

Did You Know?

If you die without a will (intestate) your provincial government decides how to disperse your assets. In fact, even if you do have a will and experience a major life event such as marriage (unless the will was prepared in contemplation of marriage) your will may be automatically invalidated depending on the province that you live in. An interesting point to this is your will is still valid upon marital breakdown.



According to a recent Harris/Decima poll 31% of Canadians between the ages of 45 and 64 don't have a will. Of those baby boomers who do, 44% haven't updated it in more than five years. Here is a breakdown of how the province of Ontario distributes the assets of someone who dies intestate. In our example Ted and Jane have three children, Susan age 19, Bill age 14 and Robin age 6. Ted is self-employed and all of their assets are held in Jane's name as follows.

Primary Residence: \$700,000
Investments: \$400,000
Recreational Property: \$300,000
Total: \$1,400,000

In this example if Jane died intestate, most people would assume that Ted would simply inherit the entire estate. However, that is not the case under Ontario's succession law which calls for the surviving spouse to receive the first \$200,000 of the estate. This is known as the preferential share and then the rest of the estate to be distributed equally between the surviving spouse and children. Jane's estate would provide Ted with \$500,000 and each of the children with \$300,000. Complicating matters even more is that Ted does not have enough money to buy the primary residence and trusts would need to be established for the two minor children. Additionally, Susan, while legally considered to be an adult, may not have the maturity to manage such a windfall.

Estate planning is not a static process; it is dynamic and as a result needs to be constantly updated to reflect the changes that occur during our lives as well as advances in our habits. For example, an emerging trend across all age groups is a digital legacy as more and more Canadians are recording their life in digital environments. As a result, determining who is given access to these environments as well as tracking changes to login and passwords has also become part of the estate planning process.

Estate planning, regardless of asset level is important. When properly constructed, an estate plan can help minimize taxes, and probate fees, as well as determine how assets should be distributed. Additionally, an estate plan, through vehicles such as testamentary trusts, can help manage the ongoing needs of dependent children and adults.