

Every adult who owns assets should have a Will. It is important to take the time to sit down with a lawyer and properly plan the distribution of your estate. The main purpose of a Will is to ensure your wishes are carried out, in the most effective manner.

How an estate is divided if there is no Will:

If you die without a Will (which is called dying “**intestate**”) the law in British Columbia determines who is entitled to your estate. If you die intestate, generally speaking, the law divides your estate as follows:

- If you die leaving a spouse, but no children, your entire estate passes to your spouse.
- If you die leaving both a spouse and children, your estate is split between your spouse and your children. Your lawyer can explain how the intestacy law would apply to your particular circumstances.
- If you die leaving children, but no spouse, then the children share equally.
- If you die without a spouse or children, then your estate passes to your parents. If you have no living parents, then your estate passes to your siblings, then to nieces and nephews, then to next of kin. If no next of kin can be located, then your estate passes to the government.

Other problems that arise if there is no Will:

As you can appreciate, these outcomes may be significantly different than what you would want. The intestacy laws also permits children to take their inheritances at age 19; an outcome that many parents would be opposed to. Furthermore, the intestacy rules do not take into consideration the ability of the person receiving the money. For example, if you have a child with a cognitive disability and you die without a Will, that child could receive a large lump sum of money with no mechanism in place to protect the funds from being used inappropriately, or which may impact the child’s disability benefits. To protect a person with a disability when receiving money, you need a Will.

The intestacy rules do not take into consideration who would be the best person to administer your estate. If you die without a Will, any person with an interest in your estate can make an application to the court to be appointed the Administrator of your estate. This can result in unpleasant family disputes about who should be in charge of your estate, and in the interim the estate is frozen and cannot be dealt with.

Wills are also essential if you have children, in order to name a guardian for the children if both parents die. If you die without a Will, any next of kin can apply to the courts for a court order appointing them as the guardian of the children. The judge would determine what is in the best interests of the child; and, again, this may not accord with what you would have wanted.

The intestacy rules are not sufficient to ensure that certain people and organizations important to you are taken care of upon your passing. For example, if you have a dear friend you wish to recognize, or you support a charity or non-profit organization and wish to leave a legacy to it on your death, you need a proper Will.

What your Will may address:

Creating a Will allows you to have control over who gets how much of your estate, and when. Using a Will to distribute your estate gives you the ability to:

- **Name your executor**—someone you trust to take care of your estate after you pass away. If you do not name an executor, then the court Will appoint someone to administer your estate, and that person may not be who you had in mind.
- **Distribute your estate to the particular beneficiaries of your choice.** This is particularly important if you wish to leave assets to people outside of your immediate family or a non blood-relative.

- **Make specific gifts** to organizations or charities of your choice.
- **Name the guardian of your children** (subject to the best interests of the child as determined by a court). If you do not name a guardian, family members may end up arguing over who is best suited to look after your children.
- **Provide for the care and maintenance of certain loved-ones** through the use of trusts. For example, by creating a trust in your Will you can provide for a beneficiary who:
 - Has a disability and cannot manage his/her own finances;
 - Has financial problems and you want to protect the inheritance; or
 - Is a young child and the parents want to delay the age at which that child can take his/her inheritance.
- **Lay out your plans for your memorial service:** burial vs. cremation, religious requirements or certain family traditions you want to uphold.
- **Make provisions for your pets**, who may survive you upon your passing.

Do I need a lawyer to draft my Will?

Some people prefer to save a bit of money and write their own Will or use self-help Will kits. However, these “do it yourself” Wills are risky business that can end up causing problems and costing your estate more money in the future.

A valid Will requires several legal technicalities that can easily be missed if the Will is not prepared by a lawyer. A lawyer is instrumental in both ensuring that legal formalities are met and ensuring that you (as Will maker) have capacity, and are not unduly influenced, when making a Will. In other words, a lawyer can greatly reduce the likelihood of your Will being challenged and even rejected by a court. When doing it yourself, it is easy to miss something, or to draft the Will in such a way that your intention is not clear, or in a way that causes disputes to arise among your loved ones.

Your lawyer Will assess your personal circumstances and provide you with legal advice, specifically tailored to you, about how best to structure your affairs and create an estate plan for you and your family. Factors such as blended families, foreign assets, significant net worth, and disinherited children all complicate matters and make legal advice all the more essential. The law is constantly changing, so working with a lawyer who keeps current on estate planning law is highly recommended.

Through proper estate planning, you can substantially reduce probate fees, income tax, Public Guardian and Trustee expenses, and administration costs.

Your Will is an important tool in the estate planning process and gives you the control and peace of mind to ensure that your wishes are honoured, in the most effective means possible.

For assistance with estate planning or administering an estate, contact a member of our experienced estate team at Fulton & Company LLP.



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