



Wills, Probate & Powers of Attorney

INFORMATION AND INSTRUCTION KIT

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Cornwall Business Centre
#203 1540 Cornwall Road
Oakville, Ontario Canada
L6J 7W5

TEL: (905) 337-3121
FAX: (905) 337-3272
CELL: (416) 526-3121

WWW.SMARTWILLS.CA



Peter R. Welsh
ESTATES & TRUST LAW



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Wills: What They Are & Why You Need One

INTRODUCTION

We thank you for the opportunity to provide this “kit” to you. It has 2 purposes: first, to assist you to reduce time and expense in your planning including your own inventory of your property; and secondly, to assist us in recording your wishes.

Aside from assisting you in the preparation of your Will, the primary purpose of which is to appoint someone to administer your Estate and direct its distribution, we also seek to reduce or avoid taxes and probate fees on your property. This Questionnaire, accordingly, prompts initiatives outside of just the preparation of a Will that could significantly help in your asset preservation.

THE PROCESS

The first step is completion of this “kit” by you. We take your preliminary plans, assess your wishes, propose some alternatives and deliver a draft Will, sometimes with notes in it for your further consideration.

This is an iterative process: you consider your ideas. We propose alternatives and solutions. You choose your options. We record your decisions. There obviously will be some discussions with us. This is an important process for you, not lightly undertaken and often deferred, but important. We wish to be sure you are content with your decisions when finalized.

In the end, we, together with you, document your plans and produce a final Will or Wills (there is a possibility of more than one Will, which might seem strange, but read on).



Now What?

1. DO AN INVENTORY OF YOUR ASSETS

House, summer cottage, securities, RRSPs, TFSA's, investments; essentially anything of value to be distributed or included as part of your total asset Estate.

2. DON'T OVERLOOK DIGITAL ASSETS

A digital asset is a document or other form of information that is stored on a computer or online; things like bank and brokerage accounts, social media accounts, point reward programs, digital libraries (music, magazines, and books), online sales accounts (Amazon, eBay), online gaming accounts, cryptocurrency or account withdrawal pre-authorizations (cell phone, memberships, etc.).

Keeping a password-protected spread sheet of these items will become very helpful to your Estate Trustee. The spreadsheet should include a description of the asset, the web address, user id, password and account number, location of each asset and your instructions for what you wish done with these assets (i.e. transferred or destroyed, accounts deactivated, etc.). Your appointed Trustee/Executor will need knowledge of your password in order to gain eventual access to your spreadsheet of digital assets. You will also need to keep in mind the computer savviness of any potential Trustee/Executor and their comfort level in dealing with computers and these digital assets.

3. IDENTIFY AND CHOOSE AN EXECUTOR(S)

Think about who you will want to manage your Estate after you die. You should ask the person you wish to name as Executor whether or not he or she is prepared to accept these responsibilities. If you choose one person, it is a good idea to choose an alternate Executor in case your designated Executor dies, declines or fails to act on your behalf.

In choosing an Executor, you should ask yourself the following questions:

- Will this person be reasonably available to handle these duties? (i.e. residing in Canada)
- Is this person capable of handling financial matters?
- Will this person act in the best interests of my family and beneficiaries?

4. DECIDE ON A GUARDIAN FOR MINOR CHILDREN (IF ANY)

You may also identify someone you wish to have custody of your children when you die. This nomination cannot be a forced appointment (in the sense the person "must" accept the appointment), since someone must apply to the Court for a Custody Order to establish permanent custody of your children. However, your expression in your Will carries a strong message about who you want to look after your children if neither you nor your spouse is alive.

5. DECIDE HOW YOU WANT TO LEAVE YOUR ESTATE

- A. Frequently, husbands and wives make Wills that mirror one another's, leaving everything to the surviving spouse, particularly when it is a first marriage for both spouses. Obviously second or successive marriages present different issues. Be careful. Get advice.
- B. If there are children, it is frequently the case that each parent leaves everything to be divided equally among their children in the event that they are the last spouse to die or they die together. If the children are young, it is common that the children's shares are directed to be held in Trust by a Trustee, often the Executor, until they reach some age older than eighteen. Often distributions are provided at various ages and staged times.
- C. Particularly if your family is young, it is wise to provide in the Will for what would happen if none of your immediate family is alive (everyone dies together). If this provision is missing and there is a total disaster with the family, your Estate will be divided among your closest living relatives as though you had no Will. Again, potential Public Guardian. If this is not what you would want, it is important to have your Will say what you do want.



Now What?

6. SAVING/DELAYING TAXES AND FEES

- A. Naming a surviving spouse or spousal trust as the recipient of your RRSP, RRIF, TFSA's or pension benefit will allow the funds to go to your spouse free of income tax, and without Estate Administration Tax (Probate fees). Capital gains tax may also be postponed. However, if these funds are left to your Estate, or designated to go to someone other than your spouse, tax is payable on the full value of the plan as income in the year of your death.
- B. Life insurance payable to a named beneficiary passes to that person without any income tax or Estate Administration Tax and it cannot be attacked by creditors of your Estate.
- C. Real estate and any other property owned between you and another person as joint tenants, will normally go to that other person automatically on your death, with no need to wait for Probate or to pay Estate Administration Taxes. There are some exceptions as careful preparation is required. If there would be income tax payable on the asset if it were owned by you alone, that tax is still payable at your death, even if the asset goes to a survivor and is not part of your Estate
- D. If you hold shares in a private corporation, you should consider utilizing a "Secondary Will" for these assets. Secondary Wills are intended to not be probated, so no Probate fees are payable.

7. FUNERAL AND BURIAL INSTRUCTIONS:

While a Will can include your last wishes regarding how you would like your body disposed of, it is not a good idea. In many cases, the contents of the Will are learned only after death and your wishes concerning burial or cremation may only be discovered upon the reading of your Will, but far too late to carry out your wishes. Rather, let your Executor know of your wishes.

As to organ donation, these plans can, of course, be expressed in your Will. Again, however, like cremation, by the time your Will is read, your charitable organ donation plans may well be too late. It is much better to carry your plans in your wallet and let your Executor, spouse and possibly your adult children know in advance of your wishes.

8. DO I ONLY NEED TO MAKE A WILL ONCE?

No, your Will generally has a life span of 3-5 years before it should be revisited. Possibly even sooner if there has been a dramatic change in your circumstances. Keep in mind such events as the birth of children, development of special needs by a family member, the death of appointed Executors or Guardians of minors, marriage, divorce, acquisition of assets, shareholdings, etc. These are just some of the possible changes that can occur making it necessary to revisit your present Estate plan.

9. WHO CAN WITNESS THE SIGNING OF MY WILL?

2 witnesses must be present when you sign your Wills and these witnesses must be 18 years of age or older and cannot be a named party in the Will, either as an Executor/Trustee or as a Beneficiary or a spouse of any of them. Recent Ontario rules have relaxed this requirement somewhat, but still require a lawyer, at least to be present.

10. NOW THAT I'VE MADE A WILL, WHAT DO I DO WITH IT?

Once your Will is signed it is a "live" document and should be stored in a safe place. If it cannot be located at the time of death, it may be presumed that you did not have a Will or that you had intentionally destroyed it. In that case, your estate would be distributed as if no Will ever existed. Therefore, it is suggested you provide a copy to the Executors and inform him/her of the location of the original Will.

Largely, there are 3 options:

1. You leave the original Will (there is only one) with your lawyer;
2. You take the Will and save it somewhere safe but easily found by your Estate Trustee or family members;
3. Give it to your named Executor (not recommended).

12. WHAT IS A HOLOGRAPH WILL?

A document written entirely in one's own hand, dated and signed by the Testator (no witnesses required) is considered a Holograph Will. Section 6 of the Ontario Succession Law Reform Act allows this by stating "A testator may make a valid Will wholly by his or her own handwriting



Now What?

and signature, without formality, and without the presence, attestation or signature of a witness.”

A typewritten Will with handwritten changes or corrections is not considered a valid Holograph Will.

13. CAN I MAKE CHANGES TO MY WILL?

Yes and No. Any handwritten changes made on a Will document, even if initialed by the Testator, invalidate at least the amendment, if not the whole Will. However, a change can be made to your plans in the Will by way of an amendment (called a “Codicil”), either holograph or typed, and if typed with 2 witnesses as well and should be kept with your original Will document.

14. MEMORANDUMS TO A WILL

You may wish to consider adding a Memorandum to your Will which sets out certain bequests to identified individuals, if you prefer to leave these instructions outside of your Will. You can create a handwritten list (it can be helpful to provide as much detail as possible, or a photograph, of the item(s) you are bequeathing) with your specific instructions and sign and date it. This Memorandum must be dated **AFTER** the date of your Will and should be kept with the Will. There should be a clause in your Will that requests your Trustees and/or family members to adhere to the wishes you have expressed in any Memorandum.



Powers of Attorney

What They Are & Why You Need One

POWER OF ATTORNEY FOR PROPERTY

The person you pick as your Power of Attorney (POA) will have unlimited access to your property and may deal with your property as he or she sees fit. The Attorney's duties include supporting you and your dependents and acting in your best interests. Your Attorney cannot make a Will for you but can review any existing Will.

Unlike a Will, a Power of Attorney for Property is only effective while you are still alive and mostly used when you are temporarily or permanently incapacitated or absent. If you are unable to make decisions with respect to your property, your Attorney will have the necessary powers to make decisions and carry those decisions out on your behalf.

Your Attorney can consent on your behalf to any sale of a family home being sold by your spouse. If your Attorney is your spouse, he or she can deal with the family home and other family property completely, during your incapacity or absence.

Your Attorney can make gifts or loans to friends and relatives, subject to statutory limitations, and can make charitable gifts, again subject to limitations. Alternatively, your Power of Attorney can prohibit your Attorney from making any gifts, loans or donations, during your incapacity.

Your Attorney is entitled to compensation in accordance with a prescribed statutory fee schedule, unless you specify a different fee arrangement or no fee. Remember that your named Attorney may refuse to act and irrespective of whether he or she is or is not entitled under your Power of Attorney to any compensation.

It is important to name an "alternate" Attorney in the event that the appointed Attorney is unable or unwilling to act on your behalf. It is also beneficial to appoint someone who resides in the same jurisdiction as making decisions on your behalf from a distance could be a challenge.

Two or more Attorneys can be appointed, and they can be required to only act together (jointly) or permitted to act separately (severally). Frequently, multiple Attorneys are appointed jointly and severally (which means one may act,

or they act together. This offers the most flexibility).

A Power of Attorney will be effective as soon as it is signed, unless you specify some mechanism whereby the power becomes effective at a later date. It is recommended that you allow the Power of Attorney to be effective immediately, without limitation, but control access to it by means of arranging for safekeeping of all signed copies and providing a mechanism for the holder to know when, how and to whom to release the documents.

POWER OF ATTORNEY FOR PERSONAL CARE

In 1995, Ontario legislation permitted individuals to authorize, in writing someone to make medical and personal care decisions for them while they are alive but unable to give instructions. Similar to a so-called "Living Will".

Your Power of Attorney for Personal Care can be general or specific. It will appoint an Attorney to make health care decisions (which will include decisions regarding shelter, hygiene, clothing, etc.). It may also include your specific preferences with respect to the above.

You should also name an "alternative nominee" for your Attorney in the event that your appointed Attorney is unable or unwilling to act on your behalf. It is also beneficial to appoint someone who resides in the same jurisdiction as you since making decisions on your behalf, often required on an immediate basis, could be a challenge from a distance.

Your Power of Attorney for Personal Care, through specific directions to your Attorney, may also provide instructions for treatment at a time when you are unable to communicate these instructions. It may include your wishes regarding, among others:

- a. donation of organs;
- b. use of life extending machines;
- c. preferences for homecare or institutionalization; and
- d. blood transfusions.

You should discuss your wishes with your Attorney in advance. You may also wish to discuss your wishes with your religious advisor and your doctor.



Powers of Attorney

What They Are & Why You Need One

You should know that health care providers may require your Power of Attorney for Personal Care in order to verify your wishes. This is often impossible in emergency situations.

Finally, you should remember that a medical code of ethics may conflict with your instructions. If so, there is no absolute guarantee that your wishes as set out in your Power of Attorney for Personal Care may be followed.

The specifics relating to the appointment of an Attorney for Personal Care are very much the same as those for appointment of an Attorney for Property. However the circumstances when a Power of Attorney for Personal Care can be used are different from those where a Power of Attorney for Property can be used. A Power of Attorney for Property can be exercised by the Attorney at any time, and is often used in business situations or for convenience. A Power of Attorney for Personal Care can only be exercised when it has been determined by your health care providers that you are unable to make care decisions yourself. unable to communicate these instructions. It may include your wishes regarding, among others:

- a. donation of organs;
- b. use of life extending machines;
- c. preferences for homecare or institutionalization; and
- d. blood transfusions.

You should discuss your wishes with your Attorney in advance. You may also wish to discuss your wishes with your religious advisor and your doctor.

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SmartWill Planning Information Sheet

PLEASE BRING THIS COMPLETED DOCUMENT TO YOUR
INITIAL APPOINTMENT OR RETURN BY EMAIL
TO PETER@SMARTWILLS.CA

PERSONAL INFORMATION

Full Name:

Also Known As:

Date of Birth:

Citizenship:

Address:

CONTACT NUMBERS

Business:

Home:

Cell:

Email:

SPOUSE

Full Name:

Also Known As:

Date of Birth:

Citizenship:

Address:



SPOUSE

Full Name:

Also Known As:

Date of Birth:

Citizenship:

Address:

CONTACT NUMBERS

Business:

Home:

Cell:

Email:

Date of Marriage:



**PLEASE PROVIDE THE FOLLOWING INFORMATION FOR
EACH OF YOUR CHILDREN...**

Child 1

Child 2

Child 3

Child 4

FULL NAME

ADDRESS

**DATE OF
BIRTH**

**MARITAL
STATUS**

**NAME OF
SPOUSE**

**CHILDREN'S
NAMES**

(this section
refers to grand-
children)

AGES

**CONTACT
NUMBER**

Please indicate if
any children are
stepchildren or
from a previous
marriage

Do any of your children or dependents have special needs? If so, please give details.



OTHER DEPENDENTS:

Do you have any legal obligation to support another person in addition to your spouse and children, or have you been providing actual support to anyone other than your spouse and children? If so, please give the details:

PARTNERSHIP HISTORY:

Have you or your spouse been previously married?

Is spouse deceased? If so, please provide date of death

GENERAL

Accountant:

Phone:

Address:

Financial Advisor:

Phone:

Address:



DOMESTIC CONTRACTS AND COURT ORDERS:

Have you or your spouse ever signed a Separation Agreement, Marriage Contract, or been involved in a court proceeding which might have an impact on your estate:

YES

NO

If so, please provide details together with a copy of the agreement.

Divorce (if any):

Date & Place:

Details:

Any other children/Beneficiaries?

Full names:

Address:

Relationship:



FINANCIAL DETAILS OF THE ESTATE

A. REAL ESTATE

Do you own a house? If yes,

Address:

Approx. value

Mortgage amount/ to whom (if applicable)

Registered in the name of

Do you know if the registration is in a court proceeding which might have an impact on your estate:

JOINT TENANCY

TENANCY IN COMMON

OTHER PROPERTIES:

Address:

Purchase Price:

Approx. value:

Mortgage owing/amount/to whom:

Registered in the name of

Do you have any property outside of Canada

Do you have any property you own jointly with anyone else

COLLECTIBLES - AUTOMOBILES OR BOATS, ART, COINS:

Item:

Approx. value:

Registered in the name of:

Date of acquisition:



FINANCIAL DETAILS OF THE ESTATE

B. BUSINESS INTERESTS:

Name:

Address:

Type of Business:

SOLE PROPRIETORSHIP

PARTNERSHIP

LIMITED COMPANY

Do you own shares in any private Corporation? If so, please provide:

Business Name:

Incorporated where

Business Number:

Number of Shares:

Common:

Special:

C. INSURANCE

Company

Face Value

Policy No

Beneficiary

**GROUP
INSURANCE:**

**PERSONAL
INSURANCE:**

D. RRSP'S

#1 Name of Owner:

Trustee and Plan No.

Approx. Value:

Beneficiary:



D. RRSP'S (CONT)

#2 Name of Owner:

Trustee and Plan No.

Approx. Value:

Identified Beneficiary:

E. PENSION PLANS:

Do you have through your employment?

Self: **YES** **NO**

Spouse: **YES** **NO**

If so, who is the beneficiary?

Do you have more than one?

F. STOCKS, BONDS AND OTHER SECURITIES:

Please provide a current list of your stock portfolio or other securities:
(You can attach as separate page; e.g. statement from broker)

G. BANK ACCOUNTS, G.I.C.'S, TFSA'S AND OTHER INVESTMENTS:

Please provide a current list of your accounts and other investments, you can attach a separate page.
Please confirm the name of any beneficiary.

H. DEBTS AND LIABILITIES:

Please provide all details of monies that you owe to an institution or third person (if any):

I.

Are you an executor/trustee for someone else? If so, please provide details.



I. (CONT)

Are you presently receiving benefits from an estate or trust? If so, please give particulars.

Have you set up a trust to benefit another person? If so, please give particulars.

WILL INSTRUCTIONS

What person or persons would you like to act as your Estate Trustee or Executor:

SPOUSE OTHER - IF OTHER:

Name:

Address:

Relationship:

[If trustees are not resident in Ontario, further consultation will be needed]

If you have chosen your spouse or anyone and your spouse or that someone predeceases you or is unable to act, who would be your alternate choice?

FOR MY WILL:

Name:

Address:

Relationship:

Name:

Address:

Relationship:



**PLEASE NOTE THAT A SPOUSE MAY DISPOSE OF HIS/HER
ESTATE SEPARATELY FROM HIS/HER SPOUSE**

SPOUSE'S WILL (if different):

FIRST EXECUTOR:

Name:

Address:

Relationship:

ALTERNATE EXECUTOR

Name:

Address:

Relationship:

My Spouse is to receive all of my property if I pass away first.

YES

NO

[If No, further consultation will be needed]

If my spouse dies before me, I would like all of my property to be divided equally among my children who survive me.

YES

NO

[If No, further consultation will be needed]

If children are not of the age of majority, I would like their shares held in trust and distributed as follows (e.g. ¼ at age 25, 1/3 of remainder at age 30 and remainder at age 35):

Age

Share distribution

If a child has died before me and my spouse leaving children (my grandchildren) who survive me, those grandchildren will take their parent's share equally.

YES

NO



If both my spouse and I die together, I wish my child(ren) (under 18 years old) to remain under the guardianship of:

Name:

Address:

Relationship to you:

List alternate & relationship to you:

Name:

Address:

Relationship to you:

Please state whether you wish your child(ren)'s custodial guardian or your Estate Trustee to manage the distribution of your child(ren)'s share in your Estate:

Should all of myself, my spouse and my child(ren) die together, I wish my Estate to be divided between/among the following:

If you have specific bequests (e.g. jewelry item(s) or collection) for beneficiaries, these can either be included in your Will or you can include in a separate memorandum written in your own hand to be appended to your Will.

ITEM/BEQUEST

RECIPIENT (and relationship to you)



Please list any other specific wishes to be recorded in your Will, such as provisions relating to funeral arrangements, donations, etc. (or attach as separate sheet):

Do you wish any restrictions on the powers of your executor?

YES **NO**

If yes, please indicate the restrictions:

POWER OF ATTORNEY FOR PROPERTY

Attorney(s) for property are (insert full name(s) and address(es) of not more than 2 people):

The alternate(s) (insert full name(s) & address(es) of at most 2 people in order of preference):

Attorneys must act together only (jointly): **YES** **NO**

Attorneys can each act alone (severally): **YES** **NO**

(Note: Attorneys can act both jointly & severally) **YES** **NO**

There will be restrictions on my Attorney(s) powers: **YES** **NO**

If there are to be restrictions, please provide particulars.



MY ATTORNEY(S) WILL BE ENTITLED TO EITHER:

no compensation; or
compensation at usual trustee rates pursuant to the laws of Ontario.

Please indicate choice.

MY POWER OF ATTORNEY FOR PROPERTY WILL BE:

immediately effective; or
effective when my family physician or other qualified person has decided that I am incapable of managing property.

POWER OF ATTORNEY FOR PERSONAL CARE

Attorneys for personal care are (insert full names and addresses of not more than 2 people):

The alternate(s) (insert full name(s) & address(es) of at most 2 people) in order of preference):

Attorneys must act together only (jointly):	YES	NO
Attorneys can each act alone (severally):	YES	NO
(Note: Attorneys can act both jointly & severally)	YES	NO

If you have any special instructions pertaining to your personal care, please outline below:



The following Work Sheet is for your assistance when considering your testamentary intentions and to highlight matters that may require special consideration for Will preparation.
(Please use extra sheets if required.)

NET ESTATE ASSETS

Category	Location	Owned by	Joint: yes/no or designated beneficiary	Value	Estate value
----------	----------	----------	---	-------	--------------

REAL ESTATE

INSURANCE

RRSP

RRIF

BANK ACCT

STOCKS

BONDS

TFSA

COLLECTIONS

**PREPAID
FUNERAL**

TOTAL ASSETS



LIABILITIES

Category	Creditor	Amount	Insured Yes/no	Total debt to Estate
----------	----------	--------	-------------------	-------------------------

MORTGAGES

**PERSONAL
LOANS/CREDIT
CARDS**

**FUNERAL
EXPENSE**

**TAX LIABILITY
ON RRSP/RRIF**

**TAX LIABILITY
CAPITAL GAINS**

TOTAL DEBTS

**NET ESTATE
VALUE**



DIGITAL ASSETS

Item Description

Information

Log-in or User ID

Password

COMPUTER:

**EMAIL
ACCOUNTS:**

**SOCIAL MEDIA
ACCOUNTS:**

**ONLINE SALES
(AMAZON,
EBAY):**

**CONTENT
HOLDERS
(ITUNES,
ICLOUD)**

**LOYALTY
PROGRAM:**

**GAMING:
VALUE**

**VIRTUAL
CURRENCY:**

**DOMAIN
NAMES, ETC.:**

**PASSWORD
PROGRAM
ACCOUNTS &
PASSWORDS**

**SAFETY
DEPOSIT BOX**



OTHER QUESTIONS:

Have you an interest in any assets outside Ontario?	YES	NO
Have you an interest in any assets outside Canada?	YES	NO
Have you an interest in another estate or trust?	YES	NO
Have you made any loans or advances to family members or others that are to be collected or that you wish to be forgiven? Please state particulars and names.	YES	NO
Have you an interest in farmland?	YES	NO
Do you own any property in joint-tenancy with someone not described above?	YES	NO
Are you the owner of a life insurance policy on the life of another person?	YES	NO
Are you the owner of any pets?	YES	NO
Do you have any specific plans or wishes for your pet's care? Provide details...		

Please provide particulars of any yes answer



Summary

WILL (PLEASE IDENTIFY EXECUTORS/TRUSTEES)

PRIMARY EXECUTOR

Full Name (first & Last):

City & Region of Residence:

SECONDARY OR ALTERNATE EXECUTOR

Full Name (first & Last):

City & Region of Residence:

POWER OF ATTORNEY FOR PROPERTY

PRIMARY ATTORNEY

Full Name (first & Last):

City & Region of Residence:

SECONDARY OR ALTERNATE ATTORNEY

Full Name (first & Last):

City & Region of Residence:



Summary

POWER OF ATTORNEY FOR PERSONAL CARE

PRIMARY ATTORNEY

Full Name (first & Last):

City & Region of Residence:

SECONDARY OR ALTERNATE ATTORNEY

Full Name (first & Last):

City & Region of Residence:

GUARDIANS

PRIMARY GUARDIAN

Full Name (first & Last):

City & Region of Residence:

SECONDARY OR ALTERNATE GUARDIAN

Full Name (first & Last):

City & Region of Residence:



Wills, Probate and Estate planning should be S.M.A.R.T. and easily updated as life changes.

We chose "SMARTWILLS" to pick up on the SMART Planning process. The process evaluates your goals as to their Specificity, ability to be Measured, if they are Attainable, Realistic and Timely. The Will, Probate and Estate planning process needs to be SMART to ensure you have addressed all the issues that may impact your planning needs.

PETER@SMARTWILLS.CA



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