

Will Checklist

We have been assisting clients with their estate planning for almost 90 years. Depending on your needs, your plan can be quite complex or very simple. Many people die with no plan at all leaving it up to the government legislation for intestate people (The Succession Law Reform Act) and the common law to determine how your assets are dealt with at your death.

Intestacy

While the law that deals with an estate where there is no will does not lead to gross inequality, in that it divides the assets largely the way the majority of people would have expected them to be divided, it can lead to some extremely inequitable, awkward and sometimes bizarre results. The Act sets up a schedule of who would receive your assets at your death which is usually your legal spouse and legal children. It makes no provisions for children who are underage and common law spouses are treated differently from legal spouses. Should you die without a will and an estate trustee needs to be appointed (this is the case of most estates where the value is in excess of \$20,000.00), your estate trustee will probably have to be bonded before the courts allows him or her to administer your affairs.

Testacy

For most people with assets in excess of \$20,000.00, or if you have children or a spouse, a will, simple or otherwise, it is strongly recommended as the main estate planning tool.

With a will you can set up trust funds for children or others. A trust fund can be adjusted to fit each families' needs.

With a will you can ensure that certain people are looked after that may not fall within the limits of the Succession Law Reform Act (for example; parents, stepchildren or charities). You can also ensure that certain items such as cottages, art collections, etc. will be divided amongst the appropriate people (meaning they get the actual cottage as opposed to forcing the estate to sell the cottage and dividing the money).

You will set up an "Estate Trustee" (Trustee) who is a person appointed by you to look after your estate. This person, assuming they are a resident, will not be obliged to file a bond.

Other Estate Planning

There are many other estate planning tools other than wills which are regularly used by lawyers and financial advisors to ensure an orderly succession on death. These include life insurance policies, owning assets jointly, setting up “inter vivos trusts”, setting up separate corporate wills, cohabitation agreements, shareholders agreements and partnership agreements.

Our Procedure

If you are interested in estate planning, our practice is to book an appointment.

The meeting typically takes about a half-an-hour.

To prepare for this meeting, you do not require a detailed list of your assets. In fact, no list at all is mandatory. You will be asked about your assets in a general way. You should bring in copies any of the above-mentioned documents which could affect your estate planning.

After review of your general financial circumstances, we will discuss with you the main points of your will and draft a will. It will then be sent to you for review. You will need to re-attend to sign it.

It is our office policy that a will prepared by our office be witnessed by Geoffrey Dashwood.

Main Issues

Estate Trustee

Who will be your estate trustee (executor)? That is the person who administers your estate on your death and typically administers any long term trust funds you may have set up. This person should be a resident of the country you live in, available on reasonably short notice to assist and must be of legal age of majority. This should be a fairly responsible person as this person will have access to your assets upon your death.

Guardian

If you have any underage or incompetent children or dependants, you should consider a guardian. This is the person who will largely look after the children on a day-to-day basis. The appointment of a guardian, under the Children’s Law Reform Act, is only good for three months after your death. At that point the guardian may have the appointment approved by the court.

Main Issues (continued)

Beneficiaries

The final position, the one most people are most interested in, are the beneficiaries.

There are a series of ways of getting your assets to your beneficiaries. You can pass specific things to your beneficiaries (e.g. cottage) or you can give a bequest to a beneficiary (e.g. \$1,000.00). The assets that remain (the residue) will then have to be divided amongst a given set of beneficiaries.

Amending

Once we have prepared and signed the original will, we would be pleased to assist with any necessary changes. Typically you should re-think your estate plan every time a major life change occurs or about every ten years. Please do not amend the original will or Powers of Attorney once they have been signed. The best thing to do is to simply photocopy them and on the copy make any necessary changes and drop them off to the office. We do not charge the full fare for reasonably minor amendments to wills or Powers of Attorney, however we do have to go through the same formalities of signing the documents.

Once we have met, we usually draft documents and forward them on to you. You have the opportunity to review the documents to confirm that the draft represents your wishes. At that point, once you have reviewed the document and you are satisfied with it, you book an appointment to attend the office to have the document formally executed. Please note that the document is invalid until the document is executed with the appropriate witnesses.

It has been the practice of Dashwood & Dashwood for many years to keep a record of the meeting and the fact that the will was signed. The original will is delivered to the client.

The usual process can take as little time as 2-3 days but typically takes about 2-3 weeks.