



**Tax, Retirement & Estate Planning Services**

 **Wealth Transfer Strategies #5**

## Wills 101

Preparing a will is not something most people look forward to. Yet there are a number of good reasons why you shouldn't procrastinate in getting your will prepared – especially when you consider how little it costs and the benefits that come with it.

Having a will helps facilitate the administration of your estate and can help you save taxes. A will communicates your intentions and can allow you – and not the government – to determine how your assets will be distributed upon your death. You put a lot of effort into acquiring wealth, so doesn't it make sense to ensure your interests are preserved after you pass away?



## Will Planning in Quebec

In the absence of a proper will, a Quebec resident's estate will be settled in accordance with the applicable provision of the Civil Code. This is often not the wisest choice. For instance, if you leave behind a common law spouse and minor children, the spouse would be entitled to nothing under the Quebec Civil Code. A situation like this could lead to countless difficulties in raising these children to adulthood. Many other examples could be given all with a common factor – they're all preventable with a valid will.

## What happens if you don't have a will?

Beside the fact that your assets will not be transferred in accordance with your wishes, there are other consequences of dying without a will, for example:

- The transfer of your assets may take more time and be more costly.
- Taking financial care of dependent children or relatives may be more difficult or even impossible.
- Your spouse may end up not being well protected.
- Your minor children could have access to their share of your estate at the age of 18, something they may not be able to handle at that life stage.
- Preventable tax liabilities

- The executor will be named by your heirs or the court if they cannot agree, not the person you would have selected.
- It may force the sale of assets at the wrong time.

## What are your options in Quebec?

In Quebec, three different forms of wills are available:

1. Holograph wills are handwritten and signed by the testator.
2. Signed before witnesses wills can be printed but have to be signed by the testator in the presence of two witnesses. It can be prepared by a third party or by the testator him or herself.
3. Notarial wills are drafted by a Quebec notary and signed by the testator, before a witness and the notary.

There is a definite advantage to using a notarial will in Quebec. First off, it does not have to be probated by the Superior Court like the two other forms, resulting in time and cost savings.

## Professional Advice

Mistakes can easily be made in the drafting of a will. Estate and tax planning is complex and the help of a specialist is highly recommended to facilitate the settlement of the estate and to help minimize the tax liability.

## How to prepare yourself?

Before the meeting with your legal advisor, you should reflect on the following:

- Prepare a summary balance sheet that includes your assets and liabilities and your life insurance coverage.
- Who do you want to name as legatees of your estate?
- Who is going to serve as executor (and/or trustee) and what will be the extent of their mandate and powers? Ensure that they are willing, and if not, be prepared with a back up.
- What are your wishes/instructions for your funeral arrangements.
- Do you wish to leave a particular legacy to friends, relatives or charities? Often, personal belongings are bequeathed in this fashion.
- Who could act as guardian or tutor to your minor children?
- Who are going to be your primary legatees? Also consider naming secondary legatees should your primary legatees not survive you?
- Do you want your children to receive their legacy in a lump sum, over a certain period of time, at a certain age or do you want to set up a trust for their benefit?
- Do you wish to have certain provisions to deal with your business assets?
- Do you wish to discuss the feasibility of setting up trusts for legal or tax purposes?

## How often should you update your will?

A will should be reviewed every time a significant life event occurs, for instance, the death of a legatee or an executor, a divorce (yours or that of a legatee), a birth or a change in your financial situation. Also a will should be reviewed whenever there are changes to tax, family or other applicable laws that could have an impact your estate planning goals.

As a rule of thumb, every five years or so, you should read through your will to see if it is still relevant and in line with your wishes. At this time you may also want to meet and discuss the matter with your legal advisor.

## Protection for you and your family

A will is the foundation of an estate plan. The goal of having a properly drafted will is to ensure your assets will be distributed according to your wishes and that your loved ones will be properly provided for in a tax efficient manner. By creating a will, you can avoid unnecessary costs, delays and the undesirable results of intestacy, while gaining the ability to choose the executor of your estate and the tutor(s) of your children. When you consider that most wills can be prepared for a few hundred dollars, and also take into account the potential consequences of not having one, it is clear that everyone should have a will.

### Note

There may be certain situations in which a will is properly drafted, but may be affected by pre-existing alimony obligations or a residual claim under a marriage contract or the family patrimony. If successful, this may change the distribution of assets contemplated by the will. However, your legal advisor should be able to help you evaluate the impact on your plan and guide you properly to limit unwanted results.

## Ideal candidates

Investors who want to:

- Ensure their assets are distributed according to their wishes.
- Facilitate the administration of their estate and minimize taxes.
- Select the executor(s) of their estate and tutor(s) of their children.
- Set out specific instructions on certain matters such as their funeral arrangements.

## Take action

If this applies to you, and:

- You don't have a will, have one prepared by your legal advisor.
- You do have a will, review it regularly to make sure it still reflects your wishes and amend or update it if need be.

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