be the best way.

If you have minor children, you may want to establish a trust for their care in the event that neither you nor your spouse survives. Principal distributions would be delayed until whatever age you judge the children to be mature enough to receive them.



If you have one child who manages money well and another who doesn't, you could leave one a lump sum and the other a stream of income through a trust or annuity. If you have a child with disabilities, the best arrangement may be a trust in which the trustee has discretion to make distributions for special needs and care.

When there are children by a previous marriage, a common problem is how to provide adequately for the surviving spouse while ensuring that the property eventually goes to the children. Simply bequeathing your property to your spouse or placing it in joint ownership with right of survivorship could cause your children to be disinherited if:

- ◆ The surviving spouse dies without a valid will, in which case all the property would go to his or her next of kin, or
- ◆ The surviving spouse remarries and transfers property to the new spouse, or
- ◆ The surviving spouse makes a new will, leaving most of the property to his or her relatives and preferred institutions.

The solution may be a spousal trust created under your will. It pays all of the income from the trust property—and some principal too, if you so choose—to your spouse. At his or her death, the remaining principal is distributed to your children. This arrangement both provides for your spouse and preserves your estate for your children. It is also an appropriate arrangement if the surviving spouse is not skilled in managing property.

If you are married and have no children, you could create a spousal trust under your will and, at the end of the surviving spouse's life, have the principal paid to a church or charity.

INCLUDING GIFTS TO CHARITY

The form of your gifts to charity, like those to individuals, will depend on your family circumstances. A lump sum bequest may be

best if you are single or have already provided for your spouse and children. But for other circumstances, there are alternatives.

- ◆ If you are married and have children, you might divide the remaining principal from a spousal trust between children and your favourite charities. This assumes, of course, that the children's portion of the trust principal, plus other bequests to them, would be sufficient for their needs.
- ◆ If you have a sibling, parent, or other relative who will need financial assistance, you could create a charitable remainder trust under your will. The income would be paid to the family member for life. The trust would then terminate and the principal would be distributed to the church or charity. Unlike a spousal trust, there can be no encroachment on principal during a trust's existence.
- ◆ If you have an RRSP, RRIF, or retirement annuity, and a spouse does not survive you, you can make the church or charity the beneficiary of any benefits payable at death. The tax credit resulting from the gift will offset the tax on the distribution of retirement funds, so you will be able to pass your remaining retirement funds to the church or charity tax-free.

ENSURING NO UNNECESSARY TAXES ARE PAID

Your property will go to individuals, church and/or charities or the government. You have no other choices. But tax planning can maximize the portion that you control. After you have decided whom you want to benefit and how to respond to their special needs, you can then devise the most tax-efficient way to realize those objectives. A lawyer who specializes in estate planning is best equipped to help you develop an estate plan and draft your will accordingly.

Remember that when you die you are deemed to have disposed of your property immediately before death. Consequently, all resulting capital gain must be reported on your final tax return.

An exception is the capital gain on your principal residence. Another is the gain on property that goes directly to your spouse or into a qualified spousal trust. No tax is payable until your spouse dies or the spousal trust sells the property. The amount of gain reported at that time is the difference between the fair market value then and your original cost base. The gain will have been rolled over from you to your spouse.

Your will should give your executor the power to make appropriate elections and to allocate property between your spouse and children, determining which type of assets goes to each.

You should also consider giving your executor the discretion to choose the particular assets that fulfill the charitable bequest. If your executor is able to select listed securities for the charitable bequest and distribute cash or other properties to your heirs, your tax savings will be much greater. Whatever the asset, your estate is entitled to a donation receipt that may result in a tax credit on your terminal tax return.

Example: Richard S., a widower, made a \$100,000 bequest to charity and divided the rest of his property, valued at \$600,000, between his two children. Part of that property consisted of appreciated stock, and all of the taxable capital gain had to be reported on his final tax return. In fact, the combination of taxable gain and other taxable distributions resulted in a net income of \$200,000 on that return. The tax payable, however, was reduced by \$46,000 because of the combined federal and provincial tax credit for the charitable bequest. Thus, the \$100,000 bequest to charity reduced his children's legacy by only \$54,000.

The donation limit for gifts made in the year of death is now 100 percent of net income. Thus, Richard's bequest was entirely claimable. Even if he had doubled the charitable bequest, it still would have been fully claimable because it would not have exceeded 100 percent of his \$200,000 net income. If the charitable bequest had been larger than \$200,000, the excess could have been carried

back one year (again, subject to the 100 percent-of-income limitation) and possibly have generated additional credit based on the previous year's tax return.

Many people feel that the legacy they leave to children and grandchildren is not only money and property, but also the community in which they live. Thus, they may leave a portion of their estate to improve education and health care, to enhance their cultural and religious heritage, to protect the environment or to address social needs. Fortunately, there are significant tax incentives for making such bequests to charitable institutions and providing a better future for heirs.


ENSURING YOUR WILL IS CURRENT

Your current will may perfectly express your wishes—of ten years ago. It may not express at all what you want today, especially if:

- ◆ Your marital status, or that of your children, has changed.
- ◆ There are new children or grandchildren in your family. You have moved to another province.
- ◆ The size of your estate has increased or decreased significantly, or you have sold or acquired a business interest.
- ◆ Some of the individuals to whom you left bequests have died, or their financial circumstances have changed.
- ◆ The individual you chose as your executor is no longer in the area or would be unable to serve.

Even if your own circumstances haven't changed, the laws may have. A phone call to your lawyer could be sufficient to ascertain whether any recent legislation necessitates adjustments in your will.

There are two ways to make changes without having to incur the expense of drafting an entirely new will. One is to add a codicil to an existing will. This is an amending document, duly dated and wit-



nessed, which may change an existing provision or add an entirely new one. For example, a bequest to a church or charity requires only a simple codicil unless it would fundamentally alter your distribution plan.

Another way to make changes without re-drafting your will is to keep a list, separate from your will, itemizing jewellery, furniture, artwork and other tangible property with the name of the person who is to receive each object. As you acquire or dispose of objects, you simply change the list without changing your will. Although such a list is not legally binding if it is referenced in your will, there is a good probability that your wishes will be respected.

A helpful supplement to your will is a letter, periodically updated and kept with your will, in which you provide complete information about your assets, where records are kept, and any special wishes you have.

FOR MORE INFORMATION:

Consult your legal and financial advisors about making or revising your will. If we are in your charitable donation plans, we recommend that you call us for information and suggested language.

We also suggest that you send us a confidential copy of the section of your will pertaining to us. This will enable us to determine whether there would be any problems in carrying out your wishes—and will give us the opportunity to express our gratitude for your thoughtfulness and generosity.

All examples are current as of September 2006 and are subject to change.



About Siloam Mission

As a Christian humanitarian agency, Siloam Mission is a connecting point between the compassionate and Winnipeg's less fortunate.



Siloam Mission alleviates the hardships of poverty and homelessness as Mission staff, volunteers and donors provide free meals, shelter, clothing and support services.



The Mission assists in transitioning homeless and disadvantaged people to more self-sufficient and healthier lifestyles by providing referral services, life-skill development, education upgrading and employment training opportunities.

Financial Planning



The information in this booklet does not constitute legal or financial advice and should not be relied upon as a substitute for professional advice. You should always seek professional legal, estate planning, and financial advice before deciding on a course of action.



If you would like information on other methods of planned giving, please contact us and we would be glad to assist you in whatever way we can.



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