

KRAMER'S LEGAL BRIEFS

WHY EVERYONE NEEDS A WILL...

Preparing and updating your Will, and developing a plan for your estate, are two of the most important things you will ever do to protect your family and your legacy. Approximately one half of Canadian adults do not have a Will. What they do not realize is that, in addition to protecting their families and legacies, estate planning is an essential part of a complete financial plan.

A Will is the articulation of your estate plan and the only legally recognized document that allows you to choose how your estate is to be distributed. It directs your estate's assets to your beneficiaries or to trusts for their benefit, and names and empowers an executor to deal with your estate assets. It is also a reflection of your life's work and the relationships you have forged. It is cause to look back and to think ahead. Ultimately, it is a source of peace of mind for you and comfort and security for your beneficiaries.

What happens if you die without a Will in British Columbia?

Initially, your estate would be distributed according to the provisions of the Estate Administration Act. This legislation applies a rigid formula to divide your estate among your spouse, children and relatives, and the results may be very different from what you really want. This legislation also fails to take advantage of current tax planning opportunities as well as addressing the needs of your beneficiaries? For example, if you have a spouse and two children, the first \$65,000 of your estate would go to your spouse and the remainder would be divided three ways between your spouse and two children. Additionally, if your spouse was not listed as a joint owner of your principle residence, he or she would only be entitled to a life interest in the property upon your passing.

The absence of a Will will also eliminate the possibility of having your assets diverted to charitable organizations which you may have a strong association with. Furthermore, there will be no opportunity to allocate gifts to friends and other relatives and all of your assets may be converted to cash (i.e. family heirlooms may be sold and the proceeds distributed rather than passing on to your family).

A common law spouse is not a spouse under the Estate Administration Act but has a limited time to apply to the Court to seek a share of your estate. In order to do so, your common law spouse must have lived with you for 2 or more years and have been maintained by you. If you have minor children, their share of your estate would be paid to the Public Guardian and Trustee and will remain there until they turn 19. Requests can be made for funds prior to the child turning 19 but such payment is at the discretion of the Public Guardian and Trustee. Additionally, you will not have the opportunity to choose guardians for your infant children. This

differs from a Will where if you are the custodial parent you can appoint a guardian for your children.

Those British Columbian's who die without a Will will also not have the benefit of choosing an individual to be the executor of their estate. Rather, an administrator for your estate will be appointed by the court and it may not be the individual whom you would have wanted to do the job. Anyone can apply to become the administrator of your estate however, preference goes to next of kin (spouse, children, parents). If no one comes forward, the Official Administrator for British Columbia will perform the task and that may take much longer due to the number of estates they administer. Furthermore, given that the appointment of an administrator must be made by the Court Order, this increases the cost and delays the appointment process. Additionally, unlike an executor named in a Will, an administrator may only start dealing with your estate when appointed by the Court. Finally, the administrator of your estate may have to post a bond to protect the assets of your estate, which is an added cost to the estate. Thus, if the applicant for administration of your estate is not bondable another person or the Official Administrator will have to apply.

Not having a Will may also delay the administration of your estate, as the Estate Administration Act restricts an estate from being distributed until 1 year after your death. There are a series of other disadvantages to not having a Will including the possibility of your estate being assessed with a higher and unnecessary amount of probate fees.

Thus, developing a Will today and ensuring that it is regularly reviewed will provide you with the piece of mind that your wishes are being followed after you are no longer around. It will also assist in ensuring that your hard earned estate is directed towards your loved ones and those whom you believe should receive it and not necessarily the Canada Customs and Revenue Agency or the Provincial Government. Don't delay, do your Will today!!!

I caution my readers that the information expressed in this article should in no way be construed as legal advice. If you would like further information on this or any other topic please contact me at the address below.

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