



Make-a-Will Information Session

November 27, 2023



**Yukon**

This presentation offers general information and is not intended to provide legal advice.



Disclaimer

- This presentation offers general information on the topic of Wills and Estates Planning and is not intended to provide legal advice.
- Listeners and readers should seek professional legal advice on particular issues that concern them.



What is Estate Planning?

Estate planning refers to the process of managing and transferring your assets in an organized and effective manner.

- A. Wills
- B. Enduring Powers of Attorney
- C. Advance Directives
- D. Resources

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Terms to understand

- **Grant of Probate** is court approval of the Will, Executor and proposed distribution of the estate.
- **Letters of Administration** are issued by a court when there is no Will but the court approves someone's application to administer an estate
- **Letters of Administration with Will Annexed** is when there is a Will but it is deficient, e.g. if no valid Executor is named, and the court approves someone's application to administer the estate
- If an estate is large or contains land or some other kinds of assets, an application to court for one of the above will be required.



Why is Estate Planning Important?

- Reduces burden and stress on your family in administering your estate.
- Can reduce the taxes payable by your estate and so maximize the amount passed to your beneficiaries.
- Can provide you with peace of mind that your wishes will be followed.
- Wills and Enduring Powers of Attorney are two documents that are often prepared as part of estate planning.



Why Make a Will?

- A Will is a document through which your assets are transferred to your beneficiaries after your death.
- Allows you to choose your executor.
- Allows you to choose your beneficiaries.
- May set out other wishes for what will occur after you die.
- Helps reduce stress and conflict among your family members when you have left clear instructions for them to follow.



What happens if I die without a Will?

#1

- Since no Executor has been appointed, someone will need to apply to Court to be approved as administrator of your estate.
- Not having a Will can delay the administration of your estate and lead to conflict among family members.



What happens if I die without a Will?

#2

- Beneficiaries of your estate will be determined by the Yukon Estate Administration Act.
 - **A legal spouse and no kids** > your spouse inherits everything.
 - **A legal spouse and children** > Legal spouse inherits first \$75,000 plus life estate in the family home and the contents of the family home. The rest is split between spouse and children (if one child – 50/50, if more than one child, the spouse gets 1/3 and the children split the other 2/3).
 - **No legal spouse or children**, your parents will inherit everything if they're alive, otherwise your brothers and sisters, or if none of those are living, extended family.



What happens if I die without a Will?

#3

- If you have a common law spouse they will need to apply to court for a share of your estate.
 - A common law spouse is “a person who has cohabited with another person as a couple for at least 12 months immediately before the other person's death.”
 - A common law spouse does not automatically inherit anything.
 - Amount of inheritance uncertain – depends on what a judge orders.
 - Possibility of court proceedings may give rise to family disputes.



What happens if I die without a Will?

#4

- Children's inheritance
 - If any of your children are under the age of 19, they can't receive inherited property directly. A Trustee must hold and manage their inheritance until they turn 19.
 - If you don't have a Will, you haven't appointed a Trustee, so (unless a court orders otherwise) each child's inheritance will have to be paid to the Public Guardian and Trustee to hold in trust, for a fee, until each child turns 19.



What Property passes to your Estate?

- Assets that you own in your name alone normally become part of your estate.
- Jointly owned assets often pass by right of survivorship to the surviving joint owner instead of becoming part of your estate.
- Policies and plans with beneficiary designations (RRSP, RRIF, TFSA, life insurance) will be paid directly to the beneficiary and do not become part of your estate.



Things to Consider When Preparing Your Will

Appointing an Executor & Trustee

- In charge of administering your estate, including:
 - Arrange for funeral / burial or cremation,
 - Apply for probate if needed,
 - Pay your debts and expenses related to your death,
 - Sell your property and any asset that you didn't leave to a specific individual,
 - File income tax returns and apply for a Clearance Certificate.
- Responsible for investing your assets in trust and holding them pursuant to the trust conditions set out in your will.
- Responsible for distributing your estate to beneficiaries.
- Compensation for your Executor & Trustee.



Things to Consider When Preparing Your Will

Types of Distributions from your Estate:

- Many different types of gifts that can be made through a Will. May include:
 - Gifts of household items or personal effects.
 - Gifts of specific property.
 - Cash gifts.
 - Charitable donations.
- The remainder or “residue” of your estate – what is left once debts have been paid and any gifts listed above made.



Things to Consider When Preparing Your Will

Division of Household Goods and Personal Effects:

- Often have sentimental value.
- Important to think about the relationships between beneficiaries and whether disputes may arise.
- You can leave specific items to specific people in the Will itself.
- You can leave instructions about what items you want given to specific people in a list separate from your Will, but these instructions are not legally binding.



Things to Consider When Preparing Your Will

Residue of your Estate:

- “Residue” means what is left in your estate after all debts, taxes, funeral and administration expenses have been paid and gifts of specific property or sums of money have been accounted for.
- You can specify that the residue of your estate goes to one or more people, or a class of people.
- You can specify whether the residue is distributed immediately or some or all of it held in trust for a period of time.
- It is recommended you name alternate beneficiaries in case your first named beneficiaries have died before you.



Things to Consider When Preparing Your Will

Providing for Dependants:

- If anyone is financially dependent on you, such as minor or disabled adult child, or a spouse, it is important to adequately provide for them in your Will.
- If you do not provide adequately for dependants in your Will, the dependant may bring a claim against your estate under the *Dependants Relief Act*, requesting that the terms of your Will be varied.
- It is also important that you honour any obligations you may have under a separation agreement, e.g. to pay child or spousal support, in the terms of your Will.



Things to Consider When Preparing Your Will

Jointly Owned Assets:

- If you own an asset jointly with someone else, such as a car or bank account, upon your death your interest in the asset will usually pass to the surviving owner, outside of your estate.
- If you own land (or a condo) with someone else, you should determine whether you own it as “joint tenants” or as “tenants in common.”
 - If you own it as joint tenants, then your interest in it will pass to the surviving owner automatically on your death.
 - If you own it as tenants-in-common then your interest in it will become part of your estate and then be distributed in accordance with your Will.



Things to Consider When Preparing Your Will

Beneficiary Designations of Life Insurance Policies and Registered Investments:

- You can typically designate a beneficiary for your RRSPs, RRIFs, TFSAs or life insurance policy.
- If you have designated a beneficiary on any of these plans, that person will receive the payout from the plan and that payout will not form part of your estate.



Will Validity

- In order for a Will be valid, the Will-maker (called the “Testator”) must have sufficient mental capacity to make a will.
- Testamentary capacity means the Testator understands and appreciates:
 - the nature of the Will and its effect,
 - the extent and value of their property and debts (what is being disposed of by the Will),
 - who their property is being given to,
 - possible legal and moral claims that could be made against their estate, in particular by persons who would inherit if there was no Will.
- A Testator also must not have any mental illness that might influence the terms of the will (in particular delusions about family members.)



Will Validity

Several formal requirements of Will validity and effectiveness (Will does what you intend it to).

If a Will is invalid, it is as if it never existed.

A Will, or part of it, may be invalid if:

- a) Signed incorrectly,
- b) Fewer than two witnesses,
- c) Two witnesses, but not together when the Will is signed,
- d) Witness is a beneficiary,
- e) Witness's spouse is a beneficiary,
- f) You sign the Will anywhere other than at the end,
- g) Alterations made to the Will are not initialed prior to signing,
- h) You separate or divorce after making Will (after May 2021),
- i) You marry after making Will (prior to May 2021).

Some errors may be corrected by a court but this still can be costly.



When should I review or change my Will

- You should review your Will every time there is a significant change in your personal life or in your financial situation.
- Even if there is no significant change in your circumstances, we recommend you review your Will every 3 to 5 years to make sure it still reflects your wishes.
- If you decide to change your Will, and if your Will was prepared by a lawyer, it will be simplest and least costly to have the same lawyer prepare the new Will.



Making your own Will option 1

Will kits:

- Aren't usually designed specifically for the Yukon.
- It can be difficult to fill in the blanks with words that are clear enough for a court and/or your survivors to know what you meant.
- Don't always provide for contingencies (e.g. your named heirs dying before you, new children being born).
- Words and phrases such as “personal possessions”, “family members”, and “spouse” are words that mean different things to different people, and sometimes the legal meaning is different than what you meant.



Making your own Will option 2

Homemade Wills

- Some of the same problems as with Will Kits.
- “Holograph wills” (entirely handwritten) are legal in Yukon but not recommended.
- May be good, may be poor, may be valid, may not be valid – only your Executor will know (unless you have the Will checked while you are alive – something many lawyers refuse to do).
- Cost of fixing mistakes to Estate often more than price of lawyer-drafted Will.



Will making with a Lawyer

Steps if a lawyer prepares your Will:

1. Fill out questionnaire with information and wishes.
2. Meet with lawyer to review questionnaire if you have questions.
3. Typically 1-2 meetings with lawyer plus email and phone communication with lawyer or paralegal.
4. Lawyer prepares draft Will and sends to client for review.
5. Needed changes identified by client, made then reviewed.
6. Meeting with lawyer to sign Will.



Will - Summary

Virtually everyone is better off having a Will

You especially need a Will if:

- You are in a common law relationship.
- You don't have a spouse or children.
- You have minor children.
- You are part of a blended family.
- You don't want your property to be distributed the way the *Estate Administration Act* dictates.



What is an Enduring Power of Attorney?

- An Enduring Power of Attorney is a document in which you appoint someone (your “Attorney”) to look after your finances and property if you become incapable of doing so for yourself.
- Your attorney will be able to access your bank accounts, even sell your house unless you limit their power.
- The attorney must only use your assets for your benefit.
- Does not cover health care decisions.
- Authority survives your incapacity.
- Authority ends on death.
- Must be certified by a lawyer (presently).



What happens if I do not have an Enduring Power of Attorney?

- Most people will never need an Enduring Power of Attorney but if you do need one (because e.g. you have suffered a brain injury or stroke or have dementia) and didn't make one, the consequences for your family are serious.
- If you become incapable and you do not have an EPOA, a family member or friend may be required to apply to court for an Adult Guardianship Order.
- The process for obtaining an Adult Guardianship Order is expensive and time consuming, and comes with additional reporting and disclosure obligations.



Things to consider when making an Enduring Power of Attorney

- Choosing your “Attorney” – it is essential to choose someone trustworthy, responsible and organized.
- Possible restrictions on your Attorney’s power.
- Whether you want the Enduring Power of Attorney to come into effect immediately or at a later date, such as when you become mentally incapable.
- Who you want to make the decision whether you are mentally incapable.



Capacity

- A person making an Enduring Power of Attorney must have sufficient mental capacity in order for the document to be valid.
- Yukon's *Enduring Power of Attorney Act* states that you must be able to understand the “nature and effect of the enduring power of attorney” at the time the document is signed.
- Sometimes a spouse or adult child will contact a law office, but when the lawyer meets the person who needs the Will or EPOA, the lawyer concludes the person does not have sufficient mental capacity.
- **This can be disastrous. DON'T WAIT.**



What is an Advance Directive?

- An Advance Directive is a document in which you appoint someone (your “Proxy”) to make health care decisions for you if you become incapable of doing so for yourself.
- An Advance Directive form is available for free online on the Yukon Health and Social Services website.
- Default hierarchy of decision-makers exists under the Yukon Care Consent Act.
- Can also be used to provide instructions: e.g. do not resuscitate (DNR), specific types of medical intervention, personal care, etc. See form.



Things to consider when preparing an Advance Directive

- Who you would like to name as your Proxy.
- Your wishes with respect to your medical care.
- It is recommend that you review your Advance Directive with your doctor or another medical professional, to make sure you understand the medical terms used in the form and to ensure that your instructions are clear.



Common myths – but this is the truth

- The Executor has no power until the person who made the Will dies.
- The Attorney you have appointed under an Enduring Power of Attorney has no authority after you die.
- Your beneficiaries won't inherit or be responsible for your debts.
- You can disinherit anyone other than your spouse or minor children, so long as they are not financially dependent on you.



Resources

- Yukon Public Law Library

https://laws.yukon.ca/cms/images/LEGISLATION/PRINCIPAL/2002/2002-0230/2002-0230_2.pdf (Wills Act)

https://laws.yukon.ca/cms/images/LEGISLATION/PRINCIPAL/2002/2002-0073/2002-0073_2.pdf (Enduring Power of Attorney Act)

- Yukon Public Legal Education Association (YPLEA)

<https://yplea.com/wills-and-estates>

- Office of the Public Guardian and Trustee


<https://yukon.ca/en/legal-and-social-supports/wills-and-estates>

https://laws.yukon.ca/cms/images/LEGISLATION/PRINCIPAL/2002/2002-0073/2002-0073_2.pdf (Advance Directives)



Finding a Lawyer

- The Law Society of Yukon maintains a list of lawyers practicing in different areas, including Wills & Estates.
- The Law Society can give you a certificate that entitles you to a 30-minute consultation (not Will preparation) with a lawyer for \$30. You can, but are not obliged to, then hire that lawyer to prepare your Will.
- Word of mouth - ask people you know if a lawyer drafted their Will and if they are satisfied with the service they received.



If you cannot physically go to Lawyer's office

- Some lawyers will come to the hospital or go to a client's home if the person is too ill to go to the lawyer's office.
- If you would have difficulty getting to a law office because of mobility or health reasons, ask the lawyer if they would be willing to come to you.



Cost of a Will or EPOA

- Lawyers set their own rates for preparing wills, and the rates vary.
- Expect to pay between \$400 and \$600 for a simple will.
- You can contact law firms and ask for their standard rates for wills before you choose which one to hire.
- Most law firms offer discounts for couples making “mirror” Wills or EPOAs, and for a client making an EPOA at the same time as a Will.



Summary

- Will: Allows you to decide how your property will be distributed on your death; and choose an Executor and Trustee for your estate.
- Enduring Power of Attorney: Allows you to name an Attorney to manage your property and financial affairs in the event of mental incapacity.
- Advance Directive: Allows you to name a Proxy to make health care decisions on your behalf.