

WILLFUL NEGLECT

It's always shocking to hear that a wealthy celebrity has died and left no will. A star-studded example of an all too common problem: too many Canadians are dying without a will, leaving children, heirs and assets in limbo.

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We're often surprised to hear about celebrities, who are worth millions, dying without a will. It seems unfathomable that someone who is surrounded by wealth and business advisors would not have their estate affairs in order. Without a will, legal proceedings to divvy up an estate will be the only way to decide who gets what. It's a process that could be lengthy, expensive and ultimately might not be what the deceased wanted.

You might be equally surprised that over half of Canadian adults don't have a signed will.¹ Why not? According to a poll by LawPRO, a Canadian insurer of legal professionals, the most common reason respondents cite is that they believe they're too young. Often people believe they don't need a will until they are in their 60s or 70s, and well into retirement. Sadly, that could be too late.

Nicole Ewing, Tax and Estate Planner at TD Wealth, says that a will is important for any adult. "Anyone over the age of 18 should have a will," she says.

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Here are a few reasons you don't want to be "will-fully" negligent:

You can decide who acts for you after you die

Without a will, your heirs will have to apply to a probate court, who will then appoint an administrator to oversee your estate. It could be a lengthy and expensive process. By having a will, you can choose an executor you trust, and the probate process will be quicker and simpler.

The executor you choose can manage your estate after you're gone, make

your funeral arrangements based on your wishes, and wrap up your financial affairs. It's important to choose someone you trust, or a professional that has knowledge of estates and probate, is diligent and thorough, and is likely to survive you.

"If one dies without a will in Canada, provincial legislation determines who will administer your estate, including decisions with respect to funeral arrangements, and where your assets will go," says Ewing. "A common-law spouse or a step-child, for example, could be excluded from receiving anything from your estate."

56

per cent of Canadian adults don't have a signed will (Source: LawPRO survey)

You have the last say: Dictate where your assets go

It doesn't matter if you have millions or just some nice teacups. Telling your heirs what you want to do with your stuff will make it easier on everyone.

If you don't have a will, then estate law kicks in, and ultimately your assets may be distributed according to the law, and not to your wishes. Without a will, a court will split assets between the closest relatives and won't take your friends into account. If your relatives can't be located, the government may even keep your assets.

If you don't have a complicated estate plan and you just want your assets to go to your spouse and children, you may believe that you don't need a will. But even with a supposedly simple case, fights can happen. Not everything can be split evenly — like a cottage or a business. That may lead to legal battles and hurt feelings. Also, if there is someone close to you that you don't want to inherit part of your estate, you can direct that too.

You get to declare who you want to take care of your kids

Wills aren't just for distributing assets. If you have minor children, a will can allow you to select and document the person of your choice to take care of them after you're gone. The court ultimately will determine what it believes

to be in the best interest of the child, but it goes a long way for the court to know a parent's preference. "A will can include a clause naming one or more individuals to be a child's custodian," says Ewing. "In Ontario, the named individuals would need to make an application to court within 90 days for a more permanent appointment. A will can also include clauses to deal with when, and how, any inheritance would flow to children."

Minimize taxes

The government may be an additional "heir" that few people give much thought to, but should. Passing on certain assets may result in a tax bill. For example, passing on a cottage or vacation home may mean a capital gains tax that is payable when it is passed on. "In Ontario, there are two types of taxes payable on death, income tax and estate administration tax, commonly referred to as probate fees," says Ewing. "Both types of tax can be minimized with proper planning. For example, probate fees may be reduced by making appropriate designations on registered plans and life insurance policies or using multiple wills."

A will means that you can plan in advance who will receive what, how much taxes will be, and allow for some tax planning so it will be your heirs, and not the government, who gets the most out of your estate.

29

per cent of Canadian adults do not have a will because they either do not know how to get started or believe they cannot afford one. (Source: LawPRO survey)

You can give to causes that matter to you, after your death

Ewing warns that without a will, the administrator of your will lacks any authority to make a charitable donation from your estate. With no will to specify how you wish to continue philanthropy after death, your favourite charities that you have supported throughout your life will not be entitled to receive anything upon your death, even if that may have been your wish.

"By sharing your charitable intentions with your advisors, they may have

recommendations about gifting during your lifetime and on death in a way that both reduces your tax bill and maximizes the value of the charitable gift,” says Ewing. “Canada’s charitable donation rules have recently undergone significant changes. It’s more important than ever to seek advice from your professional advisors to make sure your charitable gift is structured appropriately.”

So, if you have no will, but would like to use your assets to give back — like creating a legacy by way of a scholarship fund, or charitable donation — your wishes will not have been recorded anywhere for your estate administrator to follow up on.

One never knows how much time we have. That’s why planning now for the care of children, passing down assets, and creating a legacy is paramount. Creating a will doesn’t have to be expensive or time consuming. “If you don’t already have a will in place, it really is something you should make a priority,” imparts Ewing. “If your affairs are simple and straightforward, the will preparation process will be too. If they’re not, all the more reason to not leave your family members with the burden of sorting out your affairs.”

Written by Denise O’Connell, MoneyTalk Life

¹LawPRO. Survey: More than half of Canadians do not have a signed will. May 7, 2012. <https://www.lawpro.ca/news/pdf/Wills-POAsurvey.pdf>. Accessed April 29, 2016.

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