



Preparing A Canadian Will

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The Process:

This memorandum sets out the information we need in order to prepare a will that deals with your Canadian assets. Please consider the matters set out below and once you have completed the review of these issues you should contact us with your instructions for the preparation of your Canadian will. We would also strongly recommend that you prepare powers of attorney to allow your representatives to conduct your affairs in Canada, as the use of an attorney is often a convenient way to arrange for signing of documents relating to your property in Canada and avoids having to courier documents to you for signature. As well, the attorney will be able to act on your behalf should you become ill or incapacitated.

We would like to point out to you that powers of attorney are valid during your lifetime, but cease to be effective after your death. Upon your death your executors will have the authority to deal with your Canadian assets.

The Canadian will shall be prepared so as not to revoke or amend any provisions contained in any will (your "Main Will") that you may have prepared in the country where you reside, but if you have any concerns about a conflict with any existing will, please contact your local legal advisors. If you prepare a will in your home state or in any other jurisdiction after signing your Canadian will you should be careful to make certain that such will does not terminate or revoke your Canadian will.

You should also consider any estate tax issues in your country of residence before finalizing your instructions to us and if your affairs are particularly complicated, we recommend that you contact your professional advisors, such as tax accountants or legal counsel, in the jurisdiction where you reside.

Once we have your instructions, we will generally prepare drafts of the required documents for you to review, and will ask you to advise us of any required changes. Once the documents are in final form we can either arrange to meet with you to sign the documents or we can provide you with instructions to have the will and powers of attorney signed. Please note that if one of our lawyers is not a witness to your will, one of the witnesses will have to go to a lawyer or notary to swear an affidavit of execution.

Step One: Gather Information

In order to prepare wills, powers of attorney and other documents, you will have to provide us with information about your family, your proposed beneficiaries, your Canadian assets and your liabilities. Information we require regarding your family and proposed beneficiaries will include full legal names, ages, places of birth, places of residence. If one or more of your beneficiaries have special economic circumstances or physical/mental health issues, you should advise us of these matters. As well, please provide us with the name, address and telephone number of the contact person who manages your Canadian assets.



The Law Society of Upper Canada's rules regarding identification of clients require us to obtain contact information from you, as well as to view identification documents (typically, a current government issued document with a photo).

If you are a party to agreements which impact upon your ownership of assets, or your legal obligations to others (e.g. shareholders agreements, marriage contracts, separation agreements, co-ownership agreements), we would appreciate it if you would provide a copy of the agreements to us or confirm that your instructions reflect the restrictions contained in such documents. As well, if your country of residence restricts or limits your capacity to dispose of your assets on death, please advise us.

All of the information that you provide to us is confidential, just as in any other legal matter.

Step Two: Make Decisions

The decisions which you need to make depend upon the goals you want to accomplish.

Preparing A Will:

If you (the "Testator") are preparing a will, you will need to decide upon:

1. Who the executor(s) (and alternate executors) are to be. The executor is the person who manages the assets of the estate, pays the debts of the estate, and distributes the remaining assets in accordance with the instructions set out in the will. If the will contains any trusts for beneficiaries, such as young children, the executor may act as a trustee of the trusts. Your Canadian Will can require your Canadian executors to deliver the residue of your Canadian estate to the executors/trustees/beneficiaries you have named in your Main Will. **Due to the requirements imposed by Canadian Estate Courts, it is our strong recommendation that the executor be resident in Canada, as otherwise your executor will have to post a bond with the Court, which either is expensive to obtain, or may not be available;**
2. Who the beneficiaries (the people or charities who receive assets under the will) are to be. If a beneficiary is young, you must decide at what age the beneficiary will receive control of his or her share of the estate, and who will be the trustee (if it is to be someone other than the executor).

Preparing Powers of Attorney

If you are preparing property powers of attorney, you will need to decide who the attorney(s) is to be, and may decide upon substitute attorneys if the original attorney cannot act for any reason. We generally limit the power of attorney to your Canadian assets. You will also be asked whether you wish to leave the property powers of attorney with us for safekeeping until they are needed, or whether you wish to keep the documents yourself.

Since the power of attorney for property gives your attorney virtually complete power and authority to deal with all of your assets in whatever manner your attorney thinks appropriate, when choosing an attorney you should consider the same factors (honesty, ability to invest and manage funds, etc.) as when choosing an executor.



If you spend a significant amount of time in Canada you may want to prepare a power of attorney for personal care, appointing attorneys to make personal care decisions if you are unable to do so yourself.

Step Three: The Signing Meeting

Once you have reviewed the draft documents, one of our lawyers will meet with you to go through them in detail, make any changes you require, and, hopefully, sign all of the documents. If meeting with one of our lawyers is not practical, we will guide you and the required witnesses through the signing process. Only when the will and powers of attorney have been signed will your wishes be legally effective.

Please note that Ontario law provides that:

1. If a person marries (or remarries) after making a Will, that marriage automatically revokes the Will unless the Will expressly states that it is made in contemplation of marriage to the person whom the testator in fact married; and
2. A final divorce after the date of a Will revokes all gifts to the former spouse and the appointment of the former spouse as executor or trustee. The Will is construed as if the former spouse had predeceased the testator.

Step Four: Reporting To You

Following the signing meeting, we will report to you with copies of all documents which you have signed. We will confirm what original signed documents we continue to hold for you, and what you should do with any original documents which we are sending to you.

More Questions?

If you have any questions please do not hesitate to contact us for a more detailed explanation or assistance in determining how to structure your Canadian will and power of attorney.

Disclaimer: The information contained in this overview is of a general nature and should not be relied upon as a substitute for professional legal advice. The content should not be relied upon as accurate or fit for any particular purpose. In all cases, please consult with qualified legal counsel about your specific circumstances. Dale & Lessmann LLP assumes no responsibility or liability whatsoever for the content of this overview.