

Smooth Transitions

September, 2013



This flyer is intended to provide general information only, not legal advice.

Questions? Call us.

The Notary Group

info@thenotarygroup.ca
www.thenotarygroup.ca

The Notary Group is the trade name for Janzen & Caisley Notary Corp., a Professional Notary Corporation.

I don't need a Will, do I?

Wills and other personal planning documents aren't required, by law, but they can make your and your family's lives much easier, and save your estate some money in the long run.

If you don't have a Will (or any other personal planning documents such as Powers of Attorney or Representation Agreements), then the law dictates what happens to you and your assets.

While that might not sound bad to some people, the default laws don't necessarily do what you expect with you or your affairs. But you always have a choice – either you can control your affairs yourself, or the law will do it for you.

Call us for an appointment to discuss how Wills and other personal planning documents like Powers of Attorney and Representation Agreements can help you control your affairs and save you money.

What is a Will, anyways?

A Will names the people who are going to wind up your affairs after your death (your "Executors"), tells them what to do with your assets and debts, and gives them the powers they need to do their job properly. A Will has to be in writing, and it has to follow a certain format.

Do I need any other documents?

Very likely. A Will doesn't get used until after you have died. But unfortunately, most of us spend 10-15 years living with illness or frailty at the end of our lives.

If you have a long term illness like Multiple Sclerosis, Parkinson's, dementia, or a disability caused by a stroke, accident or illness, then you may not be able to deal with your affairs while you are still alive.

Some other documents you might want to have are:

- **Power of Attorney:** appoints someone to deal with your legal and financial affairs during your lifetime
- **Representation Agreement for Health Care:** appoints someone to make (or help you make) decisions about your personal care and your health care
- **Advance Directive:** tells others what kinds of health care instructions you may have (but doesn't give another person power to help make decisions)

Your family members are not allowed to help you with your affairs unless they have been formally appointed. For example, your spouse cannot put your jointly owned house up for sale after your stroke unless you have named them in a Power of Attorney. Nor can your spouse make any "end-of-life" decisions for you unless you have named them in a Representation Agreement for health care.

But I have pre-arranged my funeral...

Perfect! Pre-arranging (and pre-paying for) your funeral is a great way to control what you want to have happen with your remains, and whether a service should be held or not. Your funeral director can help you with this, as can the Memorial Society of British Columbia.

That is one less issue your Executor will have to sort out on your behalf. But a funeral is only one of many details that need to be sorted out if you are sick, or when you have died.

For example, how do your bills get paid if you can't pay them yourself? Who is allowed to deal with your pension if you can't speak to the government yourself? How do your household effects get distributed on your death? Who feeds your pets if you are in the hospital? Who has the right to decide when to stop life support?

I made a Will in 1982; is that still good?

Wills law in BC is undergoing some very big changes. These changes could mean that an older Will no longer does what you want it to do. You can always bring your old Will in to your notary, and ask them to review it with you.

I have documents from Alberta; can I use them?

Not always. Each province (and state) has different rules about what makes a valid document, and what kinds of things you can do with your affairs.

Just because you made a document that is legal in one province doesn't mean that document will be legal in another province. Again, you can bring your documents in to your notary and ask them to review them to see if they would be valid in BC.

I don't have to make these documents until I'm sick, right?

Don't wait. You have to make a Will, Power of Attorney, Representation Agreement or Advance Directive when you are "of sound mind".

If you wait until you are sick, you might not be able to (or allowed to) make these documents. Of course, if you have died without making a Will, then no one can do that for you. If you haven't made these documents by the time you become sick, or die, then the default laws take effect.

It can place your family in a very difficult position if you don't have these documents in place by the time you lose your capacity, or die. Your family members would probably rather spend their quality time with you instead of dealing with your legal issues.

Your family members may have to pay your bills for you if they can't access your accounts. This isn't a problem for things that are set up on auto-debit, but what about paying for medications? Therapies?

It costs more money for your notary to come to the hospital or your home (and not all notaries and lawyers will do "out of office" visits). It also takes more time – if you have an illness, it may be necessary to get a doctor's letter, stating that you are not on any

medications, or do not have any illnesses or disabilities that interfere with your decision-making capabilities.

Documents made while you are sick can also be subject to lawsuits. What happens if you make a Representation Agreement appointing your daughter to help you with your health care, but your son thinks your daughter is negligent and he should be the one to do this work? Your son might make a claim that you were not capable of making a legal document because of your illness.

If you aren't able to make a Power of Attorney or a Representation Agreement when you are sick, someone in your family will have to volunteer to go to court and apply for an order that strips you of your legal rights, and appoints them as your guardian. This is time-consuming and expensive.

Can I make my own documents?

Yes, but only attempt them if you absolutely know what you are doing. These are complicated documents, and the consequences of doing them incorrectly can be devastating. Not all financial institutions will honour home-made documents either.

Questions? Ask us!

The Notary Group has offices throughout the Okanagan. Please check our website at www.thenotarygroup.ca for information on branch locations and phone numbers, or you can e-mail us at info@thenotarygroup.ca for more information.