

## Avoid Chaos Later – Have Powerful Conversations NOW

**There are many reasons to talk to your family about your will, most importantly, *where is it?***

If your family or a trusted friend does not know where your will is, or if you even have a will, it will be chaos for them and for your estate. The uncertainty leads to additional stress and expense at a terrible time when they're already dealing with grief.

If you haven't let your loved ones know where to find it, it's guesswork where to look for your will.

Believe it or not, wills have been found "under the passenger seat," in the freezer, or not found at all. Wills in a safety deposit box cause a circular problem. The bank may require the will in order to be able to open the safety deposit box (where the will is located).

Even if you do not wish to share the contents of your will, make sure someone knows where to locate it. However, it is also a good idea for a neutral person to know the contents of your will in case your will is lost (e.g., flood or fire). A wills and estates lawyer can suggest best practices for protecting your intentions.

It is also important to put together a list of what you own (and where) and maintain a list of your advisors (lawyer/banker/accountant) that can be easily found. Let at least two people know where you keep your list. Don't rely on people finding it on your computer.

If a loved one has died and you do not know where the will might be, connect with an experienced wills and estates lawyer to see what suggestions they may have.

If your will cannot be found, you will be said to have died 'intestate' and all of your well-planned, well-intentioned wishes will not be fulfilled. Harness your will power and to make sure it can be found.



## SESSIONS

### ESTATE PLANNING FOR A BENEFICIARY WITH DISABILITIES

Shelly K. Chamaschuk, BSc, LLB, TEP Partner, Reynolds Mirth Richards and Farmer LLP

MONDAY, OCTOBER 4 | 2:00 - 3:30 PM – ONLINE

Estate planning can be daunting for anyone but planning when a loved one is a person with a disability is particularly difficult. This presentation will discuss a number of tools available to families whose plans involve a beneficiary with a disability. We will also discuss applicable AISH rules, RDSPs, and discretionary trusts (*Henson Trusts*).

### WHAT'S THE WORST THAT CAN HAPPEN?

Allison Barkwell, Partner, Barkwell Brown Estate & Tax Lawyers

Michael Simons, Partner, McCuaig Desrochers LLP

MONDAY, OCTOBER 4 | 6:30 - 8:00 PM – ONLINE

Seasoned lawyers will pull back the curtain on what happens when people fail to plan, or mistake their Google search for a law degree! Hearing what can go horribly wrong might be just what you need to get your estate plan in place. The panelists will share true stories that are certainly stranger than fiction!

### BRADY BUNCH BASICS – ESTATE PLANNING FOR BLENDED FAMILIES

Patty Ko, B.Comm., LLB, Associate, Bishop & MacKenzie LLP

TUESDAY, OCTOBER 5 | 10:00 - 11:30 AM – ONLINE

Every family has its own story and challenges and blended families are no exception. In this session, we will explore some of the unique circumstances that blended families face and the impact that those circumstances may have on wills and estate planning.

### MAKE GOOD CHOICES – PICKING THE RIGHT EXECUTOR IS NOT AS EASY AS YOU MIGHT THINK

David Ranieri, B.A., LLB, Barr LLP

TUESDAY, OCTOBER 5 | 1:30 - 3:00 PM – ONLINE

You have your estate figured out? Hold on! Who is going to deal with everything you leave behind? What does it take to be an executor? Who should you appoint to do the job? What are the complications of appointing certain people? What options are available? This session will provide answers to these questions and more.

### WHY GETTING PROFESSIONAL HELP IS IMPORTANT

Anna May Choles, LLB, Rachel Belzil LLP

TUESDAY, OCTOBER 5 | 6:30 - 8:00 PM – ONLINE

A will can be valid without being good. You are paying for advice, good questions, and effective writing to make a better will. This session will consider some of the common mistakes and assumptions that people make when creating a will; covering topics such as requirements for a will to be valid, who are not good choices for witnesses, property that you cannot give away in a will, and who you must include in your estate plans, to name just a few.

### FIGHTING THE TERMS OF A WILL – HOW CLAIMS ARISE (AND HOW TO PREVENT THEM!)

Jacklynn Pivovar, LLB, Partner, Miller Thomson LLP

WEDNESDAY, OCTOBER 6 | 10:00 - 11:30 AM – ONLINE

In this presentation you will learn about how some estate claims arise and how to prevent them. This includes information about the formal requirements for a valid will, the use of will kits, family support claims, property owned jointly with someone else, and how things like "capacity" and "undue influence" may affect the intention of a person making a will.

### ESTATE PLANNING 101 – A GENERAL OVERVIEW

Southeast Edmonton Seniors Association (SESA) Activity Centre, 9350 82 St NW, Edmonton, AB

WEDNESDAY, OCT. 6 | 6:30 - 8:00 PM – IN-PERSON EVENT

Join us at the Southeast Edmonton Seniors Association Activity Centre\* for this general overview session about the importance of proper estate planning. Learn about creating or updating your will, what your will can and cannot do and what to think about to ensure that your affairs are in order for you and your loved ones.

\*In the event that this session is unable to be delivered in-person, it will be delivered online via webinar and recorded.

### THE RIGHT TAX PLANNING COULD LEAD TO A BIGGER ESTATE

Michelle Coleman, CPA, CA, TEP, Sr. Manager, Taxation Services, MNP

THURSDAY, OCTOBER 7 | 1:30 - 3:00 PM – ONLINE

When writing or updating your will, you will want to be sure to plan for the impact of taxes. Planning to reduce or defer taxes is an essential part of estate planning and administration.

Contemplate the potential tax liability, how it will be paid, and provide your executor(s) with the tools and flexibility they need to prepare the tax returns and administer the estate in a tax-effective manner. This presentation will present tax-planning options for you to discuss with your family and advisors.

### THE WILL ISN'T THE ONLY DOCUMENT YOU NEED

Ravinder Chana, JD, Parlee McLaws LLP

THURSDAY, OCTOBER 7 | 6:30 - 8:00 PM – ONLINE

Said by some to be the best gift you can give your family; this is an introductory presentation on the importance of two documents that help you and your family during your lifetime. This presentation will explain what an Enduring Power of Attorney and Personal Directive are, how they differ, how they come into effect, and the consequences of not having them in place. It will also present the importance of receiving legal advice when obtaining these documents.

### QUESTION & ANSWER PERIOD

Benjamin Taylor, Partner, Barr LLP

David Ranieri, B.A., LLB, Barr LLP

FRIDAY, OCTOBER 8 | 10:00 - 11:30 AM

To wrap up this year's Wills Week, two of our volunteer lawyers tackle some of the more general questions that arise from discussions about estate planning. Tune in for this impromptu conversation in case you missed a particular topic earlier in the week.

Please note: for privacy reasons, personal or case-specific questions will not be addressed.

### ESTATE PLANNING 101 – A GENERAL OVERVIEW

Northgate Lions Senior Recreation Centre

7524 139 Ave NW, Edmonton, AB

FRIDAY, OCTOBER 8 | 1:30 - 3:00 PM – IN-PERSON EVENT

Join us at the Northgate Lions Senior Recreation Centre\* for this general overview session about the importance of proper estate planning. Learn about creating or updating your will, what your will can and cannot do and what to think about to ensure that your affairs are in order for you and your loved ones.

\*In the event that this session is unable to be delivered in-person, it will be delivered online via webinar and recorded.

Jacklynn Pivovar  
– Partner, Miller  
Thomson LLP  
Edmonton



## The Perils of WILL KITS

Pandemics and other events may lead people to do a Google search on “do-it-yourself” will kits to try to get their financial and family affairs in order. You might believe these will kits are an inexpensive and easy way to protect your assets and provide for your family. However, failing to get proper legal advice can lead to numerous legal problems after death. Many will kits do not include key elements, without which your wishes may be misinterpreted, or worse, all or parts of your will could be invalidated.

If you do not have a will, or need to update your will, it is recommended you speak with an estate planning lawyer.

### DANGERS OF USING A WILL KIT

A will kit is a one-size-fits-all solution and includes a “fill in the blanks” standard form that allows a user to click boxes or complete blanks regarding their financial circumstances and last wishes. This may lead to a number of legal problems that will increase the costs of the estate, and leave loved ones in a difficult situation.

Some of the issues with will kits include, but are not limited to, the following:

#### 1. Will formality requirements.

What happens if the will kit is for the wrong jurisdiction? Will kits designed for another jurisdiction (country or province) often lack the formal requirements to make a valid will in your province. Having the wrong number or the wrong people witness your will can invalidate some or all of it. If the will formalities are not clearly followed, the validity of the will may have to be determined at a court hearing. This causes significant delay and increases costs by an amount that far outweighs the cost of having a lawyer prepare your estate plan to begin with.

#### 2. Will interpretation and the exclusion of important clauses.

Will kits may contain clauses or words in which the intent may not be clear given your specific circumstances. They can inadvertently fail to deal properly with everything you own, due to uncertainty in the wording of the will, or missing assets, or if one of the beneficiaries has died before you. This lack of a valid will is called “intestacy” and statutory default rules would apply to the distribution of your assets.

Will kits may also miss important clauses, such as a surviving beneficiary clause or a family demise clause. These clauses set up a backup plan in the event your first set of wishes cannot be carried out. A properly prepared estate plan anticipates changes and allows flexibility to ensure that your ultimate wishes will be satisfied.

#### 3. Lack of Legal Advice.

The questions lawyers ask lead to better results! An estate planning lawyer learns about your unique circumstances, and then gives you advice to tailor a will that protects your family and reflects your true intentions. When financial advisors and estate planning lawyers work together, they are able to address a variety of concerns such as minimizing tax, providing for a minor beneficiary or disabled child, or protecting a child’s inheritance from divorce proceedings. Will kits do not adequately consider the impact of family dynamics and the particular needs of the beneficiaries named in the will.

Your estate planning lawyer can also review the ownership of your assets and provide important advice regarding joint ownership and direct beneficiary designations. Jointly held assets are a significant cause of estate problems and litigation. These assets typically are not affected by your will so will kits do not address the important advice needed and may, in fact cause confusion.

#### 4. Exposure to Estate Litigation.

As noted above, a will kit often leads to a court hearing due to formalities or uncertainty resulting from filling in a blank form with language that, at law, could have a variety of meanings. Will kit wills are often successfully challenged in court, by someone who may interpret your wishes differently than you intended. The use of a will kit also makes your will more vulnerable to claims of lack of capacity or undue influence, because there is usually no independent witness to provide evidence about your state of mind at the time the will was made. These issues can be prevented with proper legal advice, including having a qualified lawyer supervise the signing of the will and take notes. Your estate planning lawyer and the lawyer’s notes become important evidence, which is critical to upholding a will’s validity if it is ever challenged.

#### 5. Evolution of the Law.

Wills are dynamic and change with life events. The law is constantly evolving and the will kit may be based on old laws. Estate planning lawyers know the current law and prepare wills accordingly. With a will kit you may not be aware of changes that affect the will kit form.

Using a will kit may be cheap but the question is, “Is it worth it?” The difference in cost between will kits and having a will professionally done by an estate lawyer is no comparison to the cost of sorting out the problems later.



**ADMINISTRATOR:** The person or entity appointed by the court to administer an estate if you die without a valid will. An administrator can also be appointed when the will does not designate an executor or the designated executor cannot act and there is not an alternate named.

**AGENT:** The person given authority to act on your behalf under a personal directive.

**ATTORNEY:** The person or corporation (e.g. a trust company) given authority to act on your behalf under an enduring power of attorney. This is not a lawyer.

**BENEFICIARY:** The person or organization that receives a gift under your will or receives a benefit under a trust, life insurance policy or RRSP/RRIF/TFSA designation.

**BEQUEST:** A gift of property made in a will to a particular beneficiary.

**CANADIAN REGISTERED CHARITY:** An entity registered with the Canada Revenue Agency as operating exclusively for charitable purposes such as: helping people in need, education, health, recreation, environment, arts and culture. Gifts to Canadian registered charities in a will, life insurance, or RRSP/RRIF TFSA designation can result in significant tax savings so that you can choose where more of your estate is distributed.

**CODICIL:** A legal document to amend a will.

**CONTINGENT BEQUEST:** A gift in your will that takes place only if your first choice is not possible; such as when a person named as a beneficiary dies before you.

**DEEMED DISPOSITION:** When the Income Tax Act (for tax purposes) treats property “as if” it was sold. For example, when a person dies, there is a deemed disposition of the person’s property.

**DONOR:** Under an enduring power of attorney, this is the person who names another person (the “attorney”) to act on the donor’s behalf.

A person who makes a gift to a charity during lifetime or in a will or other estate document.

**ENDURING POWER OF ATTORNEY (EPA):** A legal document created by you (called the “donor”) to give someone else (called the “attorney” - please note that this is not a lawyer) the power to handle your financial matters during your lifetime. An EPA can be immediate or “spring” into effect when you lose the ability (temporary or permanent) to handle your own financial matters. On your death, it ceases to have any effect.

**ESTATE:** All of the property in which you have a right or interest.

**EXECUTOR / EXECUTRIX (F):** See “personal representative.”

**HOLOGRAPH WILL:** A will written entirely in the handwriting of the testator, dated, and signed by the testator but unwitnessed. (Not a “fill in the form,” online or typed document). Many problems have been caused by mistakes and omissions made in holograph wills.

**INTESTATE:** When a person dies without a valid will, the person is said to die “intestate.”

**JOINT TENANCY WITH SURVIVORSHIP:** A form of property ownership where the property passes directly to the survivor(s) and is not part of the estate distributed by the will. Exercise caution when owning property jointly with someone other than a spouse, as this type of ownership can have unintended consequences.

**LAST WILL AND TESTAMENT:** See “will.”

**NAMED ENDOWMENT:** A fund, named for the donor or another person the donor chooses to honour, that provides ongoing support to a charity or cause important to the donor. At Edmonton Community Foundation (ECF) fully operational endowment funds can be created during your lifetime or in your will with gifts amounting to \$10,000 or more. They can support any Canadian registered charity or charitable work described by the donor. Gifts of any amount may be made to any of the more than 1,100 existing funds at ECF.

**PERSONAL DIRECTIVE:** A document that appoints one or more people (called “agent”) to make personal nonfinancial decisions for you when you are incapable of making them yourself. It can include palliative care decisions, and decisions about where you live, the activities you take part in, etc.

**PERSONAL REPRESENTATIVE:** A person, or corporation (e.g. trust company) named in the will to administer the estate (also called an “executor” or “executrix”).

**PROBATE:** The court process of validating a will and administering an estate in accordance with the terms of the will.

**PROBATE FEE:** The amount charged by the courts to fulfill the probate process. In Alberta this fee is very reasonable. Currently the highest fee in Alberta is \$525.

**POWER OF ATTORNEY:** A legal document created by a person (the “donor”) to give someone else (the “attorney” - not a lawyer) the power to handle his/her specific or general financial matters. For this document to be effective after the donor loses mental capacity, it must be an enduring power of attorney.

**RESIDUAL BEQUEST OR RESIDUE:** A gift in a will of all or a percentage of what remains of your estate after paying taxes, other expenses and specific bequests.

**SPECIFIC BEQUEST:** A gift in a will of a specific amount of money (a “legacy”) or of particular property (e.g. a car).

**TAX CREDIT:** The amount that may be subtracted from the tax otherwise due. Gifts to Canadian registered charities during lifetime or in a will create a generous tax credit.

**TESTATE:** When the person who dies has a valid will, the person is said to die “testate.”

**TESTATOR:** A person who dies with a valid will.

**TRUST:** An arrangement under which an individual (the “settlor”) transfers property to a person or institution (the “trustee”) to be managed for the benefit of one or more beneficiaries. Your will may include one or more trusts (e.g. for minor children).

**TRUSTEE:** The person or institution (e.g. trust company) that holds legal title to property in a trust and has responsibility for managing it on behalf of another person.

**WILL:** A document that directs how a person’s property is to be distributed after the person’s lifetime. It has no effect until the person dies. In Alberta it must be in writing and there are very specific signing requirements that apply (see also “holograph will”). If incorrectly prepared or incorrectly signed, unintended consequences result.