WHY A WILL?

With very few exceptions, everyone should have a well-planned up-to-date will. A will is a fundamental legal document that lets *you*, instead of the government, decide how your assets are to be distributed. Upon your death, your estate will be settled quickly and efficiently sparing your family conflict, expense, and inconvenience. And if necessary, your children will be cared for by a guardian of your choice.

Who can make a will?

Any mentally competent person over 18 years of age may make a will. If the person is under 18 years old, but is married, or is a member of the military force on active service, or a seaman away at sea, he or she may also make a will.

What happens when a person dies without a will?

There is no law that requires anyone to make a will. When a person dies without a will or leaves property that is not disposed of by a will, (he is said to have died, *"Intestate"*). Provincial legislation determines how the estate is to be distributed. Unfortunately, this legislation cannot take into consideration the specific needs of an individual deceased and unfair situations may result. For example, if the deceased's estate does not exceed a specified statutory minimum, the entire estate will go to his or her surviving spouse without any consideration for his or her children or valued friends. On the other hand, if the net value of the estate does exceed that amount, the deceased's surviving spouse may be required to share the balance with his or her children. Either result may be unfair depending on the individual's circumstances.

If no heirs survive the deceased person, the estate goes to the Crown in Right of Alberta under the *Ultimate Heir Act*. The Wills and Succession legislation makes many other provisions, depending upon the actual situations, but in all cases the law is rigid and inflexible. The law makes no exception for individual circumstances.

What happens in a common law relationship?

For those living in a common-law or same-sex relationship, their partner is called, under Alberta legislation, an adult interdependent partner. The *Wills and Succession Act* treats an adult interdependent partner in the same way as it treats widows and widowers. The *Family Property Act* of Alberta gives the deceased's partner as well as the widow or widower of a deceased married person the right to make a claim against the estate before the estate is distributed under the provisions of the *Wills and Succession Act*.

A person's Will will be revoked upon marriage if that marriage was entered into prior to February 1, 2012. Marriages after that date do not revoke existing Wills. A separation or

divorce, may, however, revoke a bequest to a divorced or separated spouse or interdependent partner (common law spouse).

What special uses are there for wills?

Your will can provide that gifts to children to be held in trust until they reach a certain age. If you die intestate and a child under the age of 18 is one of your beneficiaries, the Public Trustee's Office, a branch of the Attorney General of Alberta, will administer the child's share until he or she reaches the age of 18. A cheque is then written and handed over to your child on his or her 18th birthday. You may think that children of 18 years of age are not mature enough to handle a substantial amount of money. In your will, you can name a trustee to administer the money in place of the Public Trustee. You can also choose a more appropriate age for the distribution of the trust assets (for example, at 21 or 25 years of age). In addition, you can choose to disburse the money to the children in two or three intervals. This will also allow them a couple of opportunities to do something worthwhile with the money if they do not make sound investments the first time. You can also create an education trust fund for the child, encouraging them to pursue an education.

One of the most important reasons for making a will is to appoint guardians for your minor children. This is an opportunity for you to consider the needs and future of your children. It also gives your respective families some direction as to whom you would like to raise your children, often saving the heartache and costs of a court battle. It is important to obtain the consent of your guardians beforehand as they will become substitute parents in the event of your death. The designation of guardians in your will is not legally binding until the Court confirms the same; however' all things being equal, the Court will usually uphold the appointment in a will since it is a clear expression of the parent's wishes. The Court must however, always consider what is in the best interest of the child.

A will is also an effective tool for providing gifts to charitable organizations as well as for effective tax planning.

May a person dispose of property by a will in any way desired?

Not quite. When a person is married, the spouse has a right for life (dower) to live in or receive rent from the property occupied by the married couple as their homestead.

In addition, if a person is either married or living in a common-law or same-sex relationship or has dependent children or grand children, he or she must make provisions in his or her will for them.

Is it permanent?

No. A will can be changed or revoked. Generally speaking, once made, a will should be reviewed every five years or sooner if circumstances change.

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