

PLANNING A WILL

Provided for the convenience of clients of Glenn G. McAllister

The following are some of the questions (with some of the background information) that your lawyer will ask you when we assist you in the preparation of your Will. It is advantageous to review these ahead of time to prepare for the meeting.

1. Personal Information:

Full name of Person making the Will _____

Any other names (including nicknames if used frequently) _____

Full Address _____

Phone Number _____

2. Children:

Name

Age

3. Personal Representatives (Executors):

The Personal Representative is the person who is responsible for administering your Estate and carrying out your wishes as set out in your Will on your death. If your spouse is the full beneficiary of your Estate, it is preferable to name him/her as your Personal Representative. You should also name an alternate Personal Representative(s) to ensure that someone is available to replace your first choice if something happens to him/her. Joint personal representatives can be named if you wish but having more than one personal representative can cause some problems in terms of all personal representatives being available to meet with officials or sign legal documents. For tax and jurisdictional reasons, it is not advisable to choose a Personal Representative who resides outside of Canada. The Personal Representative should be a person you know and trust and who is familiar with your assets. It is preferable to ask your Personal Representative(s) beforehand if they are willing to act. Generally, if your children are adults, a child or children may be an appropriate Personal Representative depending on your individual family situation and relationship.

Full name of Personal Representative(s): _____

Relationship: _____ Address: _____

Alternate Personal Representative: _____

Relationship: _____ Address: _____

4. Guardians for Minor Children:

A Guardian is the person who will look after your children under the age of 18 years at your death. In the event of a joint mishap or other circumstances where both spouses are deceased, and if you have children under the age of 18 years, you should nominate a guardian for them. It is best to select an individual rather than a couple because of potential conflicts should the couple separate. You should also nominate an alternate guardian. We suggest that the Personal Representative and guardian be different persons to provide a “check and balance” system on assets being held for minor children, although this is not necessarily required.

Full name of Guardian: _____

Relationship: _____ Address: _____

Alternate Guardian: _____

Relationship: _____ Address: _____

5. Funeral or Burial/Cremation Directions:

- I have no direction as far as my funeral and burial are concerned
 - I desire cremation with my ashes to be _____
 - I desire a chemical cremation if it is available and the remains to be _____
 - I desire a simple funeral
 - I wish to be buried at _____
 - I have the following directions: _____
- _____

6. Distribution of Estate:

Generally speaking, a husband and wife usually have “mirror” Wills. This means that if anything happens to one spouse, then the other receives the entire Estate. The spouse is also named as Personal Representative. In any event, most spouses own most, if not all of, their property jointly or are the respective designated beneficiaries of the other’s life insurance policies, RRSPs and/or RIFs such that these assets will pass directly to the survivor regardless of the Will.

If you own some assets individually and you do not wish your spouse to receive your entire Estate, these wishes should be indicated. You should also make adequate provisions for your spouse and dependent children; you have no legal obligation in Alberta to provide for independent (adult) children in a Will.

In the event that both husband and wife fail to survive each other, then it is common for your Estate to then go to your children in equal shares. This distribution, however, need not be equal. The age of majority in Alberta is 18. The majority of people feel that at 18, a child is not able to manage money in a mature and responsible manner and therefore the most common distribution is not all at age 18 but at some age that greater, sometimes 21 or 25. It is possible to select any other age, particularly if you are concerned about your child's ability to manage money, or to pro-rate the estate, for instance, by giving 1/2 at 18 and 1/2 at 21, or 1/4 at 18, 1/4 at 21 and 1/2 at 25. While money is held in trust, your Trustee may utilize some of those funds for the care and maintenance of the children, including post secondary education.

(a) Specified Gifts or Legacies - List Amounts or Items:

Do you have any specific items (ie. valuable antiques, paintings, family heirlooms, things of sentimental value) or amounts of cash you would like to give to any specific person, charity or child (in addition to or other than a specific child receiving an equal share of your Estate in the event of your spouse's death)? We recommend that you not list any items unless you are planning to retain them indefinitely and they are of significant sentimental or cash value. Remember that the Personal Representatives obligation is to sell the items that you own and distribute the cash monies to the beneficiaries if you do not specify otherwise in the will.

Full Name of Beneficiary: _____

Relationship: _____ Address: _____

Item: _____

Full Name of Beneficiary: _____

Relationship: _____ Address: _____

Item: _____

Full Name of Beneficiary: _____

Relationship: _____ Address: _____

Item: _____

As discussed above, how do I wish to have the residue of my Estate dealt with as follows:

(b) All to spouse: yes / no

(c) If spouse predeceases me:

 equally to children

 different percentages to different children

(d) My children are to receive their share at the following age (trust clause):

- all at _____ years
- pro-rated at specified years: _____
- other: _____

(e) If one or more of my children dies before I do or before attaining the age at which he/she is entitled to the share, the following person(s) shall receive that share or the amount remaining?

- the children of the deceased child (my grandchildren)
- my surviving children only
- other: _____

7. Family Demise:

You should also think about who you want to receive your Estate if there is some tragedy or circumstances resulting in the death of your entire immediate family. This will also apply to a situation if you do not have a spouse and/or children. Some options available are:

- 1/2 to each set of parents
- equally among all my brothers and sisters then alive
- 1/2 to each of mine and my spouse's siblings to be divided among them equally who are then alive
- equally among all surviving nieces and nephews of both my spouse and me
- specified charities: _____

- other: _____

8. Other Important Considerations:

There are other circumstances or considerations that will impact on the preparation of your Will; some of these are:

- Are any children mentally or physically handicapped or receiving social assistance for any handicap? A handicapped child may lose certain government benefits if the child is the recipient of an inheritance. On the other hand, they may be a dependent child to whom you have an obligation at law to adequately provide for.
- Are any of your children step-children or adopted and/or do you have any other children from a previous marriage or relationship?

- Have any of your children predeceased you, and if so, do you wish to provide for their children?
- Have you made any loans to family members or others that are to be collected or that you wish to be forgiven or mentioned in your Will?
- Have you been married previously? If so, is there an obligation to pay or receive maintenance?
- Are you in an “Adult Interdependent Relationship”? (Common Law included)
- Do you own a farm, a small business or a private corporation?

9. Documents That May be Required:

Certain existing documents may impact the preparation of your Will. If you have any of the following, you should produce them to your lawyer: Marriage Contract, Cohabitation Agreement, Separation Agreement, Minutes of Divorce Settlement, Unanimous Shareholders Agreement, ongoing obligations under any business agreement(s).

10. Other Estate Planning Documents:

In completing an overall estate planning program, you may wish to consider an Enduring Power of Attorney. This allows you to appoint another person who would look after your financial affairs while you are alive but are unable to look after them yourself. Additionally, you may wish to appoint an agent and provide some special directions regarding your personal affairs, particularly health care, if you are no longer able to make such decisions yourself; this is done through a Personal Directive (previously referred to somewhat incorrectly as a “Living Will”).