

ESTATE PLANNING & YOUR WILL: LEGAL DOESN'T MEAN EFFECTIVE

In light of COVID-19, many people have turned their minds to their estate plans.¹ One news report indicated that a Canadian online will-creation site saw an increase in sales of 700 percent from the same period last year.²

A will is the cornerstone of any estate plan, and creating one on your own is not difficult these days using the support of a will kit or online tool. However, there may be good reasons why more thoughtful planning can be beneficial.

The will itself may not be valid. While you can create legal documents online, they may not be legally binding. Canadian law currently requires that will documents be physically printed and stored offline. In order to be valid, a will must also be signed in the presence of two witnesses who are required to sign the document.

As a result of physical distancing measures put in place due to COVID-19, some provinces have issued emergency orders to permit virtual witnessing of legal documents including wills.³ However, at the time of writing, there has been some confusion as to the procedures to be followed to ensure validation. There are also concerns about situations involving lack of capacity or undue influence.⁴ In addition to this, there may be other nuances in provincial laws and/or language that may affect the validity of a will.

Legal does not mean “effective.” Even if the document is valid, do you fully understand family law or succession regulations within your province, Canadian income tax and investment rules, or even the current U.S. estate tax law? These can change over time, and also create risks or potential future consequences to your estate plan. Today's families are more complex than ever, with divorces, remarriages and blended family arrangements. In these cases especially, careful wording in a will can help to ensure that assets are distributed after death as intended. Equally important, a will that has been quickly drafted, such as one created in reaction to the current pandemic, may not thoughtfully consider all aspects of the estate.



Has Your Will Been Updated?

If you do have a will in place, how old is it? Perhaps this may be a good time for a thorough review of the complete document, especially if circumstances have changed.

Seek Expert Advice

The support of a professional can not only ensure the validity of a will, but also its accuracy. Taking the time to do a deep discovery with an estate planning professional can help to ensure that your plan completely reflects your needs and desires. We can help provide a financial perspective, if required.

Improper documentation or vague instruction can lead to misunderstanding, conflict or even court battles. Don't let this be your legacy.

1. <https://www.cnn.com/2020/03/25/coronavirus-pandemic-triggers-rush-by-americans-to-make-online-wills.html>; 2. <https://ctvnews.ca/health/coronavirus/should-you-create-or-update-your-will-in-light-of-covid-19-1.4879831>; 3. <https://investmentexecutive.com/news/industry-news/ontario-quebec-allow-legal-documents-to-be-signed-virtually/>; 4. <https://torkinmanes.com/our-resources/publications-presentations/publication/virtual-witnessing-of-wills-and-powers-of-attorney-permitted-in-ontario-during-covid-19>

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