

# Wills and Powers of Attorney: *some things to consider*

Here are some things for you to have ready or to think about when deciding what you would like done with your property, your personal care and any responsibilities you may now have when you are no longer capable, whether as a result of mental incapacity or death.

Please feel free to call me at 416 323 6890 if you have any questions.

1. About you: Full name, date of birth, occupation, address, telephone, marital status.
2. About your spouse: Full name, date of birth, occupation, address, telephone, marital status when you married—single, divorced, widowed.
3. About each of your children: Full name, date of birth, address, phone number, marital status.

*Note: While you can try to distribute your estate as you like in your Will, there is family law legislation in Ontario that can over-ride your wishes. Your spouse has certain rights, as do your dependants.*

*If you have been acting as a parent and providing support to a child, you will have responsibilities to that child on your death or incapacity, even if he or she is not your biological or adopted child.*

4. Domestic/separation agreements/divorce judgments: Provide a copy for review.

*Note: Your plans to distribute your estate may also be restricted by a court judgment or by any previous agreement that you may have entered into. I would like to review the terms to ensure your estate documents do not conflict.*

*More overleaf...*

If you want to take a preventative approach to  
your legal affairs, please contact me.  
I want to help you.

5. Executors: Name of each executor, relationship to you, address

**Note:** Your executor should be over 18 years old and, preferably, an Ontario resident.

*Being an executor can be an onerous job, requiring even-handedness between beneficiaries, an ability to deal with accounts, finances, etc.*

*Look for an executor that is familiar with your property and one that knows you well enough to carry out your instructions as you would have wished.*

*If you have a complex estate, you may consider a professional, such as an accountant, lawyer or trust company. Or you may have a combination of co-executors: personal and professional.*

*Executors are entitled to compensation out of the estate, if they wish to claim it, at a standard rate. The size of compensation will depend on your estate and complexity. The standard guideline used by the courts when reviewing Executors' compensation works out to about 5% of the value of your estate.*

6. Alternate Executors: Name of each executor, relationship to you, address

**Note:** Should your chosen executor(s) be unable to take on or complete their role, who should take their place?

7. Personal effects: How would you like your household and personal things distributed?

**Note:** This decision can be left to the discretion of your executors or you can require them to deliver special articles to particular beneficiaries.

*You can also maintain a list and leave it with your Will, or give it to your Executor, with a moral, but not legal obligation, on your executor to comply.*

8. Gifts of money: Amount, full name of beneficiary, relationship to you, address

**Note:** Are you sure there will be enough money to cover each gift after payment of your debts, estate costs, taxes, etc.? Consider giving a percentage of the residue of the estate or dividing it up into parts.

9. Gifts of specific assets: Full description, full name of beneficiary, relationship to you, address

**Note:** What happen if you sell or give away the property specified in your Will before you die? Will the gift be cancelled? Would you want the estate to replace it with its value or another asset?

**More overleaf...**

10. Charitable gifts: Amount, full name of charitable beneficiary, any restrictions?

*Notes: Make sure you have the correct name of the charity; many charities have similar sounding names.*

11. Residue: Full names and portions of residual beneficiaries; relationship to you, ages, addresses, alternative beneficiaries.

*Note: When all debts have been paid and all specific gifts and legacies have been transferred or paid out of your estate, what remains is the "residue". How do you want that residue distributed? Your spouse? Children? Siblings? Friends? Charity?*

*If a beneficiary dies before you, to whom should his or her share go?*

12. Children: Age to receive benefits

*Note: If any one of these children is too young to deal with the property he or she inherits, is there an age, other than the age of majority, up until which you would like the property held in trust for him or her?*

13. Guardianship: Names in full, relationship, address.

*Note: Your Will can appoint guardian(s) for your children for a period of 90 days; after that a court application is required for legal guardianship. In choosing a guardian, you will, obviously, look to the best interest of your children - their stability in their home, and familiarity with the individual you choose.*

*Consider the relationship between the executor(s) who will be controlling the funds in the estate and the guardians who may need funds for the care of your children before they reach the age of majority.*

14. Attorneys for Property: Names in full, relationship, address, alternative Attorneys

*Note: You will want to choose someone who can handle financial matters for you in case you become incapacitated and are unable to do so yourself. This Attorney should also be someone who understands your wishes.*

*If there is no-one close to you to take on the task, consider co-Attorneys, one being a professional such as an accountant, lawyer or trust company.*

*Who could be an alternative Attorney if your original choice is unable to act?*

*Attorneys for property are entitled to compensation, if they wish to claim it, at a rate provided for by legislation.*

*More overleaf...*

15. Attorneys for Personal Care: Names in full, relationship, address, alternative Attorneys.

*Note: Your Attorney for personal care should be someone who will make the decisions for your care that you would have made for yourself. By law, this may not be someone who receives payment for providing health care or personal services (residential, social, training or support services) to you, e.g. your doctor, personal care worker or landlady.*

*This Attorney will have to consult with your Attorney for property in respect of the cost of your care; they should be able to work together without conflict.*

*You may decide to give your Attorney a general power for your care, or you may set out specific instructions, including instructions in the form of a 'Living Will' (setting out your wishes in connection with medical intervention when you are terminally ill). I can provide you with a direction to complete with your Power of Attorney document.*

16. Property and persons outside of Ontario: Property that you may own outside of Ontario and any persons or charities that you wish to benefit that are not Ontario residents may require special consideration when drafting your Will, or in choosing Attorneys for your property and personal care.

*Note: Where part of your assets include property outside of Ontario, or where you have beneficiaries outside Ontario, there may be additional considerations to be made in drafting the Will and Powers of Attorney.*

*Appointing executors, trustees, guardians or Attorneys who reside outside of the province can create problems in administering your estate; providing security will be an issue.*

Your Notes/Questions