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Start Your Plan with Your Will

Contributed by Cate Grainger, wills and estates lawyer with Harrison Pensa LLP, London, Ontario

Eat kale. Exercise more. Get 8 hours of sleep. Hearing you need a will is just one of those things you already know, but maybe haven't done anything about? You're not alone – more than half of adult Canadians don't have a will. A will really is a foundational part of your financial security plan. And yes, you need one.

DO: GET STARTED NOW

If you own a house, you need a will.
If you have a spouse, you need a will.
If you have children, you need a will.
If you have a business, you need a will (or maybe more than one). And, if you have a will that hasn't been looked at in 10 or 20 years, you need to dust it off and update it.

Start with talking to your spouse and family members. Then take inventory – of your assets, your wishes, any special needs or legal obligations, and your beneficiaries. Then meet with an experienced wills and estates lawyer. Depending on your situation, you may also need to include your financial advisor and tax advisor. Together you can develop a plan that will fulfil your wishes and minimize taxes and estate expenses.

Is there a situation where a will isn't required? Frankly, no. You may not realize this, but without a will that names your executor, there is nobody with the authority to do anything – including the authority to deal with your body.

DON'T: DO NOTHING

If you die without a will, it's called *dying intestate*. This means that no person has the authority to act and a court application must be brought to have an executor appointed. It also means you have no control over who receives your hard-earned money or assets.

Many people believe if they die without a will, their estate would simply pass to their spouse. This may be partly true – but not necessarily. And the process to settle will take time and work. If your spouse is common law, in many provinces they will inherit nothing.

DO: CHOOSE YOUR EXECUTOR WISELY

Be sure the person you name as executor is willing and able to carry out the duties, even if the person is your spouse. Being an executor is a big responsibility, so consent and communication are key. Don't just name someone because that person expects it or because you feel obligated. You can have co-executors to share the responsibilities, but they must agree. Unless your will provides otherwise, executors must act unanimously.

DO: NAME A GUARDIAN FOR YOUR MINOR CHILDREN

If you have minor children, you can name a guardian in your will. This is the person who will look after your children if you die before they're the age of majority. It's a tough decision, but an important one. Before you name someone in your will, be sure to have a frank conversation with them first to be sure they're willing. Putting a name in your will doesn't automatically mean that person must take your children – they could say no.

DO: CONSIDER TESTAMENTARY TRUSTS FOR MINOR OR DISABLED BENEFICIARIES

Minor children can't receive an inheritance and some adult beneficiaries are not capable of managing their inheritance. You can include testamentary trusts in your will. These ensure your loved one's inheritance is invested and used for their benefit; and in some cases, distributed to them at a later date.

DON'T: JUST WRITE SOMETHING DOWN AND SIGN IT

This isn't a weekend DIY project. Each province has legislation that sets out what constitutes a valid will. In general, a person (the "testator") must sign their will in the presence of two other people who do not benefit under the will and, in most provinces, an affidavit of execution is required. If there's a hand-written will, or a "holograph" will, there are different requirements for validity. Let's just say much estate litigation could have been avoided with a properly drafted will. This is a time to call in a professional – a lawyer will ensure all details are included and correct.

DO: PARTNER YOUR WILL WITH POWERS OF ATTORNEY

Create powers of attorney along with your will. A power of attorney is a legal document in which one person gives another person or people the authority to act on their behalf. A standard power of attorney for property empowers your "attorney" to legally make decisions about your assets on your behalf if you become incapable of making these decisions yourself.

In some provinces, a separate legal document is required to delegate decisions about your health and personal care. Unexpected accidents or illness can occur. Think about who you want making your hospital decisions if you're not able to make them yourself. It's strongly recommended you have a qualified lawyer prepare your powers of

attorney, and for spouses to do this together for understanding and clarity. This helps ensure you create a document that contains the clauses needed to enable your attorney(s) to effectively carry out your wishes.

DON'T: FORGET ABOUT LIFE CHANGES

An annual check-in is a good idea. Maybe when you do your taxes, or on your birthday or anniversary. Was there any major change? You may need to act accordingly. Did you get married? Some people forget that, in some provinces, marriage revokes a will. Did you split with your spouse? Divorce does not revoke a will, but in some provinces, it does change a will's effect. Did you have your first child or grandchild? Did anything happen to your executor and guardian?

Any of these events is a trigger to revisit and update your will to ensure it still meets your needs and reflects your wishes. If there were changes to tax laws, this may be an incentive to give more to a charity of your choice.



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IN FUTURE ISSUES



Estate planning, more than your will.

Estate planning can involve more than your will and powers of attorney if you want to ensure you have a complete plan in place. In upcoming issues, CMA Network will talk about planning for family dynamics, taxes, trusts, evaluating insurance and charitable giving.

We live in challenging times. Industry disruption, political evolutions, compliance, tax changes and increasing demand on the health care system are just part of it. Physicians and specialists have unique planning needs and requirements, within the financial world and beyond. You deserve a specialist partner that can integrate multi-disciplinary input from a team of advisors to deliver an integrated and credible long-term plan.

**Specialist physicians require specialized financial support.
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