



## **WILLS AND ESTATES - INFORMATION AND TIPS**

### **1. Will Kits - Penny Wise Can Be Pound Foolish**

Will kits are cheap but they have purposely been drafted to be simple to understand. The trade-off is that they may not be effective to deal with all types of property. What is worse is that the formal requirements regarding witnesses are not well understood. If those formal requirements are not met the will is void and of no effect resulting in an intestacy. Handwritten amendments after the witnesses sign can also jeopardize the validity of the will.

### **2. I can do my Will at any time. Why spend money now?**

As long as you know the date of your death and you have your marbles you can hold off doing your will. Otherwise, the cost of having a lawyer draft your will now is a cheap insurance premium against the costs to your loved ones if you die without a will (intestacy). In the event of an intestate estate, a court order must be obtained which grants legal authority to administer the estate. Court applications are much more costly than having a lawyer prepare a will. If there a minor entitled to share in the estate, then the Office of the Children's lawyer must be involved and that will also increase the costs.

### **3. Should I put everything into joint names to avoid probate?**

While this may be a good idea in most cases for spouses, there are many perils of joint ownership. For example, a parent wishing to transfer ownership of their home to themselves and a child jointly in order to avoid probate taxes is avoiding the mouse and forgetting about the elephant. Avoiding income taxes may be a better idea. Capital gains on a principle residence are exempt from income tax. If the child to whom joint ownership is transferred does not reside at the house, he or she may have capital gains tax to pay triggered at the time of your death. A trust may be a better solution and offers a means of creditor protection.

### **4. Did you know that marriage automatically revokes a will?**

Unless a will is made in contemplation of an impending marriage, marriage automatically revokes any prior will.

### **5. "I don't need a will because my spouse gets everything anyway. Am I right?"**

No. On an intestacy (no will), where there is a spouse and children, the spouse may have to share the estate with the children. A spouse is entitled to the first \$200,000 (the spouse's preferential share) and any excess must be split with the children. If there is one child then the spouse and child split the excess 50/50. If there are two or more children then the spouse receives one-third of the excess and the remaining two-thirds of the excess are split equally among the children.



## **6. Am I entitled to ask the executor to provide me with a copy of the will?**

If you are named as a residuary beneficiary in the will you are entitled to receive a copy of the entire will at the time the executor files for a certificate of appointment. If your bequest relates only a specific item you are entitled to receive a copy of the page on which your bequest is set out.

## **7. Is a will public record?**

Where an executor has filed an application for a certificate of appointment of estate trustee with a will at the Superior Court of Justice, any person may inspect the file and obtain a copy of the will upon payment of the prescribed fee, unless a judge of the court has ordered the file sealed. The application is filed at the court location in the county or district where the deceased resided.

## **8. Dependant Support Claims**

The Ontario Succession Law Reform Act creates a legal obligation to properly address the needs of dependants including dependant children and spouses. Failure to adequately provide for the support of dependants gives the dependant an opportunity to challenge the will.

## **9. What is the estate administration tax (probate fees)?**

The estate administration tax has replaced probate fees since December 1998. The tax must be paid when the executor files an application for a certificate of appointment of estate trustee. There are no other court fees payable for filing the application. In certain circumstances, the estate administration tax paid may be calculated on an estimated value of the estate.

## **10. How do I calculate the amount of the estate administration tax?**

The estate administration tax is calculated on the total value of the deceased's estate wherever situated (worldwide). The formula for calculating the amount of the tax is set out in the Estate Administration Tax Act, 1998 as follows:

- \$5 for each \$1,000, or part thereof, of the first \$50,000 of the value of the estate, and
- \$15 for each \$1,000, or part thereof, of the value of the estate exceeding \$50,000.

If you have any questions or concerns, please do not hesitate to contact us at: (519) 653-3217 or for information about us try our website: [www.mcsevneylaw.com](http://www.mcsevneylaw.com)