



earn • save • give

Free Methodist Church in Canada
Estate Planning

A Will Planning Guide

CAUTION TO READER:

You will appreciate that, as this guide will be distributed across 10 provinces and 2 territories, with the laws of each going through constant revision, this guide can give only an overall view of this topic. The effect of the law of the jurisdiction in which you reside will require further examination by you and/or an advisor. We trust, however, that this general overview will provide you with basic information which will be of real assistance as you plan your estate.

The Generous Steward is the Stewardship Ministry of the Free Methodist Church in Canada. The Stewardship Ministry exists to make known to people everywhere the biblical principles of stewardship and to equip them to live as faithful stewards. The vision of FMCIC Stewardship Ministry is to see generous people meeting the needs of others in Canada and beyond.



Free Methodist Church in Canada

4315 Village Centre Court, Mississauga, Ontario L4Z 1S2 (905) 848-2600

www.fmcic.ca



Table of Contents

Introduction1

Using This Will Planning Guide2

Do You Need a Lawyer?6

Planned Giving As Part of Your Plan7

 Gift Planning7

 Planned Giving to any of the Free Methodist Churches/Ministries.....8

 Core Giving.....8

 Giving Streams8

 FMCiC Donor’s Bill of Rights11

 Planned Giving12

 Bequests.....12

 Gifts of Life Insurance.....13

 Gifts in Kind (Property)13

 Gifts of Publically Traded Securities13

 Charitable Remainder Trusts.....14

 Charitable Gift Annuities14

 Planned Giving Guideline Chart.....15

Estate Planning17

Property Inventory18

Family Information21

The Responsibilities of an Executor23

Distribution of Estate24

After Your Will is Prepared.....33

Appendix 1A The Role of the Executor34

Appendix 1B Responsibility of an Executor37

Appendix 1C Executor’s Checklist After Probate40

Appendix 2 Letter to My Executors42

Appendix 3 Summary & Checklist.....45

Appendix 4 Business Succession Planning47

Appendix 5 Living Will.....48

Appendix 6 Funeral.....59

Appendix 7 Handicapped Family Member50

Appendix 8 Definition of Terms51

Appendix 9 Frequently Asked Questions52

Notes55

Acknowledgements:

The Generous Stewardship Ministry would like to thank the generosity of The Tyndale Foundation for the use and adaptation of their Will Planning Guide.





Introduction

It is the prayer of the Generous Stewardship Ministry of the Free Methodist Church in Canada that this Will Planning Guide will provide you with the information you need to complete your estate plan. This booklet contains general and at times, specific ideas but should only be viewed with the idea that we are not qualified to give specific legal or investment related financial advice. We urge you to seek the advice of your own legal or financial advisors.

This is an aid in planning your Will. It does not purport to exhaust every eventuality, but it does draw attention to most of the points you should consider.

The points are designed to enable you to consider the general nature of the Will you wish to make before consulting your solicitor. When you do consult with your solicitor, he or she will find it easier to advise you because you have directed your mind to possible methods of dealing with your estate.

Note: The author and the publisher of these forms make no representations or warranties regarding the outcome or the use of these forms and do not assume any liability for any claims, losses, or damages arising out of the use of these forms. The user of these forms should not rely on the author or publisher of these forms for any professional advice.

Please be aware that there are statutory and common law rules that govern the making and validity of Wills, some of which may be unique to the province/territory in which you reside. These may include laws that require certain people to be included among your beneficiaries. Accordingly, due to the uniqueness of individual circumstances, it may be advisable to seek professional advice when drafting your Will.

You should get such advice:

- a) If you have a large or complex estate;
- b) If you are separated or contemplating divorce;
- c) If you are older and potentially subject to undue influence from possible beneficiaries;
- d) If you are contemplating marriage;
- e) If you have questions about the Will, any terms used in the forms, or the type of gift you wish to make.

*I am the resurrection and the life.
He who believes in Me, though he may die, he shall live.
John 11.25 NKJV*



Using This Will Planning Guide

Completing this Will Planning Guide does not complete your task but it is an important step towards doing so. Please work through it carefully and prayerfully, filling in all the blanks that apply to you. After you are satisfied, choose a lawyer in whom you have confidence and provide him or her with the information so that he or she may draw up your Will in proper legal form.

Before commencing the preparation of a Will, you must be aware of many things which can affect, or even prohibit, the disposition of your assets. A few examples include:

- Assets held jointly with another person cannot be disposed of by Will, nor can proceeds of a life insurance policy unless your estate is named as the beneficiary.
For example, you cannot list a property held in joint ownership in your gift plan because immediately upon your death, the property is no longer yours but automatically transfers to the other person(s) that hold joint ownership.
- Laws such as the Family Law Act and the Succession Law Reform Act may oblige you to provide support for family members and prevent the administration of your estate as directed by your Will.
- Failure to consider the provisions of the Income Tax Act in structuring the distribution of an estate pursuant to a Will can result in very costly taxation which could have been avoided and, what's worse, the taxation burden may fall on someone other than the person receiving the benefit.
- Improper witnessing of the Will may result in challenge to its validity.

Free Methodist Church in Canada Estate Planning Guide

This booklet explains why it is essential for every adult to make a Will. For a Christian the drawing up of a Will is a vital act of stewardship – a document that is not only “My Will” but “God’s Will” too.

Estate Planning is also the last place we can be generous and steward our resources. For many, planning your estate is the largest single act of financial stewardship because we are giving from the largest portion of what we have. For most people a large majority of their net worth involves the equity in their homes, life insurance, and various retirement funds.

A will or trust enables you to provide guardianship for minor children, trusteeship over life insurance proceeds and other assets, and in the process:

- Bless your heirs
- Minimize or even eliminate taxes and fees
- Impact your church or other charities you care about



As Christians, there are a number of important reasons for having a valid, up-to-date Will:

- Biblically, we are instructed to look after our dependants –

“I am planning to visit you for the third time. But I still won’t make a burden of myself. What I really want is you, and not what you have. Children are not supposed to save up for their parents, but parents are supposed to take care of their children.”
(2 Corinthians 12:14)

“People who don’t take care of their relatives, and especially their own families, have given up their faith. They are worse than someone who doesn’t have faith in the Lord.” (1 Timothy 5:8)

“Honour the LORD by giving him your money and the first part of all your crops.” (Proverbs 3:9)

“Although they were going through hard times and were very poor, they were glad to give generously.” (2 Corinthians 8:2)

- It is both sensible and scriptural to make a Will. This provision for your family needs prayerful consideration while a person is in good health and is capable of exercising this responsibility with a clear mind and a heart yielded to God’s direction.
- The Scriptures speak of when Isaiah the prophet came to Hezekiah and pronounced impending death. Although we do not receive such a warning as to the exact time of our passing, and in fact, because of the uncertainty as to when this will happen, we should heed the instruction given by the prophet when he spoke for God saying, *“The LORD says you won’t ever get well. You are going to die, and so you had better start doing what needs to be done.”* (Isaiah 38:1)
- One of the most important steps that we need to take if we want to prove ourselves “faithful stewards” over what God has blessed us with materially is to prepare a Will. (See 1 Cor.4.2 and 1 Tim.5.8)
- Even apart from the scriptural injunction, it sounds right to make specific arrangements for the disposition of the assets accumulated over a lifetime. The distribution of your assets should reflect your wishes based on your own life-long priorities, not those of the government. When you die without a Will, the provincial statutes provide for division of your estate according to a fixed pattern. Your church, favourite charitable institutions, dear friends and even some loved relatives will not be included.

Do not let your hearts be troubled, and do not let them be afraid.
John 14:27 NRSV

A Christian Testimony

Should you desire to include a Christian testimony in your Will, you could use the following paragraph or you could substitute your own statement of faith.

“I, realizing the uncertainty of this life and with full confidence and trust in my Lord and Saviour Jesus Christ, in His death for my sins on the cross and in His shed Blood as an atonement for my soul, and knowing that by faith in His Sacrifice on the cross for me I have eternal life, do hereby make, publish and declare this to be my last Will and testament.”

A Love Letter to your Spouse

Because none of us know exactly when or under what circumstances we will depart from this earthly life, it is a good idea to put in writing some of the things we would like to say to that special someone just before departure. You may want to relay some words of wisdom and special thoughts to children.

Here is a sample message.

Darling, you are so beautiful and special to me. I love you so much. I am thankful that God allowed us to be life partners. I have gone on ahead to be with Jesus. I have my new spiritual body. No more aches and pains. I am looking forward to our celebration in glory. Love always, your husband.

If I Were to Die Tonight...

Faithful stewardship life, family and all the other resources God has given us, requires that we ask the following question:

If I were to die tonight,

- What Would Happen to My Family?
- What Would Happen to My Belongings?

Everyone, with or without a family, who has any personal belongings should have a Will. If you do not have a proper, valid Will, there will be legal complications when you die. Your family may encounter a bitter, expensive feud.

If you have no Will, the law determines what will happen to your belongings and your family. Your estate may not benefit those whom you want it to benefit – your family, a favourite charity, a dear friend, or a special child.

By means of a Will, one exercises the right conferred by law to express one’s post-mortem objectives:

- to provide for the welfare of one’s family,
- to distribute one’s assets as one thinks best, and
- to secure the efficient management of one’s property.

Implicit in these rights also is an opportunity to save taxes by means of a well-drawn Will that takes advantage of available tax shelters.



For the testator (one who makes or has made a will; one who dies leaving a will) who does not make lifetime transfers, a Will constitutes an entire property transference programme. The Will is the sole expression of the testator's intentions and the only way of carrying out his or her ultimate objectives. Without a Will, you will not achieve these objectives. Without a properly designed Will, you will not achieve the desired results.

The underlying aspect of a Will, then, is the maker's intention. Though the testator's solicitor draws the Will, the testator must determine what he or she wants the Will to do. The testator is, after all, the one who knows his or her family's needs and how he or she would like to see them met.

*And God will wipe away every tear from their eyes.
Revelation 21.4 NRSV*

Do You Need a Lawyer?

Yes! Making a Will is not a do-it-yourself job. While not required by law in many provinces, it is rather essential that your Will be drawn by a member of the legal profession. Avoid a homemade Will, if possible, as such a document often contains errors that can render it void or misrepresent the wishes of the testator.

What does a lawyer look for in the planning process?

1. Ascertaining the Assets
2. Choosing the Beneficiaries
3. Tax Implications
4. Legal Limitations:
 - a. Testamentary capacity – is the testator legally capable of making a Will
 - b. Marriage – contemplating or questions about existing marriage
 - c. Provisions for dependants
 - d. Spouse's interest
 - e. Restriction on alienation – community of property, joint tenancies, franchises, agreements relating to any of the testator's assets or property subject to a lien or charge.
 - f. Taxes and duties
 - g. Life insurance
 - h. Are there any restrictions under the applicable law relating to proposed beneficiaries? – infants, children born out of wedlock, step-children, adopted children, incompetents, beneficiaries in "block" countries etc.
 - i. Charitable gifts
 - j. Perpetuities and accumulations – such as a life-time trust
 - k. Execution of the Will
5. Appointment of Executors
6. Drafting the Will



Planned Giving As Part of Your Plan

The Bible teaches us that giving is an important part of our life.

It is clear that good Christian Stewardship recognizes God as the supreme owner. We are His trustees bearing responsibility for everything he has entrusted to our care. This includes making sure that adequate provisions are made for family members according to principles of good stewardship and for those with children under age of majority, the naming of Guardians.

*“Estate planning is the most fundamental act of stewardship a Christian will ever take”
– Dave Keesling, Cofounder of PhilanthroCorp*

Gift Planning

If we want to be sure to do something, we need to plan for it. A Gift Plan can help us turn our good intentions into acts of generosity. This is not just for giving through your final estate. An annual gift plan can help you give both now and in the future. It can outline what, how and to whom you and your family will give of your time, talents and treasure.

Gift Planning is all about helping you to look at your total financial situation (money, property, investments, estates, etc.) and be able to give generously with discernment – both now and in the future.

It is all about your faith giving surviving and surpassing your life circumstances.

Once you have decided on planning to give from your estate, it's time to figure out where to give. One of the wonderful things about the body of Christ is that we can accomplish more together than each of us can on our own. Take some time to identify organizations through which you can give.

Start with your local church. Find out what your church is doing in the areas of need you have identified as a family. Consider your neighbourhood, your community. How can you minister to the people close to you by meeting their needs?



Planned Giving to any of The Free Methodist Churches / Ministries

As a connectional denomination – meaning that we value the importance of working together in ministry – The Free Methodist Church in Canada has two primary financial mechanisms for helping us do that.

1. **CORE GIVING** funds the national Operations Budget of The Free Methodist Church in Canada.
2. **GIVING STREAMS** funds outreach activities that we have collectively agreed to participate in.

CORE GIVING

Core Giving from local churches primarily supports the ministry of our National Leadership Team (NLT) and the ministry areas they represent. Core Giving funds the oversight, empowerment and administrative ministries of the NLT.

Among other things these include:

- providing leadership, quality assurance and accountability for pastoral leaders across the country,
- training and development of present and future leaders of the FMCiC,
- legal, administrative, payroll, medical benefits, pension services for pastors and churches across the country
- providing training, resources, and strategic planning services for churches seeking to function in a healthy manner in their own communities
- providing training, resources, and strategic planning services for churches reaching out to diverse peoples in their own community as well as around the world

Local churches are asked to contribute a tithe (10%) of their monthly Operating Receipts toward these leadership ministries which support the development of healthy churches across Canada and beyond.

GIVING STREAMS

Acting upon our connectional value, Free Methodist churches in Canada - together - support a number of ministry areas that maximize our impact beyond our local churches. Each church, at the local level, decides what contributions will be made and where those funds will be directed. These "together" ministries allow our influence to expand throughout Canada and beyond.



- **LEADERSHIP DEVELOPMENT**

Developing gifted and passionate Christian leaders for ministry in the Free Methodist Church is a priority. The Leadership Scholarship Plan (LSP) makes fund available to students who are pursuing ministry within the Free Methodist Church in Canada. This fund also supports pastors retreats, internships and pastors' network resources.

- **CHURCH DEVELOPMENT**

Developing new healthy churches in communities across Canada is a priority. Church Development makes funds available to help with the start-up of new church plants. In 2006, our collective contributions help church-plants in Peterborough, Montreal, Sherbrooke, and Toronto.... New church-planting opportunities are awaiting financial resourcing.

- **QUEBEC MINISTRIES**

The province of Quebec, with over six million people is the most unevangelized region in North America. The people of Quebec need to be a priority for vibrant Christian witness. This fund supports ministry development in Quebec through leadership training and church plant mentoring.

- **GLOBAL MINISTRIES**

Increasing our involvement in the world is a priority. Global Ministries funds enable our missionaries to faithfully point people of other cultures to the healing and transformation that is to be found only in Jesus Christ.

- **CANADIAN FM MISSIONARIES**

Our collective resources contribute to the training and development of indigenous Christian leaders, to Christian witness amongst unreached people groups, and to the relief of hurting people through the ministries of the Free Methodist Church.

Our Canadian missionaries are vitally involved in helping us reach beyond our own borders to touch the world. Your support for (bottom left to right) Dan Sheffield, Lois Meredith, Debbie Hogeboom, and Linda Stryker enables our participation in these ministry priorities. Their ministries touch people in Rwanda, Burundi, Congo, Kenya, Tanzania, Ethiopia, South Africa, Zimbabwe, India, Sri Lanka and the Philippines.

- **GATEWAY CITIES (PDF)**

These 100 cities, found in the most unreached regions of the world, are urban centres that allow us to touch unreached people groups in a strategic manner. Canadian Free Methodist churches are presently developing Christian witness in 3 Gateway Cities in South Asia and East Africa. Our collective resources are helping to fund these new initiatives.

- **INTERNATIONAL CHILD CARE MINISTRIES**

International Child Care Ministries is a child sponsorship initiative serving over 21,000 children in 30 countries. We work with Free Methodist workers in local settings for high levels of care and accountability. Through education, meals, clothing



and basic medical care, children in need have an opportunity for a better life. For just 82 cents a day you can sponsor a child and change a life forever.

Through our local churches, our national initiatives and our affiliated ministries, The Free Methodist Church in Canada can help your family find the best ways to give. And if God is leading you to meet a need outside of what the FMCIC is doing, there are many wonderful para-church organizations through which you can give.



FMCiC Donor's Bill of Rights

All those who choose to invest funds entrusted to them by God to the ministries of The Free Methodist Church in Canada (FMCiC) have the following rights:

1. To be informed of The FMCiC's mission, of the way The FMCiC will use the donation, and of its capacity to use donations effectively for their intended purposes.
2. To be informed of the identity of those serving on The FMCiC's Board of Administration, and to expect the board to exercise prudent judgment in its stewardship responsibilities.
3. To have access to The FMCiC's most recent audited financial statements.
4. To be assured their gifts will be used for the purposes for which they were given.
5. To receive appropriate acknowledgment and recognition.
6. To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.
7. To expect that all relationships with individuals representing The FMCiC will be professional in nature.
8. To be informed whether those seeking donations are volunteers, employees, or hired solicitors.
9. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.



Planned Giving

There are also many ways to give beyond a gift of cash. If you are interested in using any of the ways listed below, or need to understand the tax implications, we recommend that you obtain professional advice from a qualified lawyer, accountant or financial planner when considering these types of gifts.

If you are considering giving to any of The Free Methodist Church in Canada churches and/or ministries, we first want to say 'thank you' and that God bless your generosity.

Including any of our churches or ministries in your Estate Gift Planning is a simple and powerful way to give. We pray that as you designate giving through our ministries, that God will work through your gift to make a difference in His Kingdom.

To ensure that your gift is honored and used in the way you intended, we advise that you discuss your wishes with both the lawyer preparing your will as well as the ministry that will be receiving your gift.

We recommend that the following statement (or similar wording) be included in your will:

For the (area/name of ministry - or simply the ongoing ministry) at the (legal name of the local church or ministry), currently situated at (address of the local church or ministry).

If, through the passage of time, this bequest becomes obsolete, permission is given to alter the terms adhering as closely as possible to my original wishes.

Should the (legal name of local church/ministry) no longer exist, the funds should default to the Free Methodist Church in Canada, currently situated at 4315 Village Centre Court, Mississauga, ON L4Z 1S2 to be used for ongoing ministry.

Bequests

Making a bequest through your will is a simple but powerful way to give. Bequests can take many forms – they can be large or small; restricted or unrestricted; a specific sum or money, a specific asset such as real estate or securities, or a % of your estate.

As part of your will, your bequest should be prepared in consultation with your lawyer. To ensure that your gift is honored and used in the way you intended, it is important that you discuss your wishes with the ministry that will be receiving your gift.

Any charitable organization needs to adapt to changing ministry needs. Therefore, the specific ministry you name in your will today may, over time, change its name, alter its objectives, or diminish or expand its focus. Ministries are required to make every attempt to honour your wishes as closely as possible. However, it is wise that your bequest allow for some flexibility. If you are designating funds to specific church or ministry area, please include a clause such as: "If, through the passage of time, this bequest becomes obsolete, permission is given to alter the terms adhering as closely as possible to my original wishes."



You can also allow for such flexibility by being as general as you feel comfortable in stating the purpose of the gift. For example, you can state that your gift go towards “ongoing ministry at the church (or mission/ministry).” And in cases where a church/ministry may no longer exist when your estate is settled, it is wise to include a clause such as: “should (church name) no longer exist, that the funds default to the Free Methodist Church in Canada to be used for... “. Again, the terms for disbursement of funds should be as general as possible to facilitate the use of them (i.e. for the ongoing ministry, or for missions, or leadership development, etc.).

Gifts of Life Insurance

A gift of life insurance can be a very affordable way to make a significant gift to a church and/or ministry. This giving method can provide a significant contribution for a comparatively small premium cost. In addition, tax benefits can be achieved and the value of your gift is not reduced by taxes or probate and administrative costs. In fact, a gift of life insurance is independent of your estate and therefore does not go through probate and cannot be challenged.

Gifts of life insurance can be made by purchasing a new policy or donating an existing one. You can either retain ownership of the policy and name a charitable organization as the beneficiary, or you can transfer ownership of the policy to the charitable organization. Transferring ownership provides you with a donation receipt for the cash surrender value of the policy immediately, just as if you had made a cash donation.

Gifts in Kind (Property)

Gifts of real estate, investments, equipment and other tangible personal property are called “gifts in kind”.

Gifts of property can be made a couple of different ways: You may choose to give the property outright or you may decide to irrevocably assign ownership of the property now and receive the tax benefits while continuing to enjoy the property for the rest of your life. Depending on your wishes, and the type and nature of the item donated, named charitable organization may retain the gift or sell it and use the funds to support its ministries.

When you make a gift other than cash, the receiving charity must obtain an appraisal from a qualified person to determine the gift’s fair market value. Once the value has been obtained, the charity may provide you with an official receipt. That receipt must show (in addition to the information on regular receipts)

- a description of the property,
- the exact date on which the gift was made, and
- the name and address of the appraiser.

Gifts of Publicly Traded Securities

Gifts of securities have been an attractive option for many givers. In May 2006 the Canadian federal government made a change in how the tax on gifts of securities would be treated. This



change, made in the federal budget, now allows givers to receive significant tax benefits, making a gift of securities even more attractive than ever.

Now a gift of publicly traded securities is exempt from capital gains taxation. So if you own securities that have appreciated in value and you donate them you will not be taxed on the difference between their current value and the amount you paid for them.

For an example of the beneficial tax treatment, let's assume that you want to make a gift of 100 shares that originally cost you \$5,000. The shares trade at \$80 at the time of your gift. If you would sell the shares and make a gift of the cash proceeds, the net cost of your gift would be \$675 greater than if you make a gift of the shares (assuming a 45% combined federal and provincial rate).

Charitable Remainder Trusts

Perhaps you own assets such as real estate properties and investments that provide you with a stream of income. You may decide you want to leave the assets to a ministry but you need to retain the income they generate. While you could include these assets in a bequest through your will, another option would be to use a Charitable Remainder Trust.

A charitable remainder trust will allow you to make the gift now and receive the tax benefits immediately, while allowing you to continue to receive the income generated by your assets. The trust can be set up to allow the income to continue as long as you, or you and your spouse, live or for a specified number of years. Since the ownership of the assets are transferred to The Free Methodist Church in Canada, they will not be subject to probate costs or estate taxes.

Charitable Gift Annuities

There are circumstances where a Charitable Gift Annuity may make the most sense for your financial situation. This gift method involves making an irrevocable donation, part of which is used to purchase an annuity from an insurance company, the remainder becomes an immediate gift to the charity and the giver will receive a donation tax receipt for the amount of the gift that exceeds the amount paid by the charity to purchase the annuity from the life insurance company.

The annuity purchased generates an income for you for the rest of your life. The amount of income generated depends on the size of the contribution as well as your age. Often the income payments are larger than interest income from other types of investments.

Planned Giving Guideline

The following information is offered as a guideline only. It was prepared by Christian Stewardship Services (csservices.ca) and more detailed information is available on their website or by contacting them directly.

http://www.csservices.ca/services/infobulletins/Planned_Giving_Fact_Sheet_w.pdf

Gift Type	Is Gift Revocable?	Income to Donor during Lifetime?	Is Gift Subject to Probate?	When is Tax Credit Issued?	When Can Charity use Gift?
Outright Gift of Property or Cash	No	No	No	Now	Immediately
Outright Gift of Appreciated Securities	No	No	No, unless gifted through Will	Now (Plus no taxes payable on capital gains)	Immediately
Bequest under a Will	Yes, by changing your Will	Yes (Property is under control of donor until death)	Usually	On your final tax return	After your death
RRSP / RRIF	Yes, by changing your beneficiaries	Yes (property is under control of donor until death)	No	On your final tax return	After your death
Outright Gift of RRSP Portfolio	No	No	NO	Now	Immediately
Revocable Deposit Agreement	Yes, the investment remains yours	Yes – income shared with owner and charities	Yes – <u>only</u> if gifted to charity after death	Annually for the portion of interest shared with charity	Income immediately
Insurance Policy – charity is owner and beneficiary	No	No	No	Now – for annual premiums you pay	After your death
Insurance Policy – you are owner, charity is beneficiary	Yes, you make the choice of beneficiary	Yes, if you have cash in the policy	No	On your final tax return for amount of the death benefit	After your death

Gift Type (continued)	Is Gift Revocable?	Income to Donor during Lifetime?	Is Gift Subject to Probate?	When is Tax Credit Issued?	When Can Charity use Gift?
Charitable Gift Annuity	No	Yes – mostly or entirely tax free	No	Now, for minimum of 20% of capital	After your death
Endowment Fund	No	No	Only if it is established through your Will	Now (or at death if established through Will)	Income immediately
Charitable Remainder Trust	No	Yes	No	Now – for present value of Remainder Interest	After your death
Gift of Residual Interest (Gift of Property)	No	Yes	No	Now – for gift of residual interest	After your death

*In My Father's house are many mansions . . .
I go to prepare a place for you.
John 14.3 NKJV*



Estate Planning

Planning your estate does not mean you should concentrate on building as big an estate as possible for the benefit of future generations. Your first priority in estate planning should be to ensure that you have enough to meet your own income needs and will not become a burden on others. Some people have been taught to be good savers and have developed a large estate but do not know how to wisely spend what they have. Traditional estate planning assumes that you will have money or property at the time of death and looks for effective ways to distribute that money and property to your beneficiaries. For instance, there are a number of ways to reduce taxes when you are planning your estate. Often overlooked is to give some of your estate away while you are alive, or to spend some of it yourself. The best estate plan is sometimes not to have an estate remaining, having given it all away during your lifetime. You will have the satisfaction of seeing your gifts bless the people/charities intended and you will eliminate probate costs.

Before you adopt any strategy, figure out what you'll need to live on throughout your retirement and what you currently have today. Please fill in the forms in the following pages to begin the first step of your estate planning.

In planning estate giving by Will, you can choose to allocate gifts to charities either as a specific amount/thing or as a percentage/share of the remainder of your estate. You should be aware that if you choose the latter course (a percentage/share), your estate cannot be completed until the executors final accounting is approved by the named charity, which, sometimes, takes a long, long time. It may be preferable to give a specific amount to the charity which can eliminate this delay. However, care must be taken to ensure that the specific amount named for the charity will not consume the entirety of the estate leaving nothing for the other beneficiaries and could require ongoing review of your Will.

Wills provide the instructions on how to disburse your assets and may name some specific assets for specific recipients. The following forms are not part of your will but are prepared to assist your lawyer in completing your Will and to assist your executor in assessing/distributing items not specifically named in the Will.

Once the Will has been prepared, it is normally stored securely, without charge, by the lawyer and you will receive a copy for your records.

In addition to the Will, the following forms should be kept and regularly updated by you as they will be of assistance to your executor. You should be certain to store them in a safe place that is readily accessible by your executor should the need arise.

The problem with storing these documents in a safety deposit box at the bank is that the bank could be closed for the weekend. In other cases, they will deny access if you cannot find the safety deposit key. Even with the key, they may not give you access because they do not know who you are and the will that names you as executor is locked in the box you are denied access to. All of which can be a big problem which can often be alleviated if the executor has access to your copy of the Will. You should let your executor know who your lawyer is that prepared the Will and where you store your copy of these documents.

Property Inventory

A. Personal Property			
Personal Property Description <i>(This includes personal effects, automobile, jewellery, household furniture, artefacts, etc.)</i>		*Title <i>(*husband, wife, joint)</i>	Approximate Value if sold today
B. Cash (Chequing & Savings)			
Financial Institution <i>Financial institution & address</i>		*Title <i>(*husband, wife, joint)</i>	Amount
C. Stocks & Bonds, Term Deposits, RRSP's, RRIF's, GIC's etc.			
Number	Company	*Title <i>(*husband, wife, joint)</i>	Present Value



D. Money invested in mortgages, personal loans, trusts, etc.

Item	With Whom & Address	*Title <i>(*husband, wife, joint)</i>	Amount

E. Real Estate, Buildings & Any Other Real Property

Address or Legal Description	*Title <i>(*husband, wife, joint)</i>	Approximate Value if sold today

F. Insurance & Annuities

Person Insured	Company	Policy No.	Beneficiaries	Amount

G. Retirement Benefits including Social Insurance

Please explain monthly income (present, if retired or anticipated) and death benefits:



Approximate Debts and Mortgages against Your Estate

Debts on Notes, Loans, etc.			
To Whom	Address	In Whose Name	Amount
Mortgages			
With Whom	Address	In Whose Name	Amount



Family Information

Date: _____

Legal Name: _____ A.K.A.: _____

Address: _____

Occupation: _____ Employer: _____

Bus. Address: _____

Phone (H): _____ Phone (W): _____

Marital Status: _____ S.I.N.: _____

Birth Date: _____ Place: _____ Citizenship: _____

Spouse Information:

Legal Name: _____ A.K.A.: _____

Address: _____
(if different than above): _____

Occupation: _____ Employer: _____

Bus. Address: _____

Birth Date: _____ Place: _____ Citizenship: _____

S.I.N.: _____

Previous Marriage(s):

Have either you or your spouse been married previously? Me: _____ Spouse: _____

How was the previous marriage terminated? Mine: _____ Date: _____

Spouse: _____ Date: _____

Previous Partner's Name & Address (if living): _____

Previous Will:

Have you made a previous Will: _____ Date Executed: _____

Where is it? _____



Children

Name	Birth Date	Marital Status	# of Children
Children from this marriage:			
My children from previous marriage:			
Spouse's Children from previous marriage:			
Deceased children, having surviving children (Grandchild)			
Are any of the children adopted or your stepchildren?			
If so, which ones (yours)?			
Adopted/Stepchildren of your spouse?			

*May the God of peace provide you with every good thing you need in order to do his will . . .
Hebrews 13.21 GNT*



The Responsibilities of an Executor

Many executors do the work themselves. Others may hire a lawyer to do some or all of the work. Probate is legal work and only lawyers can do it on behalf of an executor.

What is Probate?

Probate comes from the Latin word “*probare*” which means to “prove”. Probate is the process whereby a court certifies that:

- the testator is deceased,
- that this is the LAST will and testament of the deceased
- that the executor named has the authority to deal with all assets and matters related to the deceased (the executor in effect stands in the deceased’s shoes and has full authority/power to deal with estate of the deceased).

Some organizations require probate. Letters probate protect the institution/person(s) that comply with your requests e.g. a bank releasing the funds to you as executor.

Some executors may hire a lawyer to handle complex business matters and an accountant to prepare the final tax return. Both lawyers and Notaries Public can help you if you need to provide affidavits (a written oath that swears the information you give is true).

Professional fees are paid out of the estate. Ask beforehand about costs, the amount of time involved and the service provided.

One of the most important benefits of making a Will is that you are able to specify whom you want to administer or settle your estate.

- A. You may appoint one person to serve as “SOLE” Executor of your Will.
- B. You may appoint more than one person as Co-Executor of your Will.
- C. You may appoint a person as Executor of your Will, and if the first person named is unable or unwilling to act, the second person named will act. This is termed Alternate Executor.
- D. You may appoint your surviving spouse and in case both you and your spouse have passed away, name an Alternate Executor.

Whom do you wish to have as Executor?	
First Choice (full name): _____	
City: _____	Province: _____
Alternate Choice (full name): _____	
City: _____	Province: _____



Distribution of Estate

A Will consists of a number of clauses, like paragraphs, that specify your instructions. Before completing your Will instructions, please refer to the following four basic, yet most commonly misunderstood and misrepresented clauses used by individuals. Your understanding of them will help you better communicate with your solicitor.

Common Dispositive Clauses:

1. When referring to a beneficiary by name or by relationship dependent on birth or marriage, exercise care to see that the correct full name is used and that persons referred to by relationship are recognized in law as having that status.
2. When drafting dispositive clauses and receiving instructions, where possible, one should anticipate and provide for:
 - a) an unusual sequence of deaths;
 - b) adoption or birth of additional people whom the testator might wish to include as beneficiaries;
 - c) divorce or marriage breakdown;
 - d) loss of mental capacity by a beneficiary;
 - e) management of large amounts given to a beneficiary of young age.
3. A survivorship period serves two purposes: it avoids extra fees and expenses associated with administering the same assets twice, and it avoids a possible “accidental” distribution which may occur if the provisions in the survivor’s (or deemed survivor’s) Will are not the same as in the decedent’s Will. The most common period is thirty days. The purpose is to attempt to cover the situation where the testator and beneficiary are involved in common accident.
4. Always consider if the Will should contain a provision to cover the possibility of the beneficiary predeceasing the testator. It is important to consider clauses that deal with distribution of the residue. In order to reduce the verbiage, it is common to see the expression “in equal shares per stirpes” used when the testator wishes descendants of the deceased beneficiary to take the share of such beneficiary. The proper expression is “to my issue in equal shares per stirpes”. This clearly covers all generations of descendants.

Important: In your Will, make sure you provide for loved ones in need. If you are married, be sure to make provision when one spouse dies, both together, or when the entire family with young children dies at the same time.



A. Complete if married and both HUSBAND and WIFE are living; if not, go to Section B

1. Do you wish to leave all your estate to your spouse, if survived by thirty days?
 Yes _____ No _____

2. If answer to above question is “NO” how do you wish to benefit your spouse:

B. To be completed by everyone:

This includes married couples making provision for the distribution of their estate when the last spouse dies whether or not there are surviving children.

1. Specific Legacies:

You do not need, in your Will, to give a description of or to list all your property because your property changes from day to day. However, if you want to give a specific piece of property (real or personal) or a specific amount of money to some particular person, including relatives, friends, organizations or ministries, then the property, person or organization/ministry should be named.

Name	Address	Specific Property, Item or \$ Amount



2. Residual Estate:

After just debts, funeral, estate administration expenses, and the above specific bequests, there remains your “residual estate” which consists of whatever you have left.

These are in percentages.

First list names of family members and friends. Then organizations/ministries, then apply percentage share for each one. The total should add to 100%. If you wish to assist your local church, then you should ensure that you have the correct legal name of the local church and a phrase similar to:

For the (name of ministry - or simply the ongoing ministry) at the (legal name of the local church or ministry), currently situated at (address of the local church or ministry).

If, through the passage of time, this bequest becomes obsolete, permission is given to alter the terms adhering as closely as possible to my original wishes.

Should the (legal name of local church/ministry) no longer exist, the funds should default to (legal name and address of the organization)

a) **Estate Beneficiaries** **% Amount**

NOTE: *If you wish to specify how the above bequests should be used, please use the blank sheet at the end of the Planning Guide.*

i)	Name _____	
	Address _____	_____
ii)	Name _____	
	Address _____	_____
iii)	Name _____	
	Address _____	_____
iv)	Name _____	
	Address _____	_____



v) Name _____
Address _____

vi) Name _____
Address _____

vii) Name _____
Address _____

viii) Name _____
Address _____

b) If any of the above named PERSONS (points 1 and 2) do not survive you by 30 days do you wish the portion due to them:

- _____ to pass to spouse and/or child (ren) per stirpes
- _____ divided equally among surviving persons or if no survivors
- _____ divided equally among balance named above
- _____ other (specify)

c) If any of the above named (points 1 and 2) ORGANIZATIONS/MINISTRIES are not in existence at the time of your death, do you wish the portion due to them:

- _____ divided equally among organizations/ministries then in existence or
- _____ other (specify)

*... there is nothing in creation that will ever be able to separate us from the love of God which is ours through Christ Jesus our Lord.
Romans 8.39 GNT*



3. Burial Instructions:

These are not binding upon your executor but express your wishes which are usually followed. Since a Will is often not read until after the testator's funeral, it is best to inform your executor of your wishes beforehand.

Alternatively, you can prearrange all funeral details with a funeral home which will ensure your wishes are followed at the time of your death. There is no charge for this and we believe you will find it informative as the funeral directors will offer invaluable advice and alternatives to ensure your wishes are fulfilled. This will not only lift a burden from you, but will save your loved ones from having to make these decisions at a very emotional time.

*Let us hold on firmly to the hope we profess,
because we can trust God to keep his promise.
Hebrews 10.23 GNT*

C. Complete if you have living CHILDREN, or if you are currently anticipating having children. If not, go to Section D.

1. Naming a Guardian:

A Guardian is a legally responsible individual who is appointed to look after the affairs of another, especially those of a minor.

When a natural parent dies leaving minor children under the age of eighteen, the court must name another adult to take care of the children. The new person named by the court is a “guardian.” The guardian is legally responsible for the care and custody of the minor child, just as the parent was.

It is wise for parents to name legal and physical guardians of their minor children to serve in the event of their deaths. But the creation of a guardianship by a parent is not always controlling. When it comes to what can have an effect on the child’s physical, intellectual, moral, and spiritual well-being, the court, considers everything in choosing a custodian or guardian.

A sole surviving parent may name a guardian to take custody of a child upon the parent’s death. But other relatives or adults significantly attached to the child can challenge the guardianship and seek custody of the child. Courts initially will presume that the parent’s choice of guardian is the best choice. However, the court will listen to testimony from challengers and will consider whether others interested in the child’s care might be better custodians. Anyone who challenges a deceased parent’s choice of guardian has a heavy burden to prove that the court should reject the parent’s choice. If there are children under the age of majority who may benefit under the terms of the Will, a Guardian is in the Will, to act in the event both husband and wife are deceased.

The Guardian has charge of the children, provides for their care, maintenance and education, in accordance with the funds available to them. In such cases, it is usual to establish a trust under the Will for the children and set out the terms of the trust, including payment by the Trustee to the Guardian for the benefit of the children.

Guardian	
Guardian: (full name)	_____
Relationship:	_____
Address:	_____
Alternate Guardian: (full name)	_____
Relationship:	_____
Address:	_____



2. Establishing a Trust

NOTE: If there are minor children, it is customary to establish a trust under the Will to provide for their care, maintenance and education, naming the Executor as Trustee and setting out the terms of the trust, including payment of money by the Trustee to the Guardian for the benefit of the children.

For smaller estates a Joint Trust may be best. This will ensure that sufficient funds are available to provide for the needs of the younger child(ren) until they are economically established.

For moderate and larger estates you may wish to place a portion of your children’s legacy in individual trusts. This will permit each child as they reach the appropriate age to receive this portion in their inheritance.

In addition, especially if there is a wide age difference between our children you may wish to place a portion of their legacy in a joint trust. This will not be distributed until the youngest child reaches a specified age and will thus ensure that sufficient funds are available for the care, maintenance and education of the younger child (ren). It will also avoid the younger child (ren)’s inheritance being depleted for their care etc. because the older children have received their entire inheritance.

a) Beneficiaries:

I. Do you wish to have an INDIVIDUAL Trust established for each of your children under age _____? Yes _____ No _____

II. Do you wish to have a JOINT Trust established for the care, maintenance and education of your children under age _____? Yes _____ No _____

III. If not, how do you wish your children’s share of your estate distributed to them?

III.

IV.



b) Trustee:

Trustee Name: (full name)	_____		
Address:	_____		
	City: _____	Province: _____	Postal Code: _____
Alternate Trustee: (full name)	_____		
Address:	_____		
	City: _____	Province: _____	Postal Code: _____

c) Annual Benefits:

_____ Trustees unfettered discretion from capital and income for care, maintenance, education, etc.

_____ Other (specify) _____

d) Termination of Trust:

In the absence of any express provision to the contrary, any person, including child or grandchild, who becomes entitled to a share in your estate while still a minor, will receive that share on attaining majority. You may feel this is too early an age for them to receive that share. Perhaps you would wish them to receive part, 25% at majority, 25% at age twenty-one, 25% at age twenty-five and the balance at age thirty. At each age, they are becoming more mature and experienced or you may wish that the share for their maintenance and education until they are economically established. Your desires in this regard should be set out specifically below. There may be the possibility that a court could order the immediate distribution of a beneficiaries' full entitlement and you should discuss this with your lawyer if this is a concern.

Do you wish a child of yours to receive their entire share of your estate at the age of majority?

Yes _____ No _____ If no, see below.



i) INDIVIDUAL Trust(s) to be distributed as follows:

_____ at age _____

_____ at age _____

_____ at age _____

Or (specify) _____

ii) JOINT Trust to be distributed as follows:

Equal shares to then surviving children commencing when youngest child reaches _____ years.

_____ at age _____

_____ at age _____

_____ at age _____

Or (specify) _____

iii) If any child for whom a trust has been established fails to reach the age at which the entire amount of the Trust is paid to them do you wish:

_____ the balance of the Trust to be divided in equal portions among your then surviving children

_____ Or (specify) _____

In the event that there are no surviving children, the balance of the Trust is to be paid to:



After Your Will Is Prepared

- Make sure your new Will has been signed, properly witnessed, and that any previous Wills have been destroyed.
- Ensure that your Will and related documents are in a fire safe location where they will be easily accessible at the time of your death.
- Advise your executor where your Will is kept.
- Include with the Will a “last letter of instructions” giving the executor specific information about assets and the location of important documents. The regularly updated forms completed as part of this package can form part of these instructions and should probably be kept at home in an easily accessible and fire-safe place known to your executor.

Protect your loved ones . . .

..... take your completed Will Planning Guide to your solicitor today!

*As you share your faith with others, I pray that they may come
to know all the blessings Christ has given us.
Philemon 6 CEV*

Appendix 1A

The Role of the Executor

What is an Executor?

An executor is the person named in a Will to carry out the directions contained in the Will. The executor is responsible for settling the person's affairs after death. The person's estate (everything he or she owned) passes temporarily to the executor.

The executor locates all of the person's assets, pays the funeral costs, debts and taxes, and then distributes the remaining money and property according to the instructions in the Will.

The executor is accountable to the beneficiaries. For example, the executor must let the beneficiaries know when he or she is applying for probate, and must keep records and give all beneficiaries a final statement of accounts.

Who can be an executor?

Most often people choose a family member or a friend to be executor. An executor can be any person, or a corporation. You need to ask if they are willing to do the job.

It is okay to choose a beneficiary to be your executor.

Your executor can be someone who does not live in the province, but the estate settlement procedures are governed by the laws of the province/territory in which the testator resided.

What is important when choosing an executor?

An executor needs to be someone you trust and who has the ability to carry out the instructions in your Will. It's best if he or she is also familiar with your situation and your wishes.

Choose:

- someone you trust;
- someone who lives nearby (if possible) in order to facilitate the fulfilment of the executor's duties;
- someone you think will outlive you; and
- someone who is able to carry out your instructions.

Make the job easier for your executor:

- Ask the person if he or she is willing to be your executor.
- Discuss your wishes with the executor, including burial and cremation.
- If required, register your Will, and tell your executor where the original Will is. It would be a good idea to keep it somewhere where others can access it. For this reason, your safety deposit box may not be the best option.
- Keep an up-to-date, detailed record of all that you own and all that you owe (see forms included in this package). For example, bank accounts, RRSPs or RRIFs, insurance, real estate, and pension benefits. Note any item which is in joint tenancy or which name a specific beneficiary. These are outside the estate, so the executor does not have to manage them.
- Talk to family members, the beneficiaries, or anyone who may be entitled to a share of the estate. Explain what your plans are. This will prevent any problems arising later.
- Review your Will and choice of executor on a regular basis, especially when your circumstances change.
- Update the Will if there are any changes.

Can more than one person act as executor?

You can appoint more than one executor in your Will. However, all executors must agree to this arrangement. For some matters, one of the executors can act “to bind the estate” (tie up details), such as arranging the funeral. In most other matters, all executors must agree and must act together.

If you appoint more than one executor, consider if they will be able to work together. You should discuss your wishes with both of them. It’s best if you can do this with them together. If one executor dies, the other one can act alone.

Sometimes people choose three executors so if there are disagreements, the executors can vote and the majority will decide. However, you need to say in the Will that this is what you want. You also must say that the executor who doesn’t agree with the other two will still go along with the decision and sign any necessary papers. (This is a majority rule clause.)

Being an Executor

Being an executor takes time, energy and careful attention to detail. An executor can get help from friends and family members and from a lawyer or accountant if necessary. However, the executor is the person legally responsible. An executor will make the decisions, will oversee all that needs to be done, and will keep accurate records.

How difficult is it to be an executor?

Your task will be simple if you are an executor of an estate in which there is only a car, a house, some personal belongings, and a bank account.

Your job as an executor may be more complicated if:

- there are many beneficiaries and they are difficult to locate
- the person who died owned a business
- the person had a lot of investments and debts
- the Will includes a trust
- the Will is challenged by someone who feels left out of the Will

Does an executor get paid?

Any expenses the executor accumulated while settling the estate come through the estate. Examples of expenses are photocopying, postage, and long-distance phone calls.

Sometimes the Will states the executor's fee. If the Will does not list any fee, the executor may take up to five per cent of the gross value of the estate and five percent of the income. The amount depends on how much work is involved and whether the executor hires professional help or does it all him or herself. The executor may also receive an annual care and management fee, in cases where the executor continues to act over a long period of time.

Sometimes the Will leaves the executor a special gift for doing the job. In this case, he or she will get an executor's fee as well, but only if the Will says so. The executor may prefer to take a gift rather than a fee because a fee is taxable but the gift (jewellery, cash, real estate, etc.) given under the Will is not.

Often an executor does not accept a fee. This is common if the executor is a spouse, family member, or close friend. An executor who is also a beneficiary may apply for a fee, unless the Will says otherwise.

The executor applies for the fee when he or she prepares the accounts for the beneficiaries to approve. If the beneficiaries do not agree with the proposed executor fee, they can require the executor to produce the accounts to the Court for approval and determination of the appropriate fee.

When does my responsibility as executor end?

The executor remains responsible for looking after the estate if assets or debts turn up years later. Even if the estate is distributed, you will personally be legally responsible for dealing with them. There is no set time as to when the responsibilities of the executor are finished unless the court formally discharges you. In practice, most people say it takes six months to a year to complete the work of an executor for a straightforward estate.

Appendix 1B

Responsibility of an Executor

Adapted from The People's Law School

What to Do First?

Here are ten steps the executor may take when the person dies. The order of the steps will depend on the situation. It may seem like a lot to do in a short time, but you will find that one leads to another. This outline can help you organize.

1. Locate the Will and read it as soon as possible

The Will may have instructions about the person's wishes for organ donation, burial or cremation, funeral or memorial service.

If the original Will is in a safety deposit box, try to find the keys and tell the manager of the financial institution that you are the executor and are looking for the original Will. If you can't find the key, the box can be drilled open for a charge. Some people leave the Will with their lawyer or Notary Public. However, problems can arise if they have not kept in touch with the lawyer or notary, who may have died, or moved or sold the business. This is not usually a problem if the Will is held by a firm of lawyers.

2. Arrange for burial or cremation

Legally, the executor is responsible for arranging burial or cremation but will normally seek the input of family members. Often people leave instructions about what they want or have made prearrangements with a funeral home. If there is any question about what the person wanted the executor has the legal authority to decide.

3. Protect the assets

It is your responsibility to protect the assets. For example, you may want to make sure they are insured and safe. You may wish to place valuable papers, cash, or jewellery in a safety deposit box. If the person owned a business, you will need to arrange for its ongoing and proper management.

If you can't find the Will, check with their lawyer, who may know where the will is likely located. If there is no Will, you cannot proceed with probate. You must apply for "letters of administration." You become the administrator rather than the executor and the estate will be distributed according to the laws of the province/territory and not according to the intentions of the testator identified in the missing Will.

4. Obtain the death certificates and do a Wills search

The Division of Vital Statistics handles both of these matters but this can take some time. The funeral director can provide a death certificate almost immediately at no charge. The lawyer normally will perform a Wills search and obtain the necessary certificates as part of the probate/administration process.

5. Decide if it is necessary to probate the Will

Probate is the procedure that confirms that you have the authority to act as executor. If the person owned real estate, probate is normally required.

Check with any institutions that hold the person's assets to find out what they require.

Sometimes financial institutions will not release the person's money without confirmation of probate. It depends on how confident they are with your authority to act. If they know you and your relationship to the deceased, they may be satisfied just to see the death certificate and the Will.

6. Get the documents you need for probate

You will need to sign some of the documents in front of a lawyer, a Notary Public, or a "commissioner for taking affidavits." All court registries have a "commissioner for taking affidavits." Some community groups do as well.

When you sign, it means you are swearing that the information you are providing in the document is true.

If the Will was in another province, is it still valid? It is always a good idea to make a new Will when you move to another province.

7. Notify the beneficiaries

You must notify all the beneficiaries named in the Will and anyone else who may have a legal claim on the estate such as a common-law spouse, children, or a separated spouse.

You don't need to have a gathering to "read the Will," like in the movies.

However, you must send them a copy of the Will and a copy of your Notice of Intent to Apply for Probate.

8. List the assets and liabilities

The "Statement of Assets and Liabilities" is one of the forms you fill out for probate. It has four parts:

- 1) a list of real property (the person's home);
- 2) a list of personal property (cash, jewellery, furniture, pension and death benefits, etc.);
- 3) a list of debts; and



- 4) a distribution list (beneficiary names, addresses, relationship to deceased and gifts they are to receive).

The form(s) require the total current market value of the estate assets at death. For some assets, you may need to contact an appraiser or dealer.

Do not list assets owned in joint tenancy or some that name a specific beneficiary, such as an RRSP or a life insurance policy with a named beneficiary. These do not form part of the estate.

If you do not know about all the debts, you may wish to advertise to creditors who have claims against the estate. This is more necessary if the person owned a business.

The above is normally completed by the lawyer to the estate.

8. Apply to probate the Will

In most cases, you don't actually go to court to get probate. You need to fill out specific forms. You will need to pay a fee when you file the documents. Again, this is normally performed by the estate lawyer.

9. Obtain probate

If all necessary forms are in order and the fees are paid you will get a "Grant of Probate." This legal document allows you to deal with the estate.

If not granted, the court staff will explain the reason your application has not met with approval and you can correct the problem and reapply. You only have to pay the filing fees once.

*God our Father loves us. He is kind and has given us
eternal comfort and a wonderful hope.
2 Thessalonians 2.16 CEV*

Appendix 1C

Executor's Checklist after Probate

Here is a checklist of general tasks after probate, in order of priority. While being an executor does not have to be difficult, there are lots of details and you need organization. This offers a brief outline.

Deal with assets

The following are some of the things you may have to do. Remember these do not apply to assets owned in joint tenancy.

- Close all banking, credit union, trust company and brokerage accounts the person held. You may want to put all money into one account for the estate.
- Send in claim forms for death benefits or pension benefits. This may involve contacting the employer, the union, Canada Pension, Old Age Security, Veterans Affairs.
- Collect any money coming to the person or the estate including salary and insurance.
- Apply to transfer assets such as real estate property, a car, bonds and other items with a registered title. Assets of the estate are transferred first to the executor and then to the beneficiary. The land title office has the forms for transferring real estate.
- Keep records of all income received and any expenses paid. Keep copies of all letters and forms you send.
- Advertise for creditors of the deceased to protect yourself and the estate from liability to unknown creditors who appear after the estate has been fully distributed.
- Pay all the outstanding debts and expenses. You pay them in the following order of priority.
 1. Reasonable funeral expenses
 2. Probate fees, legal costs
 3. Municipal and income taxes
 4. All other claims as of the date of death

If the estate does not have enough money to pay all outstanding debts, it is very important to get advice from a lawyer so that you do not become personally liable for the debts.

Prepare and file income tax returns

You need to ensure that all the deceased's tax returns for the year(s) prior to death have been filed and tax paid. It is also necessary to file a final income tax return for the portion of the current year prior to the deceased's death. If the person had assets or income in another country, you may need to file a foreign income tax return as well.

After the filing of the above return(s) is completed, and all applicable tax paid and approved by Revenue Canada, you must apply for a Final Clearance Certificate which can take one to two years to acquire. For your own protection, you should have this certificate before you begin to distribute the estate. It is recommended that any distributions prior to receipt of this certificate be done only with input from the estate lawyer and possibly an accountant as there are ways of distributing most of the estate without waiting for receipt of the Final Clearance of Certificate.

Since there is a possibility of Revenue Canada re-assessing previous years of the deceased's income tax returns, it is strongly recommended that you obtain the services of the estate lawyer to ensure adequate financial provision for such an event (i.e. by holding back a portion of the estate to cover reassessed tax and possibly penalties/interest imposed on the estate).

Distribute the estate

Do not distribute the estate until six months after probate at the earliest. You do this to make sure that no one is going to challenge the Will. If all those who have a claim on the estate sign a form saying they will not contest the Will, you can go ahead sooner.

The following are your general tasks. There are extra duties if the Will includes a trust.

Distribute gifts of cash (legacies) and gifts of personal belongings (bequests) to people or organizations named in the Will. Sometimes the person attaches a separate list with the Will that says who should receive particular items. While this is not legally binding – if the item is not in the Will – it makes the executor's task easier.

- Prepare a final statement of assets, debts, income, expenses and distribution. This is for the beneficiaries to approve.
- If any cash and belongings remain after you distributed the specific gifts, divide the remainder (the "residue") as instructed by the Will. If the Will does not have a residue clause, you must distribute the remainder as if there was no Will. This is set out in the Estate Administration Act.

If the Will includes a trust

A trust is a part of your estate that is set aside in your Will for a beneficiary, most often a child. For small or simple estates, the executor is often also the trustee. In larger or more complicated estates, there may be a different trustee, such as a trust company.

If you are acting as trustee, you are responsible for making sure that the asset is kept invested and filing annual trust tax returns. You are also responsible for making payments to the beneficiary of the trust as directed by the Will. You can get help with these tasks from a lawyer and an accountant.



Appendix 2

Letter to My Executors

You should consider including this letter or an edited version of it with your completed Will.

This letter is a supplement to my Will and is for information only. It is not a replacement of my Will nor shall any provisions of this letter amend my Will.

Location of Documents and Letters

Will. One original Will is stored at/with: _____.

A copy of the said Will is located at _____.

1. Life Insurance Policies. My life insurance policies are located in a file at

2. Securities. My securities are held at the _____ Company at

_____ (address).

3. Business Agreements. My business agreements and documents are located in



Instructions Regarding Last Rites and Burial Service

In the event of my death, it is my wish that any services connected with my burial be in keeping with the Practice and Traditions of my Church,

OR

I have pre-arranged my funeral with: _____,

OR

Legal Advice and Services

I have made a practice of consulting with _____ of the law firm of _____ of,

_____ in connection with my estate planning objectives and the various documents which constitute my estate planning program. I therefore desire that

_____ be employed to render legal services in the probate of my estate. If _____ of the law firm of

_____ is not available, I would then request that _____ of the law firm of

_____ be appointed to deal with these matters.



Accounting Services _____ of the firm of _____ has prepared my income tax returns and handled all my accounting matters for many years.

I recommend that _____ be retained to continue to render accounting services for my estate and my family. It would be a good idea to have _____ perform these services for my family members and any trusts created by virtue of my Will.

Life Insurance Advice and Services

As I have taken my own advice in the area of life insurance and related programmes, I'd recommend that _____ and _____ of the _____ Life Insurance Company be asked to assist in the settling of my life insurance policies.

Banking Services

I have used the _____ Branch of the _____ Bank for many years along with the financial services of the _____ Trust Company. I would recommend to my family that they continue to deal with these two financial institutions,

OR

Appendix 3

Summary & Checklist

The following is a summary of the information/material provided in the included form(s):

1. **Notifications** – Instruct those to be notified of your death such as your employer, minister, solicitor, financial institutions where you have accounts, accountants, brokers, and insurance companies. Give your Social Insurance Number, as well as the date and place of your birth.
2. **Funeral Arrangements** – Where you are to be buried and if you own a cemetery plot. If you have prepaid funeral expenses, give clear details about the funeral home, etc.
3. **Personal Papers** – Give location of personal documents such as your Will, birth and marriage certificates, diplomas, military papers, and other important documents.
4. **Bank Accounts** – List chequing and savings accounts, where located and account numbers. Give location of cancelled cheques and statements.
5. **Credit Cards** – Provide a list by issuer and card number.
6. **Insurance** – List all life, homeowner, accident, travel, auto and medical policies, and the location of documents needed to process claims. Do not forget that your group insurance at work may have life insurance included. There may be a need to make claims under your medical coverage, etc. You may have some life insurance under your auto club membership. Some of your loans may have been insured by the financial institution granting them.
7. **Vehicles** – Tell where registration and other papers may be found
8. **Taxes** – Give location of Income Tax records for the past six (6) years.
9. **Homeowner Records** – Supply location of deed and mortgage papers, plus information on liens, taxes, leases, etc.
10. **Investments** – List all stocks, bonds, and securities by their certificates numbers, name of issuer, and location where kept. Include any real estate owned for investment or income purposes.



11. **Trusts** – Name any living trusts you have, and where the documents pertaining to same are located.
12. **Loans** – List any loans you may have made to others and their status, terms, payments, collateral, etc.
13. **Debts** – List all major debts you owe.
14. **Survivor's Benefits** – Give all possible sources of benefits not named in your Will.
15. **Safety Deposit Boxes and Keys** – Record locations of both boxes & key(s).
16. **Others** – Provide the location of cash, receipts, warranties, and other papers. Do not forget your credit union.
17. **Gifts You Wish To Make** – It is best to outline these here unless you specifically want to make a gift as part of your legal request. Definitely minor items like books, jewellery, keepsakes etc.



Appendix 4

Business Succession Planning

Succession of the Family Business – there are many tax planners who can help make this transition smoother for the whole family. If one were a carpenter, they would be analogous to a hammer and a chisel. These tools do very little, in the absence of a skilled craftsman. Equally, knowledge of individual tax areas will do little without the aptitude to use them in your real world situations.

Tax-Free Gifts – many people today believe that there is no tax on a gift and the succession plan is simply to give away the family business to children in the belief that this will be tax-free. Unfortunately, to the extent that shares or value of the business have appreciated, they will be deemed to be disposed of at fair market value upon being transferred or given to the children or to a trust for the children resulting in capital gains.

That in itself may or may not actually result in tax. There are better tax planning alternatives than a straight gift of shares to children.

No Goodwill – When faced with the above, many people will argue that there is no goodwill inherent in their business, in fact, that it is all personal good will and that in their death, the goodwill will not be worth anything. However, it is common to find a family business with significant capital assets. Quite often, these assets will consist of real estate used in the business or held as an investment. More importantly, individuals, in order to appear to have no goodwill arrange their income in such a manner to reflect in their financial statements a no growth income. In order to do that, they paid out bonuses each year to the family members. Even though it looked like the business had no retained earnings, once normalized and reasonable salary attributed, the excess could lead to substantial goodwill inherent in the business.

Tax practitioners tend not to get heavily involved in the overall process of planning a family business succession. Instead, their role is to achieve the over-all planning objectives with the minimum possible income tax consequences. However, statistics show the longer-term results of succession planning are often less than satisfactory. According to the Canadian Association of Family Enterprise, family-owned, managed or controlled businesses account for more than 50% of Canada's GNP, 50% of the total wages paid in Canada and employ more than 60% of the labour force. In absolute numbers, they make up approximately 80% of all Canadian businesses. However, less than 25% of these family businesses survive through the second generation. It was the wish of 66% of the founders to pass them on to the next generation.

The advice of a professional accountant may prove invaluable in this process.

*Stand firm and be deeply rooted in his love.
Ephesians 3.17 CEV*

Appendix 5 “Living Will”

The phrase "living will" is not a legal term in Canada. But it is used to describe the legal directives each province sanctions that deal with your medical care wishes should you be unable to communicate them.

A living Will is a type of power of attorney. Powers of attorney vary from province to province. It is important that you understand what is required for the province you are living in. For example, in Ontario there are three kinds:

- **Continuing power of attorney for property:** covers your financial affairs and allows you to name a person to act for you – especially if you become mentally incapable.
- **Non-continuing power of attorney for property:** covers your financial affairs but can't be used if you become mentally incapable. You might need this if you want someone to look after your financial affairs if you're away from home for an extended period – or if you own a property with someone and want that person to handle the sale, especially if you're going to be away.
- **Power of attorney for personal care:** allows you to appoint someone else to make your personal decisions – such as housing and health care – if you can't communicate. It's also called a health-care proxy and a durable power of attorney for health care.

Is a “living will” the same thing as a “Power of Attorney”?

No. A Power of Attorney is a legal document in which you name a specific person to act on your behalf. You can, however, write your treatment wishes (your “living will” or “advance directive”) as part of your Power of Attorney document so that you can be sure your attorney is aware of them. A “living will” just addresses your treatment and personal care wishes and does not need to name anyone or be written in any specific way.

Do I need a ‘living will’ or Power of Attorney if I have a last will and testament?

Yes, your last will and testament deals with matters of property. Your ‘living will’ deals with your health and personal care. Your last will and testament only kicks in after you die. ‘Living Wills’ are used during life and may be modified by you whenever circumstances change.



Appendix 6

Funeral

Most of us have attended funeral services where perhaps the occasion was not a joyous one. But as Christians, we believe that our departure from this earth will be a glorious day. We have gone home to be with the Lord.

In addition to indicating your funeral arrangements in the included forms, while you have the time and opportunity, write down some thoughts you would like to share with those who attend your “home going” service. Even at the grave site, you can share the hope that is in you through the words you put down on paper now.

As one Christian said, “Don’t look down in the grave because I’m not there. Look up – I have gone to be with Jesus. Just as our Lord told us in His Word, ‘I have gone to prepare a place for you.’ And as a hymn expressed: ‘When we all get to heaven, what a day of rejoicing that will be!’”

Along with these written thoughts, you could also include your favourite scriptures, hymns, choruses, etc. so that your loved ones will be better able to plan your service.

Appendix 7

Handicapped Family Member

You need to consider a plan that will provide your handicapped child with a lifetime of financial security without jeopardizing their entitlement to any Family Benefit Allowance and other government programs.

You can accomplish this with the establishment of a Discretionary Trust. It might be wise to have a family meeting for everyone involved with your child, to discuss the appointment of your child's trustee(s). You may wish to include your child in this meeting. It is extremely important that the people who will carry out your wishes are involved in the planning process. There are two versions of such a trust, as follows:

1. **The Ministry Monitored Trust**, effective since August 1, 1993 is based on statutory provisions in the Family Benefits regulations that remove inherited money as a liquid asset or income.

These revisions remove the possibility of a disabled recipient losing their Family Benefits.

In order for the money to be excluded from "liquid assets", the capital must be held in trust and be available to be used for the maintenance of the recipient. The capital must not exceed \$65,000 unless approved by the director. The payments out of the trust will be exempt as a liquid asset if the payments are to expenses for aids, assistive devices, health needs, education, training and other disability related expenses up to an annual maximum of \$3,300.

2. **The Discretionary "Henson Trust" Approach**. This is a potentially more useful alternative approach which has been in effect since a 1989 court decision involving the Henson family. It allows you to leave an ***unlimited*** amount of money in trust for a disabled beneficiary in a Will by way of a Discretionary trust containing the following statements:
 - A. The trustees have absolute and unfettered discretion about what to do with the trust assets.
 - B. That the beneficiary should not have a vested interest in the assets, except for payments made for his/her benefit.
 - C. That the trustees might take account of other income for the benefit of the beneficiary in order to maximize the benefits they would receive.
 - D. Any income not distributed to the beneficiary is accumulated and the capital of the trust on the death of the beneficiary is to be transferred to someone else.

Again, the services/advice of the estate lawyer is recommended as the document creating the trust is lengthy and complex.

Appendix 8

Definition of Terms

Administrator: The person appointed by the Court to do the same work as the executor (if there is no Will or the executor named in the Will is unable or unwilling to act).

Assets: What you own. Assets can include things such as money, land, investments, and personal possessions such as jewellery and furniture.

Beneficiary: A person or organization that you leave something to in your Will.

Bequest: A gift of personal property by a Will.

Codicil: A supplement which modifies a Will.

Debts: What you owe. Also called liabilities. At death, these may include credit card balances, loans, and mortgages.

Estate: All of the property and belongings you own at your death. The estate does not include property you own with someone else in joint tenancy, or joint bank accounts. The estate does not include insurance policies, RRSPs or RRIIFs, or other things you own which specifically name someone as your beneficiary.

Executor: The person you name in your Will who is responsible for managing your estate and for carrying out the instructions in the Will.

Guardian: The person appointed by your Will to have custody and trusteeship for dependant children.

Intestate: A person who dies without a Will.

Personal Property: All property, other than real property, such as: stocks, insurance, jewellery, etc.

Probate: A legal procedure that confirms the Will can be acted on and authorizes the executor to act.

Property: All those things and rights which are the object of ownership

Real Property: land or anything attached to, or a part of, the land (such as a house).

Residue: Everything belonging to the estate that is left after payment of debts, specific bequests and specific devises.

Testator: A person who makes a Will

Trust: A part of your estate that is set up to ensure ongoing income for a beneficiary, usually a dependent child.

Trustee: The person or company you name to manage a trust.

Appendix 9

Frequently Asked Questions

1. Is a Will made in another province still valid?

It is always a good idea to make a new Will when you move to another province.

2. I'm young – why should I worry about making a Will now?

Only one in three adults in this country has made a Will. Of those who have not, very few can give a convincing reason for their apparent lack of consideration for their family.

Just think carefully what would happen if you died without making a Will!

If you don't leave a Will, your nearest relatives have the headache, and the heartache, of administering whatever you leave. With a Will, you can appoint whom you like (relative, friend, solicitor, or Bank) to do it.

3. Won't my spouse automatically get everything if I die without a Will?

They may, most likely, they will not. It depends on the amount you leave and what family you have. The rules that apply if you die intestate are simple and strict. If you want your spouse to receive all your property and goods, you should say so in a Will.

If you are a widow or widower with children, and have not left a Will, your children will inherit all your estate. A sister, friend, church or charity may not receive the legacy that you had intended them to have.

4. Don't I need to have a lot of money to leave a legacy?

Some people think that legacies are for big sums of money. A legacy may simply be "\$100 to my friend John Smith" or "My car to my niece Elizabeth Brown."

5. Do I need a solicitor to help me draw up a Will?

You are perfectly entitled to make your own Will without professional help. Be warned... you could be causing your family many problems.

Even the smallest error in drawing up a Will may render it invalid and make it useless in the eyes of the law. Words and phrases that to you seem quite straightforward may give rise to legal disputes after your death. You will not be there to explain what you meant.

The cost is minimal to work with a lawyer, whereas the cost of a court case resulting from a dispute could easily use up all the money you are hoping to leave. A dispute would cause delay and possibly, family bitterness.

6. I bought a printed form. Is this alright to use?

You can buy a neatly printed Will form from a stationer for a few dollars. However, even if you carefully read the instructions the pitfalls are still very great. Some forms are so complex that they can make

nonsense of your own intentions. Our advice would be to consult a solicitor about the drawing up of your Will.

7. Do I need to be exact?

Can't I just say – “I want my favourite charity to get everything” or “I am leaving you my fur coat, jewellery, etc.”?

Do you know the correct title of the charity you mean? Your executors may not know. So name the charity in full, and give its present address.

Who gets the fur coat, jewellery, or that special gold watch? If you wish your possessions to be distributed to more than one person, it would be a good plan to draw up a list of everything you have and then place beside each item the name of the person you wish to inherit it. This will help you to ensure that your treasured possessions are going to the right person after your death.

8. Where can I find a solicitor?

Even if your family has never needed a solicitor you can easily find one. Ask any of your friends, your minister, your bank manager, or inquire at the Christian Legal Fellowship and you will be put you in touch with a number of Christian professionals in your area.

It really is worth employing a solicitor.

9. Who do I choose to administer my Will?

In drawing up a Will, you have to choose someone to act as your executor. It is their responsibility to look after your interests. This would be from the moment you die until the terms of the Will are completed.

It is usual to appoint one executor and one alternate executor in case one dies before you do and to appoint, possibly, one's spouse as one of those executors. You will want to be certain that the person has some sort of administrative ability and can handle the situation with tact.

Try to choose someone younger than yourself as one of the executors: a grown-up son or daughter, a close friend, a relative, or a long-standing business associate. But first check that they know that they have been appointed.

10. What happens if my executors die before I do?

Then the court will appoint an administrator – usually the person appointed would be your next of kin.

11. If I leave something to my sister and she dies first, what happens to it?

If there are no instructions in the Will, then the legacy simply lapses and becomes part of the residue (what is over after all other legacies are distributed).

You should direct that if any of your beneficiaries should die before you, their part of the estate should go to their children or a named charity.

12. Can I name personal articles in my Will?

Yes, if you wish specific individuals to have particular items – furniture, jewellery, a car and so on. If you do not do this, they are part of the estate. Remember that if you destroy or dispose of these assets before your death your Will may need revision.

13. How can I know exactly how much I shall have when I die?

You cannot and so it is impossible to divide your estate into stated portions down. It is better to state certain specific sums or items to specific named persons or charities and then divide the remainder (residue) in percentages to other named persons or charities.

14. What will happen to my dog when I die?

The strict legal position is that it is the responsibility of your executors to look after your pets until the formalities of probating the Will are completed. If your pets have particular value, either actual or sentimental, you should leave them to someone as a specific bequest. Do not deal with them simply as part of your house and contents or as part of your residual estate.

15. Who pays the balance of my mortgage?

Unless you provide otherwise, the mortgage and any other outstanding debts will be paid by the estate.

16. Who pays for my funeral?

Again, unless you provide otherwise, all expenses, funeral and legal are from your estate.

17. How do I ensure my wishes about my body are carried out?

It is quite usual to use a Will as the place to express such wishes but it may be too late to carry them out by the time the Will is located. You may wish to be buried or cremated, or you may wish to leave your body or certain organs for medical research. With some delay between your death and your Will reading, it is important that close relatives also know of these wishes.

18. Where should I keep my Will?

Commonly, either, in a safety deposit box at the bank or with your solicitor. Wherever you decide to keep it, make sure your family and executors know where it is and that it will be readily accessible, which is not always the case in a bank's safety deposit box.



Notes

*I am with you always, even unto the end of the world.
Matthew 28.20 KJV*