

WILL I? OR WILL I NOT? A DISCUSSION ABOUT WILLS AND POWERS OF ATTORNEY

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The average person, if asked, would acknowledge that they should have a Last Will and Testament. But have you done it? Have you sat down and decided how you want your assets distributed upon your death?

LAST WILL AND TESTAMENT

A Will is an essential element of life planning. Should you fail to prepare a Will, your assets will be distributed in accordance with government legislation - which may not reflect your own wishes. Perhaps more importantly, taking the time to prepare a Will can ease the pain for your family. A Will is an expression of your wishes.

Legal Will Kits are available from bookstores, for a nominal price, which are basically fill in the blank Wills. As long as you get two witnesses, they are valid Wills. However, there is value to seeing a lawyer, discussing your options, and having the Will prepared. A lawyer can point out various options, which you may not have considered. A lawyer can also help you appoint a guardian for your minor child(ren), protect the inheritance that your child(ren) may receive from possible future ex-husbands or ex-wives, or how to give that sentimental ring to your favourite niece.

POWERS OF ATTORNEY

At the time that you visit a lawyer

to have a Will prepared, you should also have Powers of Attorney prepared. It is important to understand the difference between a Power of Attorney and a Last Will and Testament. A Power of Attorney only has effect while you are living, while a Will takes effect upon your death. They serve different purposes, but in both cases, they protect you.

There are two types of Powers of Attorney, and they both should be prepared. The first is a Power of Attorney for Personal Care. It authorizes a selected individual (referred to as the 'Attorney', not to be confused with the lawyer), to make decisions regarding your health, accommodation, and medical treatment. A Power of Attorney for Personal Care becomes effective, upon your mental incapacity. Mental incapacity may be a result of disease, such as Alzheimer's, or of accident, perhaps a car accident puts you into a coma. Neither are pleasant scenarios, but wouldn't you rather make informed decisions now, rather than put your family through making uninformed decisions?

The second Power of Attorney is a Power of Attorney for Property. It deals with assets and finances, and gives authority to a selected individual ('Attorney') to look after your affairs. It becomes effective upon signing. The Power of Attorney for Property can be for a specified time period (example: for while you are on vacation out of province), a

specified purpose (example: to sell property or assets in another City), or to continue to be effective upon mental incapacity (referred to as a Continuing Power of Attorney for Property). A Continuing Power of Attorney allows the Attorney to make any or all decisions that you could make regarding your finances except to change or make a Will.

Aside from allowing you to appoint an Attorney to make these decisions on your behalf, Powers of Attorney also provide assistance and peace of mind to family and friends who are left trying to make these decisions. Without a Power of Attorney, your family may even be required to go through a potentially time consuming and expensive guardianship application with the court.

Ultimately, you just have to decide to take the leap, and consider your options. After all, it is your life and your stuff - make sure that you are well cared for and your wishes are honoured.

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