



Wills, Estates + Trusts



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Overview

Stay in the "know" with the most recent developments in Wills, Estates and Trusts on our [BLOG](#).

Why You Should Have a Will

In Alberta, if you do not have a Will, your estate will be distributed pursuant to the intestacy provisions of the Wills and Succession Act. Other assets, such as property held jointly with another person or property which has a designated beneficiary (such as life insurance or RRSPs) will pass directly to the surviving joint owner or the designated beneficiary if they survive you, and generally not form part of your estate. There may, however, be circumstances where assets are held in joint tenancy for administrative convenience but are intended to be distributed to someone other than the joint tenant.

Your Spouse May Not Receive All of Your Estate

The Wills and Succession Act prescribes that, after payment of debts, your spouse or "adult interdependent partner" will only receive the whole of your estate if all of your surviving 'descendants' are also the 'descendants' of your spouse or adult interdependent partner. 'Descendants' is given a broad definition under the Wills and Succession Act, and means more than just children. Therefore, if even one of your children, grandchildren or great-grandchildren are not also the children, grandchildren or great-grandchildren of your surviving spouse or adult interdependent partner - he or she will not receive the entirety of your estate.

Minor Children?

As a general rule, all property (including money) in excess of \$5,000 which a minor (under 18 years of age) is entitled to receive must be delivered to the Public Trustee. If the surviving parent wishes to manage your child's property on his or her behalf, they will have to obtain a Court Order appointing them as trustee of the child's property. Of perhaps greater concern is that, without a properly drafted Will, the Public Trustee will be required to release all of your child's or grandchild's property to him or her when they reach the age of majority - irrespective of the value of the property or his or her ability to handle money. This situation can be avoided with a properly-drafted Will.

Guardians

The biological or adoptive parents of a child are presumptively the legal guardians of the child - however, you may have concerns about your child's other biological parent or want your spouse (who may be a custodial adult through second marriage but not your child's

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biological parent) to be the guardian of your child. If such concerns or wishes are not clearly expressed in a Will, they are unlikely to be honoured.

Other Wishes

Do you want a particular child to receive all of your jewellery on your death? Is it your wish that the Guardian of your children not work outside the home? Do you want to be cremated? Do you want to designate the person who is to be the executor and Trustee of your estate? Do you want to leave a gift to a favourite charity? If so, you need a properly drafted Will. A Will is the only way to ensure that your choices regarding support and protection of your children, distribution of property, funeral instructions and any other testamentary wishes are communicated and legally enforceable.

Our Wills, Trusts and Estates department can assist you in creating an individualized estate plan, including drafting a Will which provides your Executor, Trustee and Guardian with your clear instructions. If you have a blended family which includes step-children or step-grandchildren, or you have children outside of your current relationship, you may wish to contact our Wills, Trusts and Estates department to discuss preparing a Will which properly expresses your wishes.

Experience

Splett v Splett, 2017 ABQB 658

Estate of Alec Goodzeck, 2018 NWTSC 68

Moore Estate (Re), 2018 ABQB 614

Rodehuts Kors Estate (Re), 2018 ABQB 562

Birkenbach Estate (Re), 2018 ABQB 538

Edmunds Estate, 2017 ABQB 754

Lindsay Estate (Re), 2017 ABQB 452

Anderson Estate, 2017 ABQB 422

Anderson Estate (Re), 2016 ABQB 683

Nelson Estate (Re), 2014 ABQB 765

Nelson Estate (Re), 2014 ABQB 413

Brousseau v. Janz Estate, 2014 ABQB 136

Benefield v. Alberta (Public Trustee), Benefield v. Alberta (Public Trustee), 2001 ABQB 242

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November 22, 2018

[Tips + Resources for Charities and Non-Profits as Estate Beneficiaries](#)

September 2018

[The Best Lawyers in Canada 2019](#)

June 2018

[Probate for Paddington: Michael Bond, CBE \(1926-2017\)](#)

June 2018

[Pay Attention to What You Pay For](#)

FAQ

Question:

What is an Enduring Power of Attorney (EPA)?

Answer:

An Enduring Power of Attorney (EPA) allows you to appoint someone (your Attorney) to manage your financial affairs. An EPA “endures” even if you lose your mental capacity, meaning that the person you appoint can manage your financial affairs in the event that you become mentally incapacitated.

Question:

What is a Personal Directive (PD)?

Answer:

A Personal Directive (PD) allows you to appoint someone (your Agent) to make decisions with respect to personal and healthcare-related matters in the event you are unable to make reasonable decisions concerning such matters (or unable to communicate such decisions). A Personal Directive is also sometimes referred to as a “living will.”

Question:

What Are The Steps to Preparing a Legally-Enforceable Will?

Answer:

The first step to preparing a Will, Enduring Power of Attorney and Personal Directive is a consultation with a lawyer. Your individual needs and wishes will be discussed and you may be asked to complete an Estate Planning Questionnaire prior to the meeting. Once the documents have been drafted, the drafts will be sent to you for your review and comment. Once it is confirmed that the documents properly reflect your wishes, a meeting will be scheduled with the lawyer to execute the documents.

Question:

How Long Does It Typically Take for a Will to be Drafted?

Answer:

A Will may be drafted quickly once final instructions are received. The process of finalizing a Will typically takes 4-6 weeks to complete (after the first meeting with an estate planning lawyer). However, we can typically prepare documents faster where such documents need to be executed on an urgent basis.

Question:

How Much Do You Charge to Prepare a Will?

Answer:

As every individual has unique and specific requests and circumstances, our fees for preparing a legally-enforceable Will, Enduring Power of Attorney and Personal Directive is determined on an individual basis. Please contact one of our lawyers for further information.

Disclaimer: The above information is intended to provide commentary on frequently asked questions in this area of law and should not be interpreted as providing legal advice. Please contact a group member before acting on any of the information.

Helpful Links

The following links are additional resources that may be useful:

Estate Planning Questionnaire

- Our Estate Planning Questionnaire assists with the estate planning process.
- The Questionnaire facilitates an efficient meeting, as it assists us in ensuring that we are aware of all relevant information, and promotes family discussion prior to the meeting. Fill in the Questionnaire and bring it in when meeting with us.
- We also look forward to meeting with you in person to discuss estate planning considerations, in order to create a customized estate plan that is appropriate to your circumstances.
- To book a meeting with one of our estate planning lawyers, please contact Cindy O'Hara at 403-260-8575 or by email at cohara@fieldlaw.com, or contact one of our lawyers directly (see the "Our People" tab for their contact information).
- *Please note, we suggest saving the above document to your computer prior to adding any information to the form*