

# PLANNING YOUR WILL

***KEMP PIRIE CROMBEEN***  
BARRISTERS, SOLICITORS & NOTARIES

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### **WHY A WILL?**

Without a Will, your assets pass to your relatives according to law and without regard to your wishes. The surviving spouse receives the first \$200,000.00 of your assets with the remainder being divided between your spouse and children, or all to the children if there is no surviving spouse. If any of the children are under eighteen, your assets may have to be sold and the proceeds turned over to the Accountant of the Superior Court of Ontario which is operated by the Office of the Public Guardian and Trustee to be held until the child reaches eighteen. Little discretion can be exercised by the Public Guardian and Trustee in using the money for the benefit of your children. With a Will, you may provide for your spouse or children or other relatives, friends or charities you choose. A Will makes the administration of your estate quicker, cheaper and less onerous for your beneficiaries.

### **SHOULD THERE BE ONE WILL OR TWO?**

Because both spouses may be killed in an automobile accident or similar common disaster, we recommend both spouses should have Wills. Even if one spouse believes he or she has no assets, in the event of a common disaster joint property is deemed to have been equally owned by each spouse and one-half will pass to each estate to be disposed of under each spouse's Will. In addition, each spouse may have life insurance or other property of his or her own and a Will is necessary to provide for the disposition of these if both spouses are dead.

### **MULTIPLE WILLS**

If you own shares in a private corporation, you might be able to save money by having two Wills, one for the shares, and the other for your other property. For example, if you owned

shares in a family corporation worth 1 million dollars, your estate could save \$14,500.00 in Estate Administration Tax (formerly known as "probate fees") by having multiple wills. Discuss whether you should have multiple wills with the lawyer at your appointment.

### **JOINT PROPERTY**

Real estate or bank accounts held in joint names pass to the surviving joint owner, notwithstanding the provisions of the Will or the lack of a Will. We recommend joint ownership with the right of survivorship as a method of substantially reducing the cost of estate administration. Life insurance, pensions, death benefits and similar assets payable to your spouse as beneficiary will also pass to him or her notwithstanding the provisions of the Will.

However, this is not effective for a matrimonial home which you hold jointly with someone other than your spouse since the Family Law Act of Ontario in this case severs the joint tenancy. In some cases, business reasons may dictate that all assets should be in the name of one spouse.

### **CHOOSING YOUR EXECUTOR**

The executor (trustee) will be responsible for arranging and paying for your funeral and any debts, carrying out the terms of your Will, including the sale of any assets to be sold, and the transfer of assets to the beneficiaries. If assets are to be held in trust for a child or other beneficiary, the trustee will arrange for the investments and to make the payments for the beneficiary. Couples commonly name each other as executor, with an alternate executor named in the event both

spouses are dead. This alternate executor may be an adult child, relative or friend. Obviously, it must be someone in whom you have the utmost faith and trust.

Trust companies, accountants, and lawyers will act but will charge for their services.

### **BURIAL AND FUNERAL WISHES**

If you have any particular wishes respecting your funeral or burial or the disposition of your body, you may set them out in your Will. Such instructions are not legally binding on your executor, but they do indicate your wishes. You should also communicate your wishes to the executor prior to your death as the Will is not often looked at until after the funeral. If you wish to leave your body to science or for organ transplants you should fill out the necessary forms and advise your executor.

### **SPECIFIC BEQUESTS**

These include gifts of specific items to specific beneficiaries and bequests to your priest for masses for the repose of your soul, gifts to churches or charities, and items of sentimental or other value you wish to leave to individuals. If you have many items that you wish to specifically bequeath, it is possible to prepare your own list or memorandum of these. To be legally binding upon your executor and beneficiaries the memorandum must be dated prior to the Will, referred to specifically in your Will, and cannot be changed without revising your Will. Many people prefer to prepare an informal list in which they make changes from time to time and rely upon the good will of the beneficiaries to ensure that their wishes are carried out.

## DISPOSITION OF YOUR ASSETS

Most Wills provide that your assets are left to your spouse if he or she survives you by at least thirty days. The law states that you must adequately provide for your dependents, and if not they may apply to the Court to have whatever the Court considers sufficient for their support set aside for them from your estate.

A trust provision should be included for minor children under which your trustee invests their shares of the estate and uses so much as may be required for the children's education, upbringing and support. With inflation and changing living conditions we recommend that the amount that is to be expended for each child be left to the trustee's discretion. The trust can carry on until an age greater than eighteen, and if you wish your children to continue their education and utilize the money wisely we recommend that you consider having the trust continue until age twenty-one or older.

In the event that neither spouse or any of the children survive you, you may wish to consider gifting your assets to the families of the spouses or to a charity.

## FAMILY LAW ACT

Your spouse may elect within six months of your death whether to take the gift under your Will or the entitlement under the Family Law Act of one-half the difference between his or her net assets and those of your estate. If your Will leaves all of your assets to your spouse, this will not be of concern. Otherwise, you should consider having a marriage contract prepared for yourself and your spouse setting out your entitlement with respect to your spouse's estate.

## THE GUARDIAN

Parents often wish to name the persons who would raise the infant children if both spouses are dead. This is not a necessity and under present law, is only binding for ninety days. This is a method of setting out your wishes and may possibly avoid inter family disputes in the event of your death. You should obtain the consent of the person(s) you wish to name, and discuss with them how you would want your children raised. The guardian may but need not be the same person as your trustee.

## WHERE SHOULD I KEEP MY WILL?

The original should be kept in a safe place outside your home such as your safety deposit box. We will store it for you free of charge if you so desire, and in that event we will not release it to anyone other than yourself or upon your written instructions or upon your death, to your executor.

We will provide you with a copy of your Will to keep at home, available to review whenever you wish to look at it. If the original Will is kept by us it is not necessary to keep the copy in a safety deposit box.

## THE INTERVIEW

**Please complete as much of the attached form as you can and bring it with you to the interview.** After we have prepared your Will, we will mail a copy to you in order that you may review it at home.

A further interview will be necessary to answer any questions you may have and to formally sign the original Will. **THE WILL IS NOT EFFECTIVE UNTIL IT HAS BEEN SIGNED.**

## COST AND TIME

The cost of an average Will is \$350.00. If husband-and-wife Wills are being prepared together, the cost for both is \$550.00. There is H.S.T. in addition to this cost. If extra drafting is required, as, for example, for many specific bequests, there may be an extra charge of \$50.00. For Wills of above-average complexity, the lawyer will, in addition, charge for the time he spends discussing the Will with you and drafting it. The initial interview is expected to last from fifteen to thirty minutes and it usually takes two to three weeks for your Will to be prepared and a copy mailed out to you. If you require your Will more quickly, please advise us.

## CAN I CHANGE MY WILL?

Yes, at any time and in fact you should have it reviewed at least every five years for changes in the law or in the nature of your assets or beneficiaries. Changes normally require a new Will.

## POWER OF ATTORNEY

This enables you to give someone else the power while you are alive to act on your behalf to do anything which you are legally able to do, and in particular, to look after your affairs or your personal

care if you become incapable. This would allow your attorney to rent or sell your home, make investments for you, and generally carry on your affairs and to decide on matters relating to your personal care. If it specifically so states, your attorney can continue to look after your affairs if you become incapable of doing so.

The attorney must be someone whom you trust implicitly. Often people appoint the same person they choose as the executor under their Will. This enables one person to look after your affairs while you are alive and carry on the administration of your estate after your death. **WE RECOMMEND THAT YOU DO NOT APPOINT AS YOUR ATTORNEY ANYONE IN WHOM YOU DO NOT HAVE ABSOLUTE FAITH AND TRUST.**

### COST OF POWERS OF ATTORNEY

To prepare your power of attorney for either property or personal care our law firm charges seventy-five (\$75.00) dollars, plus H.S.T., for a single power of attorney or one hundred and fifty (\$150.00) dollars, plus H.S.T., for couples.

If you require powers of attorney for both property and personal care, our law firm charges one hundred and fifty (\$150.00) dollars, plus H.S.T. for singles and three hundred (\$300.00) dollars, plus H.S.T. for couples.

For more details, please see our pamphlet entitled "What You Should Know about Powers of Attorney for Property and for Personal Care".

### CONFLICT OF INTEREST

A lawyer who receives instructions from spouses or partners as defined in the *Substitute Decisions Act*, 1992 S.O. 1992 c. 30 to prepare one or more Wills for them based on their shared understanding of what is to be in each Will should treat the matter as a joint retainer and comply with subrule 2.04(6) the Rules of Professional Conduct. Accordingly, at the outset of such a joint retainer, we are required to advise the spouses or partners that if subsequently only one of them were to communicate new instructions, for example, instructions to change or revoke a will:

- (a) the subsequent communication would be treated as a request for a new retainer and not as part of the joint retainer;
- (b) in accordance with rule 2.03 of the Rules of Professional Conduct, the lawyer would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; but
- (c) the lawyer would have a duty to decline the new retainer, unless;
  - i. the spouses or partners had annulled their marriage, divorce, permanently ended their conjugal relationship, or permanently ended their close personal relationship, as the case may be;
  - ii. the other spouse or partner had died; or
  - iii. the other spouse or partner was informed of the subsequent communication and agreed to the lawyer acting on the new instructions.

In the case of a joint retainer, we will be obtaining your written consent to act on your behalf.

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**KEMP PIRIE CROMBEEN**  
 Will Information (Please bring to interview.)

PERSONAL DETAILS

**FOR OFFICE  
USE ONLY**

Date Instructions  
Taken  
\_\_\_\_\_, 202

Instructions Taken  
From:  
\_\_\_\_\_

Others Present:  
\_\_\_\_\_  
\_\_\_\_\_

Others Present  
Requested to Leave  
Room:  
 Yes  
 No

Full Name:

Spouse:

Are you known by any other name(s)?

Date of Birth:  
Place of Birth:

Mailing Address:

Municipality you live in (i.e. city/town/township):  
Citizenship:  
Marital Status:

Telephone:(H) \_\_\_\_\_ (H) \_\_\_\_\_  
(B) \_\_\_\_\_ (B) \_\_\_\_\_  
(C) \_\_\_\_\_ (C) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Occupation: \_\_\_\_\_  
Employer Information: \_\_\_\_\_

Previous Marriages?      Husband      Wife

Date and place of marriage(s):

Do you have a Marriage Contract or Separation Agreement or  
Divorce Decree?  
Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, please bring a copy with you.

Do you have a registered native status?  
Yes: \_\_\_\_\_ No: \_\_\_\_\_

If you, do you ordinarily reside on a native reserve?  
Yes: \_\_\_\_\_ No: \_\_\_\_\_

STANDARD  
WILL

Name Children?

- Yes  
 No

CHILDREN

<u>Name</u>	<u>DOB/ Place of Birth</u>	<u>Address</u>	<u>Age</u>	<u>Marital Status</u>	<u>Children</u>

Are any of the children, grandchildren, or other beneficiaries to your estate disabled? Give details:

Do you have any support obligations?

ASSETS

Real Estate (Home, cottage, etc.):

<u>Address</u>	<u>Est. Value</u>	<u>Am't of Mortgage</u>	<u>In Whose Name?</u>	<u>Acquisition Cost and Date</u>

BANK ACCOUNTS, INVESTMENT CERTIFICATES, ETC.

Type and number of accounts:

<u>Bank</u>	<u>Type of Account and Number</u>	<u>Approximate Amount</u>	<u>If joint, with whom?</u>

PENSIONS, RRSPs, TFSAs, ETC.

<u>Company</u>	<u>Plan Holder</u>	<u>Name</u>	<u>Amount</u>	<u>Beneficiary</u>

**LIFE INSURANCE**

<u>Company</u>	<u>Plan Holder</u>	<u>Name of Life Insured</u>	<u>Amount</u>	<u>Beneficiary</u>

**STOCKS AND BONDS**

<u>Issuer</u>	<u>Amount</u>	<u>Jointly Held?</u>

Attach a copy of your most recent portfolio statement(s).

**OTHER ASSETS**

Do you hold any property jointly with anyone other than your spouse? Give details.

Do you own shares in a private corporation? Give Details:

**Debts owing by you including promissory notes:**

<u>Name of Creditor</u>	<u>Amount</u>	<u>Maturity</u>	<u>Other Terms</u>

**Debts owing to you including promissory notes:**

<u>Name of Creditor</u>	<u>Amount</u>	<u>Maturity</u>	<u>Other Terms</u>

**Automobiles, Boats, and Recreation Vehicles:**

<u>Description</u>	<u>Ownership</u>	<u>Value</u>

**Total Value of Assets \$** \_\_\_\_\_

**Total Value of Debts \$** \_\_\_\_\_

Executor/Debts

1, 1.1, 1.2, 1.3, 2, 2.1, 3, 3.1\*, 3.2\*, 4, 5, 5.1, 5.2, 5.3, 5.4, 6, 6.1, 7, 7.1

Shareholders Agreement\*

9

Burial:

10, 11, 12, 12.1, 13, 14, 15.1, 15.2

Specific Bequests

20, 20.1, 20.2, 20.3, 21, 21.1, 22, 22.1, 22.2, 23, 23.1, 23.2, 24, 24.1, 24.2, 25, 25.1, 25.2, 25.3, 25.4, 26, 26.1, 27, 27.1, 28, 28.1, 28.2, 29, 29.1, 29.2, 29.3, 29.5

Residuary Estate

30, 30.1, 30.2, 30.3, 30.4, 30.5, 31, 31.1, 31.2, 31.3, 31.4, 32, 32.1, 32.2, 32.3, 32.4, 32.5, 32.6, 32.7, 32.8, 33, 33.1, 33.2, 33.3, 33.4, 33.5, 33.5.1, 33.6, 33.7, 34, 34.1, 34.2, 35, 35.1.1, 35.1.2, 35.1.3, 35.1.4, 35.1.5, 36, 36.1, 36.2

Family Law Act Clauses

37, 37.1, 37.2, 37.3

Life Interests

39, 39.1, 39.2, 39.3, 39.4, 39.5, 39.6, 39.7, 39.8, 39.9, 39.9.1, 39.9.2, 39.9.3

Infant's Trust

40, 41, 41.1, 41.1.1, 41.1.2, 41.1.3, 41.2, 42, 43, 43.1, 44, 45, 46, 47, 48, 48.1, 49, 49.1

**Approximate Net Value of Estate \$** \_\_\_\_\_

**EXECUTOR**

Whom do you wish to name as your executor?

- (a) Surviving Spouse: (Full Name)
- (b) Or: (Full Name)

Give address of executor (if not spouse):

Alternate executor, if above cannot act:

Relationship to you:

Address:

**SPECIAL BURIAL INSTRUCTIONS**

(i.e. Cremation, funeral service, visitation)

**SPECIAL BEQUESTS:** (Any specific items or sums of money to be given to a specific person, organization or church)

<u>Item</u>	<u>Beneficiary</u>	<u>Relationship</u>	<u>Address</u>

**BENEFICIARIES**

What do you wish to leave to your spouse?

What do you wish to leave to your children;

(a) upon your death?

(b) upon the death of the surviving spouse?

At what age should the children receive their shares outright?

Age: \_\_\_\_\_



**Guardian:**50, 50.1, 50.2, 50.3,  
51, 52, 53, 53.1, 54**Powers**60, 60A, 60.1, 61,  
61.1, 61.2, 62, 62.1,  
62.2\*, 62.3\*, 63\*,  
63.1, 63.2, 64, 64.1,  
65, 65.1, 65.2, 65.3,  
66\*\*, 67, 67.1, 68,  
68.1, 69, 69.1, 69.2,  
69.3, 69.4, 69.5**Testamonium and  
Covers**70, 70.1, 70.2, 71,  
72, 73, 74, 75, 75.1,  
75.2**Miscellaneous**80, 81, 82, 82.1, 90,  
91, 92\*Clauses for  
multiple wills\*\*Not to be used  
where life interest in  
spouse

If you, your spouse and all your children are dead, who shall receive your estate?

If you, your spouse, all your children and any other descendants are dead, who shall receive your estate?

**GUARDIAN:** If you and your spouse are dead, whom would you wish to look after your child(ren) under eighteen?

Relationship to you:

**SAFEKEEPING OF WILL**

Where do you wish the original of your Will be kept?

(a) In your safety deposit box? Yes: \_\_\_\_ No: \_\_\_\_  
Is it joint? Yes: \_\_\_\_ No: \_\_\_\_  
If so, with whom?

(b) In our office? Yes: \_\_\_\_ No: \_\_\_\_

**POWERS OF ATTORNEY**

Do you wish to have a Power of Attorney for Property and/or a Power of Attorney for Personal Care prepared in favour of someone who would look after your affairs in the event you became incapable?  
Yes: \_\_\_\_ No: \_\_\_\_

If Yes, please give the full name and address of this person.

If that person cannot act, please give the full name and address of an alternate person:

**OTHER MATTERS TO BE DISCUSSED WITH THE  
LAWYER:**

Have you signed a consent form authorizing the use of your physical organs for the purpose of transplants?

Yes: \_\_\_\_ No: \_\_\_\_

Have you left your eyes to the Eye Bank of Canada?

Yes: \_\_\_\_ No: \_\_\_\_

**Fees to be charged:**

Wills:

POA's:

+HST