



What To Do If There Is No Will?

INFORMATION AND INSTRUCTION KIT

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The distribution of the Estate (who inherits what) is fixed by statute in Ontario (the Succession Law Reform Act, or SLRA).

The SLRA sets out a fixed distribution, with a preferential share of \$200,000 to the "spouse" (if the deceased was married) and then thereafter, the Estate is shared between the spouse and surviving children. The SLRA provides for further distribution that is very different from what you might expect.

NO WILL & NO MARRIAGE -> COMMON LAW SPOUSE GETS NOTHING.

Currently, in Ontario, when there is no Will, a common law spouse (i.e. not formally or legally 'married') has no right to inherit anything from their deceased partner, and has no right to equalization under The Family Law Act. This applies even if the two common law spouses had children together, and even if the common law spouse is the Estate Trustee.

JOINT ACCOUNTS WHEN THERE IS NO WILL

Don't assume that the use of 'joint accounts' and placing assets like houses 'in joint tenancy' or somehow designated as with 'a right of survivorship' solves all problems (such as avoiding Probate and Probate fees). This is only an effective way to dispose of assets if the intent was to make a gift to the other joint owner. Where other persons listed by the SLRA as having a potential interest in the Estate are involved, don't assume this avoidance technique. One should expect litigation.

JOINT BANK ACCOUNTS WITH ADULT CHILDREN: BE CAREFUL

With joint bank accounts held by a parent and adult child, the burden of proving that a gift was intended and the burden of proving that lies on the surviving adult child. If this burden is not met, the asset will belong to the Estate of the deceased and must be Probated, administered and distributed in accordance with the SLRA. If you intend to make a gift of cash or investments, put it in writing.



Want more information?

**ARE YOU INTERESTED IN A CONSULTATION WITH PETER R. WELSH?
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