

## GUIDE FOR WILL AND POWER OF ATTORNEY INSTRUCTIONS

### Information you need to know when giving us instructions.

#### 1. Beneficiaries

You will need to tell us who the beneficiaries of your estate will be and under what conditions. Below I describe the most common situations when preparing Wills for a young couple.

Most husband and wife reciprocal Wills leave everything absolutely to the surviving spouse; after both spouses are deceased or if they die at the same time then the estate is to be left to the remaining issue.

Your issue are your lineal descendants - that is, your children, grandchildren, great grand children etc.

Therefore after both spouses have died, the estate will go to all children who have survived. However, if, say one child predeceased the parents but leaves children of their own (your grandchildren) then the share that would have gone to the deceased child is divided equally among that child's surviving children.

When the family is young (when your children are less than the age of majority) you can also leave instructions in the case of a family disaster. That is, if the whole family were to perish in an automobile accident, to whom do you want your estate to go to?

A typical clause used by many of our clients says to divide the estate in half and leave one part to your siblings and the other half to your spouse's siblings. Or, you could leave the estate to nieces and nephews, friends, charities or a combination of these. When leaving to a charity, please contact the charity and ask them exactly how the charity should be named in the Will to ensure that the charity will receive the gift.

#### 2. Estate Trustees (Executors)

The Estate Trustee (formerly called the Executor) is the person who has the legal right and duty of administering the deceased's estate, which involves, protecting and preserving the assets of the estate, paying all debts and taxes of the estate, carrying out any trusts in the Will and ultimately distributing the assets to the beneficiaries as set out in the Will.

Since the surviving spouse is usually the sole beneficiary if he or she survives the testator (the person making the Will) they are usually named as the Estate Trustee. You should also name alternate Estate Trustees in the event your spouse predeceases you or dies at the same time. Obviously, you should ask them first before appointing them.

Typically, a sibling of the deceased and of the spouse are named as alternate Estate Trustees or perhaps a mutual friend. If you have no one to choose from you can appoint a Trust Company that would professionally administer the estate.

You can also name further alternate Estate Trustees to take the place of deceased Trustees or one who can no longer act as Trustee.

#### 3. Guardian

In the event both husband and wife die, you should leave instructions for who you would like to name as guardian of your minor children. Please note however, that your guardian instructions could ultimately be changed by a court if it is in the best interests of the children (i.e. if you name your brother as guardian and he then moves to Australia - it may not be in the best interests of your children to be moved out of the country). This, of course, will depend on the circumstances of each case and unless there is a good reason to intervene, your guardian instructions will typically be followed.

It is generally recommended that the guardian be a blood relative if possible (i.e. name your sister, not your sister and her husband because they could split up later on). You can also name an alternate guardian in case the first guardian cannot or will not

act as guardian. Again, ask them first before appointing them.

You should also be careful when the guardian is also the Estate Trustee. For example, if you name A as your alternate Estate Trustee as well as the guardian, then A controls both the assets and the children. It may be better to name A and B as alternate Estate Trustees and A as the guardian; this provides for checks and balances and basically two people generally make better decisions than one.

#### 4. Trust for Children

If your children are young we would recommend that a trust be set up in the Will to give the inheritance in stages rather than all at once. Without a trust, your children will be able to call for all of their share when they reach the age of majority (18). With insurance proceeds, savings, RRSPs, the equity in a home and the growth of these assets over time if they are invested for your children, their inheritance could amount to a very large sum, depending on how many children there are. Just think back to when you were eighteen years old (you had, typically, just finished high school) and what you would have done with three or four hundred thousand dollars.

The typical trust for the children would set out that if any child has not reached the age of 25 years at the time of the death of both parents, his or her share is to be invested by the Trustees. When the child reaches 18 years they are to receive the income from their share; when they reach 21 they get half of the capital and when they reach 25 they get the balance of their share.

These ages are popular because after high school they will be going on to higher education or out in the workforce and could probably use the income; when they are 21 they have typically finished higher education and are a little wiser, and at 25 years they are at a marrying age.

You can change the ages at which they receive their parts, especially if the inheritance is much larger or smaller.

We give the Trustees the full discretion to encroach on the capital at the Trustees' discretion (say if your child is a musical prodigy), so that they can get to the assets when they need them.

**5. Location of the Will**

We offer a service to our clients at no extra cost, to store your Will (there is only one original) in our office fire safe (if you keep it at home and there is a fire you could perish without a Will). Or, if you wish, you can keep the original yourself, say in a bank deposit box. If we do store the Will on your behalf it is still your property and you can take it at any time. Please let us know what you decide, so we can document in our records where the original Wills will be located.

**6. Continuing Powers of Attorney for Property**

If, through accident or illness, you were deemed to be incompetent, most people are not aware that your family would not be able to administer your property for you. In fact, the provincial government, through the Public Trustee's Office, would have the jurisdiction to administer your estate to the exclusion of your family (i.e. your spouse would not be able to sell or refinance your home without getting the Public Trustee's consent).

The way to avoid this is to have a Continuing Power of Attorney for Property (CPOAP). This legal document names the people you want to administer your property when you cannot.

Typically, spouses name each other and then one or more of the Estate Trustees in their Will as alternate attorneys in their CPOAP.

**7. Powers of Attorney for Personal Care**

With the recent amendments to our health care legislation you are now able to name someone to make personal care decisions in the event of your incapacity with a Power of Attorney for Personal Care (POAPC). This form of power of attorney allows someone you trust to make health care or medical treatment decisions when you cannot do so. It also encompasses decisions such as where you

will live, what clothes you will wear and what food you will eat if you are not competent to make these decisions for yourself.

Health care providers are increasingly requiring to see a POAPC before they will assist an incompetent patient. It is for this reason that we recommend that you have one prepared together with your Will and CPOAP.

Similar to your CPOAP, typically, spouses name each other and then one or more of the Estate Trustees in their Will as alternate attorneys in their POAPC.

**8. Summary of Instructions**

To summarize, we have listed below the typical information we will need to prepare your Wills. For convenience you can send me this table with your instructions - just check what boxes are appropriate or give me specific instructions (please print). When naming someone, please give full given name and relationship to you i.e. "my brother, FRANK WHITE". Need more space? Add separate sheets and write "see attached" where applicable:

**Beneficiaries:**

- To my spouse. If my spouse dies before me, then equally to my children.
- Other:

**Family Disaster Instructions:**

- Divide half of estate between my brothers and sisters and other half between my spouses brothers and sisters.
- Other:

**Estate Trustees:**

- My spouse
- Other:

Alternate:

**Guardian:**

Name:

Alternate:

**Trust for Children:**

- Yes. As set out above
- Other:

**Location of Wills:**

- In your office
- I will keep original(s)

**Continuing Power of Attorney for Property:**

Attorney:  My Spouse  Other:

Alternate Attorney:  Estate Trustee(s)

Other:

No, I do not want this document

**Power of Attorney for Personal Care:**

Attorney:  My Spouse  Other:

Alternate Attorney:  Estate Trustee(s)

Other:

No, I do not want this document



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