Who needs a will?

Anyone with property and assets should have a will, and it should be updated as life changes due to things like marriage, having children, a death in the family, divorce or property acquisition. You should review your will regularly to make sure it continues to reflect your life and wishes.

What happens if I don't have a will?

If you die without a will, administering your estate is often longer and more expensive. The law in Canada defines this as dying "intestate," which means there are no instructions on how to divide or distribute your assets. How the government proceeds then depends on the laws in your province.

If You Die Without a Will

If you die without a will one, or "intestate", the freedom to choose your beneficiaries, as well as the amount and timing of their inheritance, is removed from your control. Your estate will be subject to the rules of succession as prescribed by the Succession Law Reform Act, ("SLRA").

For example, if you should die without issue (children or grandchildren, etc.), but are survived by your spouse by marriage, your entire estate will go to your spouse. However, if you are survived by a spouse to whom you are married and leave issue, then your spouse is entitled to the first $300,000.00 in value (or the entire estate, if valued at less than $300,000.00), with the remainder being shared between your issue and spouse.

If you die without leaving a surviving spouse by marriage or issue, the SLRA designates successive next of kin, by proximity of blood relation, who are entitled to inherit. In that situation, property would go first to your parents, if alive, and if not, then to your surviving brothers and sisters or their issue, if any, and so on. Where there are no surviving kin, your property would become the property of the government of Ontario.

For persons in common law relationships the failure to make a Will can result in a devastating surprise for the surviving common law spouse. It can come

as a nasty shock for the surviving common law spouse to discover that he or she does not have a right under the SLRA to share in the deceased's property. At best, if the surviving spouse can establish financial dependency, he or she may be able to successfully sue their spouse's estate for spousal support.

Married spouses also have the additional right of being able to bring an application under the Family Law Act for an "equalization" of family property instead of taking the share prescribed under the SLRA on intestacy. Even where there is a Will, a married spouse has the choice of making an equalization claim under the Family Law Act or taking the share designated by Will. Such a choice is not available to common law spouses as they also do not have a statutory right under the Family Law Act to share in their partner's property.

How to make a will

Making a will doesn't have to be difficult or expensive. There are three common ways to create one:

1) **Write your own**. A will is legal if it's written and signed in your own handwriting. It doesn't have to be signed by witnesses. However, problems can occur if it's not clearly understood. Also, if you're not familiar with the law and include instructions that are contrary to what the law permits, your wishes may not be carried out.

2) Have it written by a paralegal. This is a cost-effective option, provided the contents are straightforward.

3) Have it written by a lawyer. This is usually the safest route, particularly if you have considerable assets. A lawyer is qualified to write wills that clearly state your wishes, so there are no misunderstandings.

Once you have a will, keep it somewhere safe. You can store it at home with other important documents, ideally in a fireproof box, but make sure your executor knows where to find it. If you had a lawyer draw it up for you, they will also keep a copy with their records.