

Legal Planning

Everyone should have a will. It ensures that your wishes are carried out and it makes it easier for those who have to deal with matters after your death.

It is possible to make a will without a lawyer, but this is not the best course to follow. The cost of having a lawyer prepare a will for you depends on how complicated your wishes are.

You also should arrange powers of attorney and make sure your other legal affairs are in order.

Wills

The Cooperators offers the following advice:

Do you have a will?

A will is a written document that speaks for you after you die. It communicates your wishes as to how your property and assets such as your house, car and investments are to be distributed and to whom. It allows you to name a guardian for your children should you pass away before they reach adulthood. It even allows you to make your own funeral arrangements.

Anyone who owns assets and property should have a will. Wills should be updated as circumstances in your life change such as the birth of a child, a death in the family, marriages, divorces and property acquisition. You should also review your will regularly to make sure it continues to reflect your wishes.

What happens if I don't have a will?

The process to administer your estate if you were to die without a will often takes longer and is more costly. Without one, your family will have to pay the price of settling your estate, both financially and emotionally.

If you don't have a will, the government may create one for you and will choose your executor, how your assets will be distributed and who will care for your children. Do you really want the government making those important decisions?

Ways to make a will

Making a will does not have to be difficult or expensive. There are a few ways to create one:

1) **Write your own.** A will is legal if it is written and signed in your own handwriting. It does not have to be signed by witnesses. However, problems can occur if it's not entirely understood. Also, if you're not familiar with the law and include instructions that are contrary to what the law permits, your wishes may not be carried out.

2) **Have it written by a paralegal.** This is a cost-effective option, provided the contents are straightforward.

3) **Have it written by a lawyer.** This is usually the best route, particularly if you have considerable assets and a complex way to divide up those assets. A lawyer is qualified to write wills that clearly state your wishes, so there are no misunderstandings.

Once you have a will, keep it somewhere safe. You can store it at home with other important documents, preferably in a fireproof box, but make sure your executor knows where to find it. If you had a lawyer draw it up for you, they will also keep a copy with their records. The cost of a simple will can vary from \$35 on-line to \$500 or more by a lawyer.

Note: Ontarians can have a will or power of attorney prepared at a discount rate (simple wills \$100.00, powers of attorney \$50.00) through the Lung Association. Participating lawyers donate their time. 100% of the proceeds support the Lung Association's medical research and community programs. For more information, contact your local Ontario Lung Association community office: <http://www.on.lung.ca>.

The Executor

When a deceased has left a Will or binding document, the person(s) or institution named as Executor/Executrix has the legal authority and obligation to assume responsibility for all matters relating to the estate. The duties of an Executor vary depending on the complexity of the estate.

An Executor's duties

Here are some of the basic duties that may be required.

- Assist the family in making funeral arrangements, or make the funeral arrangements if no family members are available.
- Obtain a registered copy of the Death Certificate from the Department of Vital Statistics or a Funeral Director's Certificate of Death, issued by the funeral home, verifying proof of death. This document is required by many insurance companies, financial institutions and government agencies in matters pertaining to the settlement of the estate.
- The executor must determine whether the deceased's estate or survivors are entitled to any death, survivor or other benefits and then make application to access them.

- The Executor should make sure that the following items are cancelled to reduce unnecessary expenses—credit cards, driver's license, magazine subscriptions, cable television, telephone and club memberships. Other items, which should be cancelled, include Old Age Security, Canada Pension and any Canada Revenue Agency tax credits.
- The Executor may contact Canada Post to request that the deceased's mail be rerouted to a more convenient address. The Canadian Direct Marketing Association (CDMA) offers a free consumer service called The Do Not Mail/Do Not Call Service, which allows people to stop receiving unwanted offers of goods and services by mail or telephone. Some funeral homes have copies of the registration form available for the public, while others will actually complete and mail it on behalf of the family.
- The Executor must confirm the deceased's assets and liabilities by contacting the companies that looked after the deceased's financial affairs, such as banks and insurance companies.
- The Executor is responsible for filing all income tax returns, making sure all taxes are paid and letting beneficiaries know which amounts they receive from the estate are taxable. The lawyer that is involved in helping the Executor settle the estate usually handles this. The Canada Revenue Agency has provided an Information Sheet that contains basic information that the Executor should know in order to start settling the estate. This sheet has been distributed to many funeral homes throughout Canada, therefore, copies may be obtained from your funeral director. For more information, the tax guide entitled "Preparing Returns For Deceased Persons" can be ordered online at www.cra-arc.gc.ca/formspubs/rqst-eng.html or by calling 1-800-959-2221.
- The Executor must apply to the Registrar of the Supreme Court for a grant of probate verifying the validity of the Will.

When someone appoints you to be their executor

When a friend or relative appoints you as their Executor, they are placing their trust in you to fulfill their wishes, regardless of how demanding or onerous the task.

Unless you are very experienced, seek the advice of an expert to ensure that the administration of the estate is done in accordance with the deceased's wishes. This is especially important if there is more than one executor; disagreements between executors can lead to serious difficulties.

Power of Attorney and Living Wills

If you become incapable of making your own decisions, the government may appoint someone to make decisions for you. To avoid this, name someone yourself, while you are still capable of doing so. A power of attorney is a legal document that gives another person the right to act on your behalf. It must be drawn up while you are still capable of giving consent.

There are two kinds of power of attorney of importance to retirees: continuing power of attorney for property, and power of attorney for personal care

Continuing power of attorney for property

A continuing power of attorney for property names someone to make financial decisions for you.

This grants the person you name the authority to access your bank account, pay your bills and look after other important financial matters. It is wise to do this so that if you have a major medical problem such as a stroke, someone can look after the essentials on your behalf. Couples in their sixties often give the power of attorney to each other. Older people may give it to a trusted younger relative who lives in the same area.

Remember that power of attorney allows another person to withdraw money from your accounts without any explicit permission from you. So, choose carefully; some people have found themselves abused financially in this way by a person they thought they could trust.

Power of attorney for personal care

Use a power of attorney for personal care, also known as a living will or personal directive, to name someone who will make health and personal care decisions for you when you are no longer capable of making these decisions yourself.

This can include: where you are going to live, what medical care you will receive if you fall ill or are injured in an accident, and instructions for future care.

You can arrange power of attorney through the lawyer who draws up your will, or go to:

http://www.lawdepot.ca/contracts/personal-directive/?loc=CA&ldcn=livingwill&pid=googleppc-health-ca-ft-living-will-b1ft-s-ggkey-living%20will&s_kwcid=living%20will|6728079735

When someone asks you to be their agent with power of attorney

You yourself may be asked by a relative or friend to serve as their agent with power of attorney. This is not a role to be taken lightly. Do not accept unless you are certain you can do the job properly. Discuss the matter at length with the person who is asking you before you agree. Make sure you know if you are sharing this role with others. If so, you need to be clear about what each person is responsible for, to avoid legal problems for yourself.

Other legal considerations

In addition to sorting out your will and arranging powers of attorney, now is the time to consolidate your other legal affairs.

Make sure you know where all your I.D. is: birth certificate, proof of citizenship, passport, social insurance card, health card, driver's license, etc. Check that those subject to renewal are up to date.

Make sure your mortgage, home ownership, home rental, other estate documents, marriage, separation and child support documents are in order.

Consolidate your pension documents.

Clearly label your documents, sort them and file them in a safe place that you and your executors can access easily. If you use a safety deposit box for some of your documents, make sure you keep the key in a safe place where you and your executors can find it. All this can be done before you retire.

Make sure that your banking is in order. It is a good idea for couples to have joint bank accounts so that if one becomes incapacitated or dies suddenly the other can easily access the money. You should review the beneficiary named in insurance policies, wills and other important financial matters such as RRSP funds. Decisions you made when you took out the policy may no longer be appropriate. If you fail to update, the person you want to benefit may not do so.

Once you are retired you should review all these matters annually to ensure they reflect your current situation. You may want to pick a specific date, e.g. the day after your birthday, to conduct this review.