

Will planning checklist



There are many decisions you will have to make when you draft a Will. If not thoroughly considered, some of these decisions can have unintended consequences.

Here is a checklist of some of the issues that should be discussed before you make your Will:

The Executor/Executrix (Representative)	Yes	No	Things to Consider
Does the person have the interest to be the representative?			Be sure to discuss this role with your potential Executor/Executrix.
Does the person have the expertise?			Some estates can be complicated and you want to ensure that your representative has the ability to deal with it. A lawyer or accountant might be considered.
Does the person have the time?			Winding up an estate can be a lengthy and time-consuming process.
Does the person have a conflict of interest?			Is there an issue if the Executor/Executrix is also a beneficiary?
Does the person understand my intentions?			Where the representative is given discretion in distributing assets, you want to be confident that he or she will act as you would have wished.
What powers should the representative have (power to borrow money, renew contracts, invest money, etc.)?			Provincial legislation will restrict the actions of a representative in the absence of specific instructions from you.
Dependent Children and Guardianship			
Does the potential guardian want to assume this responsibility?			There needs to be a discussion before a guardian is named.
Will the guardianship require a change of location for my child?			Having to leave friends and schools can be a stressful experience at an already traumatic time.
Does the potential guardian have the financial resources to care for my child?			They may need financial assistance.
Do I want to leave money directly to the guardian for my child's care?			You could leave money directly to the guardian and trust them to act in the child's best interests. However, you may want a more formal arrangement (see Trusts below).
When do I want my children to receive their inheritances?			Through a trust, you can arrange for children to receive an inheritance when they are older and typically more able to deal with it responsibly.
Trusts			
Do I want to set up a trust for the care of my child?			By using a trust, you – through the trustee – can arrange to have the child cared for financially.
Who should be the trustee?			The trustee should be a responsible, trustworthy person who has the time and interest to behave in the child's ongoing best interests. You may or may not want a guardian to be the trustee.
What powers should the trustee have?			Trusts can be structured in such a way that the trustee has very broad or very narrow discretion to act.
How much should be put in the trust?			This will require some calculations and projections of the ongoing needs of the child.

Beneficiaries	Yes	No	Things to Consider
Are any witnesses beneficiaries?			Under law, a witness to your Will cannot be a beneficiary (or the spouse of a beneficiary).
Will the distribution of assets cause hard feelings?			Wills can be the source of a great deal of bitterness. You should consider the repercussions of the distribution of your assets.
Is my spouse being adequately taken care of?			You cannot 'write a spouse out of your Will'. If a surviving spouse feels that he or she is being treated unfairly, provincial family law can override the Will.
Will my children have grounds for a legal challenge?			Dependent children have rights under family law that will override the Will. In some cases, adult children might attempt to impose a 'constructive trust' on the estate where they can show that they helped and supported you and were not adequately compensated through the Will.
Should I give reasons for specific exclusion?			Where someone was intentionally left out of the Will, providing reasons may preclude bitterness or a legal challenge.
Are there preventions against Ademption by Advancement included?			Ademption by Advancement means that gifts made prior to death can be deemed an early distribution of estate assets and will reduce the eventual inheritance, which may not be intended.
Who is the residual beneficiary?			After specific bequests have been distributed, there may be estate assets left over. You should specify how and to whom those assets will be distributed.
Tax Issues			
What will be the tax implications on my death?			In the absence of a spouse (and dependent children in some circumstances), there will be a deemed disposition of all your estate assets and often capital gains taxes to be paid by the estate.
Will there be sufficient money in the estate to settle tax and other debts?			If there are taxes owing by the estate, your representative cannot distribute any assets until the tax has been paid. If there is not enough cash in the estate, then assets may have to be sold against your original wishes. You should estimate the amount of tax payable and make arrangements to have the cash available in the estate. Life insurance is often used for this.
Other Issues			
Do I have a 'Common Disaster' clause?			This is typically included in a spousal situation where each spouse names the other as the beneficiary and specifies how the estate should be distributed should they both die at the same time.

