

ABOUT WILLS

You Need to Review
These Essential Tips

Edward Olkovich

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Ed Olkovich, also known as “Mr. Wills,” is a leading Canadian estate expert. He is the author of several books, including ***Executor Kung Fu***, ***Breakthrough Estate Planning***, and the bestselling ***Estate to the Heart***.

Ed is certified as a specialist in Estates and Trusts Law. He was the founding chair of the Ontario Make-a-Will initiative.

Ed speaks to professional and public audiences across Canada. He is known as an inspiring and entertaining speaker who makes estate tasks “easy, and more importantly, fun!”

Since 1978 Ed has operated his own estate law practice in Toronto. His firm's website – **www.MrWills.com** – offers free valuable downloads on estate and executor topics. Ed has created the next generation of online estate tools, available at **www.EstateTherapy.com**.

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1 Get On Board

Clear the Track of Obstacles

In this chapter:

- ✓ Consider your responsibilities
- ✓ Executors and guardians
- ✓ Wills save money

Sure, your life is busy.

Your “to do” list seems to grow longer and longer every day. You barely have time to think, let alone plan a will. But you must find the time to tackle this. How else can you take care of your family, friends and favourite charities?

I know that learning a new task that deals with some of life’s unpleasant things is not high on your priority list.

When it comes to making a will, your motto may be best described as “it can probably wait”.

We are our own worst enemy when it comes to making excuses about the things we don’t want to do.

We also tend to oversimplify complex issues so we can understand them. That way, we try to justify a do-it-yourself will

as better than nothing. We rationalize that a quick fix that hides problems is really an acceptable solution.

But who are you really cheating?

You may never get caught up with your daily “to do” list but you need to make a will while you can.

Let me explain the alternative so you can understand what can go wrong if you don’t.

When You Default – Stuff Happens

If you don’t make your will, the government has rules to deal with your property.

The law distributes all that you have by legislative decree. This default system dictates what happens without exception or variation. You have no say over how, when or who gets your money or prized possessions.

Without a will:

- ✓ You can’t decide who receives your property.
- ✓ Your family is burdened with costly legal proceedings.
- ✓ You can’t choose how, when and who settles your estate.
- ✓ You can’t do any tax planning.

You can avoid these mandatory formula rules but only if you make your own will.

What Are You Afraid Of?

You may not want to talk about wills because you are afraid of what might happen. People also don't like talking about their money. Some of you will not discuss money with members of your own family, let alone a lawyer.

We keep financial secrets from our own partners because we are afraid of divorce and death. Is it any wonder that we are reluctant to discuss details of an estate plan with a lawyer? Some people prepare their own wills, buy a computer program, or get a book with forms to fill out. They keep their secrets, and it doesn't cost them much until they are gone. Or so they think.

Are You Financially Responsible?

The government does not try to minimize the taxes you must pay if you don't make a will. It is not interested in reducing these taxes, no matter what burdens it places on your family.

Your financial wealth becomes an easy target under the state's default system. Its take can be most of what you managed to save during your lifetime.

Your will, however, can help as a cost and tax-saving tool. It reduces costs and taxes that your family will pay after you are gone.

Nobody wants to leave a mess behind and be a burden on those they love.

So let's look now at more positive things that wills have to offer.

Everyone Benefits From Wills

Here are some reasons to make a will, some of which you probably haven't thought of:

- ✓ Rather than the government, you can specify who gets what and when.
- ✓ You can postpone the immediate distribution of your estate.
- ✓ You can benefit lifelong friends who are not family
- ✓ You can give special funds and directions for disadvantaged family members.
- ✓ You can specify burial arrangements, investment powers, and organ donor instructions.
- ✓ Charities, causes, and religious organizations can receive donations.
- ✓ You can select who will be your children's guardians and how their money is to be held.

- ✓ You can explain how to provide for your children, causes, or pets.
- ✓ Your spouse can receive your entire estate even if you have children.

There are more benefits when you choose the persons in charge of your estate.

Nine Benefits with Executors and Guardians

1. Executors must comply with your lawful instructions set out in your will.
2. Executors and guardians for minor children in your will can act immediately.
3. You can give your executors a reward, gift, or share of your estate.
4. Naming an executor prevents contests over who will be appointed.
5. An alternative executor can be named in your will for protection.
6. You can authorize your executor to borrow money or manage a property or business.

7. You can choose a trusted person familiar with your affairs and family.
8. Executors can operate a business so these assets are not wasted.
9. You can authorize your executor to settle disputes without going to court.

Bulletin

Wills don't come with a "best before" date sticker on them. Update your will when it no longer reflects your circumstances. Just moving to a new jurisdiction may require a new will to reflect different provincial laws. Check with your lawyer.

Make Your Will - Your Responsibility

When you make a will, you choose your beneficiaries, guardians, and executors when you make a will. Only you can exercise this privilege, when you choose to make a will. No one can do it for you. You have to personally assume this responsibility.

In the next chapters, I'll show you the steps involved in making the best will you can. You'll benefit if you are making your first will or reviewing or revising an existing one.

You spend a lifetime acquiring property. Yet, while you're alive, the simple truth is you seldom think of how it will be disposed of

after you are gone. You probably spend more time planning a two-week vacation than preparing your estate plans.

The biggest benefit of having a will is peace of mind. You make a will and estate plan so you can enjoy this benefit during your lifetime. Then you know you've provided for those you love.

Everyone needs a will, even people in their twenties or thirties. It's not just something you do when you get married or retire.

So get going and make one, because there's no reward in waiting. If you have employment benefits or a chequing account, having an estate plan and a will can make a difference.

Your loved ones and friends will never understand why you didn't bother to make a will.

It's been said...

"Experience is the name everyone gives to their mistakes."

— Oscar Wilde, 1854–1900

More Benefits from Wills

- ✓ Taxes can be deferred and not paid immediately at your death.
- ✓ Income-splitting devices can be used to minimize taxes.

- ✓ You can postpone when beneficiaries receive their inheritances.
- ✓ You can protect your assets from creditors and tax collectors.
- ✓ Trusts can shelter and protect infants, including grandchildren.
- ✓ Wills can be updated to capitalize on new tax-saving strategies.

Wills don't cost money. They save it.

Who Suffers From Your Mistakes?

You may think making a will is not a big deal. You're not a lawyer, so you believe you don't have to get things perfect. But unfortunately, the laws relating to wills are very strict. Judges have no right to rewrite your will or correct it.

Some jurisdictions do not allow a court to ignore even minor technical breaches in your will.

Here is what happened to Christy. Her uncle, Victor, made his will from a computer program and asked Christy to read a draft copy. She was surprised to see that her uncle left her a bank account and his stock portfolio.

Uncle Victor was glad she approved of his will. He told her he would print out another revised copy and sign it before his surgery.

Unfortunately, the surgery was not successful. When Victor's will was read, Christy had another surprise. Victor had signed the will, but two lines were missing — the ones that included her gift. Had he not noticed there was a printer malfunction?

Christy thought that she could use the draft will to prove Victor's intention for her gift.

Unfortunately, the courts have strict rules about repairing wills. Christy saw it only as a minor problem that needed to be fixed. The other beneficiaries who stood to inherit those assets disagreed. They said Victor's omission was deliberate.

The result was an expensive court case in which everyone hired a lawyer and took sides. The results of the case would vary depending on which jurisdiction Victor lived in. Christy may have been disappointed and could have faced the cost of losing the case to boot.

What if Victor had seen the mistake before he signed the will?

Let's say he did sign it — but in front of only one witness, not the two witnesses that the local law requires.

Victor's will would not be valid and no court could rectify that error. Getting only fifty percent (one out of two witnesses) is still 100 percent wrong.

Invest In Professionally Prepared Wills

Not using a lawyer to make your will to satisfy all the legal requirements could be your biggest mistake. When you spread the cost of your will over the years, it can be pennies a day. A court fight over your estate can cost thousands of dollars a day in court.

Even lawyers trained in the law specialize to keep up with constant changes to the tax and estate system. Why pretend you can get it right by yourself?

If you already have a will, use this checkup to make sure you are covered.

Your Will Check Up

Use this will checklist as your review.

	Yes / No	
I did provide for my spouse in my will.	<input type="checkbox"/>	<input type="checkbox"/>
I did name guardians for my minor children.	<input type="checkbox"/>	<input type="checkbox"/>
I did change my will to reflect my new marital status.	<input type="checkbox"/>	<input type="checkbox"/>
I did protect disadvantaged children and adults.	<input type="checkbox"/>	<input type="checkbox"/>
I did prepare for the succession or sale of my business.	<input type="checkbox"/>	<input type="checkbox"/>
I did provide care for my pets and animals.	<input type="checkbox"/>	<input type="checkbox"/>
I did support my charitable causes.	<input type="checkbox"/>	<input type="checkbox"/>
I did keep a promise.	<input type="checkbox"/>	<input type="checkbox"/>
I did make a will that considers my grandchildren.	<input type="checkbox"/>	<input type="checkbox"/>

Yes is the correct answer to every question.

Now in the next chapter, I show you examples of what happens to your money when you have no will.

Simple Truths

- ✓ Wills transfer what you leave behind for your heirs.
- ✓ The government's default system takes over if you do not make a will.
- ✓ You can avoid the default system by making a will.