

Investor Insight

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Do You Have an Up-to-Date Will?

Every few years, surveys are done by Canada's banks or law firms that suggest that a significant number of Canadians either do not have a will in place or have not updated their will over time. As we recall, these numbers have not changed appreciably over the last decade or so. This is, perhaps, a sad commentary on human behaviour — we recognize what should be done, but never seem to get around to actually taking action.

Indeed, we are no longer surprised by the number of new clients who reveal they don't have valid wills in place when we make routine inquiries to open new accounts. Most people don't like to think about matters such as death and the distribution of their assets, and we understand this reluctance. But a clearly written will that specifies how your wealth will be distributed can be one of the greatest gifts you can make to your immediate family. Just ask anyone who has had to go through the house of a deceased and decide how to empty it out. Think of the stress on loved ones at an emotional time that can be eased by specific instructions that you leave behind.

Moreover, a well-constructed estate plan (of which a will is a vital part) can help to ensure that taxes are kept to a minimum and more of your assets will be left for your heirs to enjoy. While there are no death taxes in Canada, assets of a deceased are deemed to have been sold at market value just prior to death. Capital gains taxes will be the principal concern, though not the only one.

Make no mistake: Canada Revenue Agency (CRA) will be demanding its money before anyone else gets a share. But the good news is that there are ways of softening the immediate impact that taxes can have when your affairs are structured properly.

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Without a Will

Dying intestate (without a will) results in the province distributing your assets according to preset rules, which may not be what you would intend. Administrative delays are often the norm, and if you have no next-of-kin, all your assets will revert to provincial coffers.

Will Preparation Does Not Have to Be Complicated

Making a valid will can be as simple as hand-writing a document (referred to as a holograph or holographic will). However, legal requirements vary by province and, indeed, some provinces do not recognize their validity.

Alternatively, you can purchase a will kit. While these may be satisfactory for simple situations, it may not be appropriate for most situations. You should recognize that wills are legal documents. As such, the wording must be precise to ensure there are no disputes as to interpretation.

For the relatively small fees involved, having a competent lawyer draw up your will, and seeing that it is signed and witnessed properly is highly recommended. Discussing your affairs with such an expert can also help to ensure that your exact wishes will be set down in your will, and that common pitfalls regarding tax or family relationships do not become an issue.

We encourage you to talk to us as well, particularly about the financial or investment aspects of your estate. We may be able to suggest ways of saving tax or otherwise maximizing the bequests you make to your heirs.

Review Your Will Regularly

Given that conditions are always in flux in everyone's life, it is also important to review the terms of your will regularly, and especially whenever there is a major "life changing" event. These might include a divorce or marriage, the death, marriage or divorce of a beneficiary, or the need to appoint a new executor. Indeed, scheduling such a review every three to five years is a prudent idea to keep your will up-to-date.

In summary, if you haven't thought about your estate plan lately, resolve to review your documents at an early date. Start with your will, but also any related documents such as powers of attorney that you might have in place. And, if we can help in any way with this, or any other estate planning matters, please don't hesitate to get in touch.