

THE ADVISOR

Legal Issues of General Interest to Individuals

DYING WITHOUT A WILL

If you die without a will, your estate will be distributed according to the provisions of the appropriate Intestate Succession legislation which varies from one province to the next. The following summary highlights how your estate would be distributed under the Alberta legislation if you die without leaving a Will, subject to variation under the *Family Relief Act* or the *Matrimonial Property Act*.

Distribution of Estates under the Intestate Succession Act

- If you are married at the time of your death and do not have any children, your surviving spouse is entitled to receive your entire estate.
- If you are married at the time of your death and are survived by children, the *Act* provides that your spouse is entitled to receive the first \$40,000 of your estate and a portion of your remaining estate depending on how many children you have (1/2 if you have one child, 1/3 if you have more than one child). Your children are entitled to share the balance of your estate equally. If any of your children died before you, but left children (your grandchildren) who survive you, those grandchildren are entitled to share equally the portion of your estate which your child would have received if he or she was alive.
- If you are not married and have no children or grandchildren, your estate will be divided equally between your parents, or the survivor of them. If your parents are no longer alive, your

estate will be divided equally amongst your brothers and sisters, and if any of your brothers and sisters have died before you, their children are entitled to receive their share.

- If you are unmarried but in a common law relationship, your partner is not automatically entitled to receive any portion of your estate under the *Act*. In that case, your estate will be distributed as though you were a single person. Although Alberta does not presently have any legislation which entitles a surviving common law spouse to share in an estate, the law in this area is subject to change. There are, for example, recent decisions of the Court of Queen's Bench of Alberta and the Supreme Court of Canada which have considered the constitutional question of providing legal protection and benefits to married spouses and not to common law spouses.

Some of the Implications of Dying Without a Will

You may think the possible distribution of your estate described above is all right for your present situation, however, there are points to consider before you accept that conclusion.

- If you die before your spouse in a common accident, your estate passes first to your spouse and then through your spouse's estate. If you don't have any children, this could mean that your spouse's parents, or alternatively, his or her brothers and sisters, receive your entire estate!
- If you die leaving children who are under the age of the majority (in Alberta, 18 years of age),

the share they inherit must be held by the Public Trustee until the child reaches the age of majority. Once children reach the age of majority their entire share of an estate must be paid to them. If your estate is reasonably large, dying without a Will could mean leaving your teenager with a large estate at an age when he or she may not be able to manage it responsibly.

- If you are a common law spouse, the law in Alberta presently provides that you are not automatically entitled to any portion of your partner's estate upon his or her death (subject to the comments above.) If your partner left minor children from a previous relationship you do not have any automatic legal authority to act as their guardian.
- All jointly owned property automatically passes to the surviving joint owner. If you are a surviving joint owner of property, you may suddenly find that you own and control substantial assets. If you then die without a Will, all of those assets will be distributed according to the *Act*, which may not coincide with your wishes.

- You should also be aware that it is important that you review and update your Will during the course of your lifetime and especially if there are any major changes in your life. For example, if you have a Will but marry or remarry after signing the Will, your Will may be automatically revoked. However, if you are divorced or separated from your spouse, your Will continues to be in effect unless you specifically revoke it.

Ultimately, leaving a Will means that you have control over the disposition of your assets, and allows you to make sure that the people you leave behind are properly treated.

Advisor is prepared by lawyers in the Personal Services Group of Field Atkinson Perraton. It is intended to provide general information on areas of law that affect individuals. This publication is based on the law at the date of publication and is not intended to provide legal advice on any specific fact situation. Please consult a lawyer before acting on the information provided. Our experienced professionals are happy to meet with you at your convenience to discuss your individual circumstances. For further information on this topic, please contact Roy Boettger, Q.C. (260-8507), Nancy-Lynn Stevenson (260-8518) or Barbara Kimmitt (260-8532).
