

Wills Vital with Arrival of Kids

Irene Seiberling

Leader Post



Wills aren't just for seniors! It's important for young parents to have a will, emphasizes Toronto wills and estates lawyer Les Kotzer.

"I don't know how young parents can go to sleep at night without making a will," says Kotzer, whose work educating the public through books and media interviews has earned him a Queen Elizabeth II Diamond Jubilee Medal.

"If you don't write a will, the province will write one for you, and basically set out who inherits your estate. Without a will, there's no guardian named. There's no executor named. The child will usually get the money at the age of majority," he explains.

"With a will, you can control and protect your children," he says.

If something happens to you, and you don't have a will, you could be leaving "an absolute nightmare" for your family, he warns.

You can set up a trust in your will, for example, specifying at what age your child will inherit money, if you're not comfortable with the money going to your child at the age of majority, which is 18 in Saskatchewan.

Kotzer suggests parents consider appointing co-executors - one from each side of the family - to look after their inheritance.

While you can stipulate in your will at what age your child receives their inheritance, you can also make the trust encroach-able. That allows whoever the executor or trustee is to have access to the money "for your children's legitimate needs," Kotzer explains. "For their welfare and their benefit."

For example, money can be accessed for the children's education or maintenance, such as private schooling or hockey school, but not for an expensive sports car when the child turns 18.

"So you give control to an executor to manage that money," he says. "Without a will, there is no executor, and there is no trust. And the child gets the money automatically at the age of majority. And he can do with it as he pleases or she pleases - and blow it.

In his book, *Where There's an Inheritance ... Stories from Inside the World of Two Wills Lawyers* (co-authored with Barry Fish), Kotzer cites the example of a brother and sister whose parents died without making a will. The boy, who was 18 at the time, received his inheritance right away, which he promptly spent on drugs. When his sister was old enough to get her share of the money, the brother wanted some of hers too because his was all gone.

"It created a real terrible rift in the family, between the brother and the sister," Kotzer recalls.

"It shows what can go wrong if you don't plan properly. You're possibly pitting one child against the other, if one blows it. You're giving a child access to a large amount of money too early. So that can be a real problem.

"Had Mom and Dad set up a trust, the money would be managed by the executor," he explains, noting that the executor could limit how much money to which the 'drug-addict child' has access.

It's extremely important to give careful consideration to who should be the executor of a trust fund, Kotzer emphasizes. He recommends appointing someone who has the compassion and understanding of the child's interests and needs, not just someone who will manage the trust from a monetary point of view.

"Another thing that people should recognize as young parents is that you should consider appointing an executor to look after the money who is different than the guardian who is going to raise your young children," Kotzer says.

"The reason for that, if you appoint the same person, which people often do, they control the children and the money. And that way he can buy a bigger house for himself to live in with the child. But if you have two different people - an executor who controls the money, a guardian who looks after the kids - it creates a check and balance."

When appointing a guardian, Kotzer recommends not appointing a husband-and-wife team. "We recommend that you appoint the blood relative, or the best friend - not the friend and his wife, or my brother and his wife, or my sister and her husband," he says.

This is to prevent your children from being used as pawns in a divorce settlement, for example, if the custodial guardians' separate after you die, Kotzer explains.

"It's so important for parents to pick the right executor (and) pick the right guardian," he stresses.

For example, it may not be practical to appoint your 85-year-old mother to be your children's guardian, or it may not be practical to appoint your sister who has five children to be the guardian, because she may not be able to give enough attention to your children.

If your children are old enough, ask them who they want as a guardian, Kotzer recommends.

"It's very important to ask the people," Kotzer emphasizes. "Don't surprise them ... The discussion is so important."

People don't have to accept. They can refuse the role of guardian, executor or power of attorney, he points out.

Always have a backup, Kotzer says. "Backups are very, very important."

"Be aware of leaving a road map for them, so they know what you own. So they're not running around the city," he says. "And also talk to them about how to raise your child.

- s "It's all a matter of communication."

Kotzer has co-authored three books to educate the public about wills and estates: *Where There's An Inheritance ... Stories from Inside the World of Two Wills Lawyers*, *The Family War: Winning the Inheritance Battle - What You Need to Know About Estate Disputes*, and *The Family Fight: Planning to Avoid It*.

For more information, visit www.familyfight.com or call 1-877-439-3999. To hear stories, visit www.aninheritancestories.com. iseiberling@leaderpost.com

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