

Beware of the “Do-It-Yourself” Will

Why You Need a Lawyer

Creating and signing a will is a very serious procedure. It should not be completed while sitting at the kitchen table with a “do-it-yourself” will kit, purchased at the book store or online. Will kits are too general in nature. They rarely provide for any unusual or special issues that may apply to your particular situation.

There are many issues, not raised in a “do-it-yourself” kit, that could make a major difference in how your will should be drafted and how your financial affairs should be arranged. They can only be properly addressed by meeting with a lawyer to discuss them and having the lawyer draft a will with clauses that are appropriate to your specific circumstances.

Issues Rarely Explained or Provided For in “Do-it-Yourself” Will Kits

1. Marriage voids a will signed prior to marriage unless specific provisions are included in the will.
2. Beneficiaries in your will automatically receive their inheritance at eighteen (18) years of age unless an older age is specified in the will.
3. Children of a deceased beneficiary named in your will may not automatically receive the deceased beneficiary's share of your estate.
4. Beneficiaries who are receiving Ontario Disability Support Program (ODSP) benefits may lose them, unless how they receive a share of your estate is addressed properly in your will.
5. Joint assets such as joint bank accounts **do not** in all cases automatically belong to the surviving joint owner upon your death.
6. There can be problems if a named beneficiary on your RRSP / RRIF or life insurance policy dies before you do.
7. If you owe support when you die, the support obligation continues and is a debt of your estate.
8. Not all of your estate assets are taxed in the same way, nor are all estate assets subject to the payment of your debts in the same way. You might create a significant problem for your estate and beneficiaries unless you deal with tax and debt liability properly in your will.
9. You can continue the two (2) taxpayer situation, and minimize taxes for your surviving spouse after your death, if you have assets that would qualify for a “testamentary spouse trust” pursuant to Canada Revenue Agency rules.
10. It is possible to draft a “charitable remainder trust” in your will, to make a significant tax-deductible charitable donation of an asset while still allowing your spouse or another person to enjoy the use of the asset or the income from the asset during his/her lifetime.
11. The executor of your will is entitled to be paid “executor compensation” for doing the work, and there is a generally accepted method of calculating the executor compensation which can only be changed if addressed specifically in your will.

Don't be caught short. Call the Plan first.