



Posted on: March 21, 2018

MAKE A WILL WEEK - NOT JUST A REASON TO PAY LEGAL FEES

By Angela Spanjers and RBS

The Will is the bedrock of most estate planning, yet most of us don't have one in place. As a result, Make a Will Week should cause us to reflect on not just why one is probably necessary, but why we haven't done it.

Why do I need a Will?

1. I have minor children.

A Will allows me to set out who the guardian will be, and it is important to ensure that my children will be raised with people and in surroundings that align with my priorities.

Also, if I don't have a Will that sets out that the assets my minor children will inherit are held in trust for them and appoints a trustee for that trust, British Columbia's Public Guardian and Trustee will assume the management and control of their inheritance.

2. I have a family member I want to benefit who is receiving provincial disability benefits.

Most provinces, including British Columbia, impose a limit on the assets a person receiving provincial disability benefits can have and, once that limit is reached, the benefits are lost. If that person receives an outright inheritance that puts them over the limit, the provincial benefits are typically lost until they are back under the limit. A trust, typically called a Henson Trust, should be established to try and protect their benefit entitlement (and tap into some preferential federal tax rates).

3. I have a spouse and children.

If I die and my spouse survives me, my spouse does **not** inherit everything. Rather, my spouse receives the first \$300,000 or \$150,000 of my estate, depending on whether my spouse is also the parent of all my children, and then receives half of what remains. My spouse could therefore be faced with a major change in lifestyle, including having to sell the home.

4. I want to do some tax planning and/or I have private company shares.





Will planning can be used to structure your estate to avoid probate fees (1.4%) on certain private company assets, such as the value of your British Columbia private company shares and shareholder loans.

Will planning can also be used to create a transfer of wealth to successive generations in a tax efficient way, such as by creating income splitting opportunities.

Why don't I have a Will?

1. The law will make sure my family gets my assets.

Yes, that will ultimately happen most of the time. However, it may not go to the family members you wish, and could involve the Public Guardian and Trustee playing a controlling role in your children's access to finances.

Also, it is now possible under the *Wills, Estates and Succession Act* that, even if you have some very remote family who survive you, if your closer family has predeceased you, your assets could pass to the British Columbia government.

2. It's expensive.

It's not as expensive as you may fear, and it is usually more expensive not to have one. The cost savings and emotional savings to your family after you pass are significant.

3. Lawyers make things complicated.

We have certainly been known to do that, and there are tools other than a Will that might be better suited for your circumstances. The only way to know, however, is to connect with the dreaded lawyers. Most lawyers will provide a complimentary consultation or preliminary information, so you can assess what a Will, and not having a Will, means for you.

Please reach out to any member of our Estate and Wealth Advisory Group to explore your planning.

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Important Note: The information contained herein is premised on the laws of British Columbia as at the date written (March 2018). It should not be treated by readers as legal or tax advice and should not be relied on





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