

Where there's a will

You can't always get what you want, but without a will your family might not get what they need

By Caroline Cakebread

Sandra and Mark* were on their way to Mexico for a romantic holiday in the sun, leaving their three small kids in the care of someone else for the first time ever. But instead of spending the night before in packing and planning all the fun things they were going to do, they suddenly realized that they didn't have a will. Without one, they hadn't given any instructions about who would raise their kids if the plane went down on the way to Cancún or if their deep-sea-fishing boat sank. A panicked discussion ensued; they ended up hastily scribbling down the name of a guardian for the kids on a piece of paper and handing it to their caregiver the next morning. Making a will forces you to imagine the worst. If you died tomorrow, who would pay your bills? What would happen to your house? Who would raise your kids? Ultimately, a will isn't just about your money and your stuff. It's about the people you leave behind, especially if you have kids or other dependants.

But kids aren't the only reason to make a will; anyone with assets should have one, says Diane McCurdy, a certified financial planner and author based in Vancouver. Without a will, the province that you live in when you die will appoint an attorney to use a standard provincial formula to distribute your money and possessions and figure out who gets what. The province's formula-based decision won't necessarily reflect your wishes, and the process ties up your money and property for longer, leaving your dependants without any money to pay the bills in the meantime.

The fact is, all of us make a lot of assumptions about what happens to our assets when we die. We think somehow everything will work out and that our friends and family will get what they need. That's just not the case. For instance, you're tempted to think everything always goes to your spouse, right? That's not always true: In Alberta, for example, if you have children, provincial rules would divide your assets between your spouse and your dependants.

If you're in a common-law union, your spouse will have to provide proof of your relationship to have any rights in some provinces. Die without a will before your divorce is finalized, and your no-good ex is potentially entitled to the same share of your estate as if you were married. And if you have small kids and no will listing an appointed guardian to say what should happen to them when you die, they go where the province sends them, without any input from you.

Now that you know you need one, here are four main things your will needs to spell out:

1. The possessions and assets you want distributed;
2. Who gets what (your beneficiaries);
3. Who will be the guardian for your children, if they're minors;
4. Who will be your executor (the person or organization you want to administer your estate and carry out your wishes).

Next, you need to write it all down. In most provinces it must be signed by two witnesses to be legal. To get you started, there are plenty of do-it-yourself will kits to choose from. But while a kit might be cheap, it's not always the best route. A bad will with a lot of legal holes in it can be as hazardous as that DIY job your spouse did on the kitchen plumbing: It won't hold water in court and can therefore be contested. That's where the professionals come in. Hire a lawyer if you can; a simple will can cost as little as \$300, and if you want to save money, using a will kit before you sit down with a lawyer might reduce the costs by helping you think about the contents and answer some questions before you get to the lawyer's office.

While it might seem straightforward, making a will is a lot harder than it looks, and picking a guardian is among the toughest talks you'll ever have with your spouse. "What stymies parents is that they think no one is going to be as good a parent as they are," says McCurdy. Just remember: You can change your will whenever you want and you don't have to designate just one person to be a guiding force in your kids' lives. For example, Robert and Hannah*, a Toronto couple, managed to strike a balance; if both died, their daughter would go to his sister and brother-in-law, but Hannah's brother would be the trustee of the estate. "It means that if she wants to drop out of high school and go to circus school, she'll have to ask my brother for money and I know he'll say no," Hannah says. Once you've picked your guardian, communicate your wishes to that person and the rest of your family to make sure everyone knows what you want. That being said, the likelihood of both of you dying on that snorkelling trip is pretty slim, so your will also needs to cover the other possibility: the death of just one of you. Remarriage is, bar none, where experts see the biggest will disasters. "Leaving money to your spouse in the hopes that they will then provide for their stepchildren is a mistake," says Tamara Huculak, a Vancouver-based lawyer. "Your spouse has no obligation to pass on anything to your child."

McCurdy remembers one woman with two children, aged four and six, from a previous marriage; she remarried but later died from breast cancer. "She was talking about putting money in trust for her children and she didn't follow through," she explains. Instead, her second husband ended up inheriting all the money and dumping the kids on her sister without ever giving them a cent.

Small kids are one thing, but adult kids also need to be taken care of in a will. And they need to be treated fairly and squarely; otherwise, battles can erupt when siblings don't feel they've been treated equally. If you do end up leaving more to one than to the other, communicate your reasons for doing so to the family: For example, one child is disabled and needs money from the estate for additional care. "Otherwise, assumptions can be made that one child has been manipulating the parent into changing the will," says McCurdy.

Also, get estate-planning advice to help you divide your assets fairly. You might think it's great to give your son

\$100,000 cash and your daughter your \$100,000 RSP, but it's not fair if your son ends up having to pay \$40,000 in income taxes because his inheritance is non-registered. You need to think it through. No matter what, making a will has you staring your own mortality squarely in the face. It's not much fun to think about, but just remember: It beats having the government divvy up your assets according to some formula, and that's worth considering. Whether you want to leave it all to your kids, your husband, your cat or a charity, your assets are yours, and a will is the safest way to make your final wishes known.

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