



GP WEALTH MANAGEMENT

INDEPENDENT THINKING WORKING FOR YOU

ESTATE PLANNING
AND
YOUR WILL



TABLE OF CONTENTS

| | |
|---|----|
| Preparing a Will | 3 |
| What is a Will? | 3 |
| Other Requirements of a Will | 3 |
| The 6 Basic Reasons To Have a Will | 4 |
| Types of Wills..... | 6 |
| The 3 Ways In Which a Will May Be Revoked | 6 |
| Having An Executor or Co-Executors..... | 7 |
| Executors' Fees..... | 8 |
| Powers and Duties of an Executor | 8 |
| Letters Probate and Administration | 9 |
| Special Clauses | 9 |
| Attacking the Validity of a Will | 9 |
| Property Passing Outside the Will | 9 |
| Structure of a Will | 10 |
| Dependent's Relief..... | 11 |
| Sample of a Basic Will..... | 12 |



Preparing a Will

The will is the most basic of all estate planning tools. In fact, preparing a will is the only estate planning that many individuals will ever do. In addition to providing for the orderly transfer of assets following a person's death, the will can be used to minimize taxation following a person's death.

What is a Will?

A will is an instrument by which a person, referred to as the testator if male and testatrix if female, makes a disposition of his/her property to take effect upon his or her death. It allows a person to decide before his or her death who shall receive the property and what interests they will receive.

One of the main differences between a will and any other type of conveyance is that a will takes effect only on death. The will must be entirely dependent upon death for its operation. If an instrument conveys an immediate interest in property it is not a will but is an inter vivos (lifetime) gift.

A will is revocable until the death of the testator. This means that the testator can amend it or change it at any time. However, a person may make a contract to dispose of his or her property in a certain way at death. For example, a person may enter into a buy-sell agreement where he agrees to sell his shares in a company to his co-shareholder at the time of his death. If the will is not consistent with this contract, the co-shareholder would have to sue his estate under contract law. This does not alter the fact that the will is revocable until death.

In order to be a valid will it must be prepared and executed in accordance with certain formalities, which are set out in the relevant provincial wills legislation. The formal requirements are dealt with later in the section titled "Normal Wills".

Other Requirements of a Will

(a) Testamentary Intention

As indicated previously, testamentary intention is a requirement for a valid will. Most formal wills commence by identifying the document as the last will and testament of the testator:

THIS IS THE LAST WILL AND TESTAMENT of me, JOHN SMITH of the City of Toronto, in the Municipality of Metropolitan Toronto, Businessman. Such a clause clearly expresses the testamentary intention of the testator.

(b) Testamentary Capacity

The testator must have mental capacity to make a valid will. The components of what constitutes testamentary capacity were enunciated in the leading case of *Banks v. Goodfellow* where it was stated that:

"It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties - that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

Here, then, we have the measure of the degree of mental power which should be insisted on. If the human instincts and affections, or the moral sense, become perverted by mental disease; if insane suspicions, or aversion, take the place of natural affection; if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its functions, and to a testamentary disposition, due



only to their baneful influence in such a case it is obvious that the condition to the testamentary power fails, and that a will made under such circumstances ought not to stand."

The courts consider the right to dispose of property by will to be a fundamental and basic right. The courts are loath to deny a person the right to make a will except in the clearest cases of mental incapacity.

(c) Age

As a general rule, a person must have attained the age of majority in order to make a valid will. However, there are some exceptions. In many provinces, a minor who is married can make a valid will. In addition, all provinces except Quebec allow a member of the military in active service, or seaman or marine who is "at sea" to make a valid will regardless of age.

The 6 Basic Reasons to Have a Will

A will is important for the following reasons:

1. Determine Heirs

If a person dies without a will, each province has a statutory scheme of distribution (i.e., laws of intestacy) where the deceased's assets will be distributed in accordance with the rigid arbitrary formula without regard to the needs of the beneficiaries or the deceased's wishes.

To give you an example of how an estate would be distributed if there were no will, let's look at the situation in Ontario.

Spouse is Sole Survivor

If the spouse is the sole survivor with no children, the survivor spouse would be entitled to the entire estate.

Spouse and Children

In this situation, the estate would be divided between the spouse and the children. This division, however, is subject to the right of the surviving spouse to take the first 75,000 of the assets of the deceased's estate. If the assets are worth less than 75,000, the surviving spouse takes all.

In computing the assets of the estate, assets that pass to the survivor by right of survivorship (e.g., real property held in joint tenancy, most joint bank accounts, etc.) and assets that pass to another by virtue of a trust (e.g., a life insurance policy with a named beneficiary) are not included.

In practical terms, this means that, even if there is no will, most estates will pass to the surviving spouse. This is not always the case, however, and indeed is not a reason for not making a will because, while 75,000 may seem like a lot today, the same might not be true five years from now.

If a person dies intestate leaving a spouse and one child, then after taking into account the preferential share (75,000) the spouse and child share the estate equally.

If there are two or more children, the spouse takes one-third of the residue and the children divide the remaining two-thirds equally among themselves.

No Surviving Spouse

If a person died intestate leaving no surviving spouse but leaves children, the children share the estate equally.

If any child dies before the deceased, leaving issue, such issue will divide the share of the deceased child among themselves.



If all of the children of the deceased have predeceased him, but leave issue, the issue divide the estate per capital.

It is important to note that in most provinces a common law spouse has no unqualified right to a share of the estate like a legally married spouse. In other words, a common law spouse will not be entitled to share in the estate unless he or she is specifically provided for in the will, subject to dependent's relief legislation which is dealt with later.

In Ontario and Quebec, illegitimate children have the same status as legitimate children for purpose of succession. Therefore, a child born out of wedlock may have as equal a right to share in an estate as one born in wedlock. By preparing a will, this problem can be overcome by specifically providing that illegitimate children are not to be included under the will.

2. Determine When Each Heir Gets His or Her Share

When a person with minor children dies without a will, the share to which the minor is entitled will be paid into Court to be administered by government authorities until the child reaches the age of majority. This share will automatically be distributed to the minor upon him or her attaining the age of majority.

On the other hand, if the deceased prepared a will, the minor's share could be administered by a trustee chosen by the deceased. Furthermore, the vesting of the minor's share could be delayed past the age of majority. The postponed vesting offers greater probabilities that the child will have the capacity to handle large sums of money.

3. Appoint Guardians for the Children

A person can suggest an individual to serve as guardian for his or her children during the period of their minority. While the Courts are not strictly bound by such a clause in a will, they will give substantial weight in deciding who the guardians will be.

4. Determine Who Will Administer the Estate

The failure to appoint an executor by will leads to a court-appointed administrator. This may result in a contest among next-of-kin as to who should receive the appointment. Furthermore, a court-appointed administrator will normally have to post a bond. The amount of the bond is usually equal to the value of the estate, and the premium can be high. In the interim, it is very difficult to deal with the estate assets at a time when there may be an urgent need for cash for the family and for the preservation of the value of the estate. Significant additional court costs will result from these procedures.

5. Give Powers to the Executor and Trustee

In the absence of specific investment powers in the will, investments are governed by provincial law which generally provides for conservative investments. An estate might be compelled to dispose of real estate holdings or company shares as they do not qualify as proper investments under provincial law. By preparing a will, the testator can avoid this problem by giving his executor and trustee broader investment powers and authorizing him or her to retain such assets.

6. Minimize Taxes

Significant tax savings can be achieved from a well-planned and properly drafted will. In order for the executor and trustee to take advantage of certain tax provisions, he or she should be given the power to make the appropriate income tax elections.



Types of Wills

(a) Normal Wills

The normal will must be in writing and signed by the testator at the end in the presence of two attesting witnesses present at the same time and who subscribe the will in the presence of each other and the testator. The testator should sign the will using his customary signature.

A beneficiary or a spouse of a beneficiary should not be a witness to a will. Any bequest to the witness, spouse of the witness or person claiming under either of them would be void. However, the will itself would not be valid for that reason. If the court is satisfied that neither the witness nor spouse of the witness exercised any improper or undue influence on the testator the bequest is not void.

A creditor of the deceased or the spouse of a creditor is a competent witness. An executor who is not a beneficiary or spouse of a beneficiary may act as a witness.

(b) Holograph Will

In seven provinces the law recognizes holograph or handwritten wills. A holograph will must be wholly or entirely in the handwriting of the testator and signed by him. The presence or signatures of witnesses are not required.

It is important to note that pre-printed wills or a stationer's form of will do not qualify as holograph wills because they are not wholly in the handwriting of the testator. Consequently, they must be formally witnessed according to the applicable provincial law.

The main problem with holograph wills is that they tend to be ambiguous and litigation often results because the testator's intention is not clear.

(c) Codicil

A codicil is an instrument which is used to make a minor change or variation to a will. The codicil must refer to the will and the same formalities with respect to the execution of a will apply.

The 3 Ways in Which a Will May Be Revoked

A will is revocable until the death of the testator. It is revoked in the following ways:

(a) Marriage

In most jurisdictions, a will is automatically revoked by marriage unless the will is made in contemplation of marriage and there is a specific declaration in the will to that effect. The declaration must contemplate marriage to a particular person and cannot be in contemplation of marriage generally.

A divorce does not revoke the entire will. In other words, the will is still valid. However, a bequest to a former spouse, appointment of a former spouse as executor or conferring power of appointment on a spouse are all revoked unless there is a contrary intention in the will. It is important to note that a beneficiary designation in favour of a spouse under a life insurance policy is not revoked by divorce.

(b) Destruction

A will may be revoked by the burning, tearing, obliterating, destroying, etc., of the instrument either by the testator, or by another person in the presence of and at the direction of the testator.



(c) Subsequent Will

A will can be revoked in whole or in part by a later will or codicil. Revocation through a subsequent will can be made either expressly or implication. Most wills contain a specific provision stating that all former wills and testamentary dispositions are revoked.

Having an Executor or Co-Executors

An executor is the person, or one of the persons, named in the will who is responsible for administering and distributing the property of the deceased. The executor is responsible for such things as arranging the burial of the deceased, gathering estate assets, applying for Letters Probate, paying debts, satisfying bequests, paying legacies and preparing and filing income tax returns.

If a person dies without a will (intestate) the individual heirs, or someone acting on their behalf, must apply to the Surrogate Court for Letters of Administration. The person named to handle the estate is known as an administrator rather than an executor. An administrator is usually required to furnish a bond and must administer and distribute the estate in accordance with the intestacy laws of the applicable province.

The testator should name an alternative executor or executors to replace the original executor in the event that he or she predeceases the testator, or dies before the distribution of the estate has been completed. Furthermore, it is prudent to name an alternative executor in the event that the original executor is unwilling or unable to act as executor.

The executor should live in the same area as the deceased so that he or she can perform his or her duties without undue expenses or inconvenience.

Although minors are not permitted to act as executors, they may still be named as executors in the will as long as an adult is also named. If the testator dies before the minor executor has attained the age of majority, the adult executor may proceed to apply for a grant of Letters Probate and the minor executor's right to take out the grant is reserved until the age of majority. A beneficiary can act as executor of an estate.

The selection of an executor or executors often depends upon the nature of the will. For example, if the will calls for an immediate outright distribution of family members it would be appropriate to name one of the beneficiaries as executor. In this way, executors' fees would be minimized. On the other hand, often the spouse is given a life estate where the testator's spouse is entitled to the income from the estate for life but the capital of the estate is to pass to the children upon the spouse's death. In this case, it is often appropriate to name one or more executors in addition to the spouse's death. If the testator's spouse is given the power to encroach on capital and he or she is the sole executor, he or she might dissipate the estate to the detriment of the capital beneficiaries (e.g., children).

With the new Family Law Act (Ontario) ("FLA") it is sometimes not advisable to name a spouse as executor, particularly if there are beneficiaries other than the spouse. This is because the surviving spouse may elect to take his or her entitlement under the FLA instead of under the will. In this case, the surviving spouse would be claiming against the estate and would be in a similar position to a creditor. If the surviving spouse were also the executor he or she would clearly be placed in a conflict-of-interest position.

A testator may name other family members or relatives as executors even if they are not beneficiaries. However, the testator should be advised that the responsibility of acting as an executor can be onerous and time-consuming. As many people are reluctant to act, the testator should obtain the consent of his named executors before executing the will.

Often a testator will want to name a business associate as an executor. This can create problems in that the business associate may be placed in a conflict-of-interest position regarding the deceased's business assets. For example, if there is a buy-sell agreement between the business associate or a possibility that the associate may wish to purchase the testator's interest in the business, it is important to include a provision in the will allowing trustees to purchase trust property. It is sometimes prudent to name a trust company as



executor or co-executor. It might be appropriate to name a trust company as executor in the following circumstances:

- (1) The size and nature of the estate assets require the expertise of a trust company.
- (2) There are ongoing trusts to be administered requiring the continuity and permanency of a corporate trustee.
- (3) There are potential conflicts-of-interest.

One of the disadvantages of appointing a trust company as executor is executor's fees tend to be greater.

Sometimes a testator's professional advisor will be appointed as executor. This should only be done if the professional advisor has sufficient time to devote to the task and knowledge of the deceased's estate. Alternatively, the testator can name someone else to act as executor but require the executor to employ the professional as counsel.

Executors' Fees

Executors and trustees are entitled to compensation for their services. Fees vary depending on the nature of the estate assets and the time spent and complexity of the work done. Family members or friends will usually not claim for executors' compensation. However, when a professional or trust company acts as executor, it will often charge the full amount permitted. Typically, executors' fees are 4-5% of the value of the assets falling into the estate. More precisely, executors' fees are 2.5% of revenue receipts and 2.5% of revenue disbursements. If there are ongoing trusts, the executor will usually charge 5% of annual income of the trust in addition to an annual management fee of 2/5 of 1% of the value of the trust. It is important to note that these fees are not a legislated tariff but have been developed as a guideline. It is certainly subject to increase or decrease in appropriate circumstances.

It is important to note that the will itself may fix the fee to be paid to the executor. If there is a compensation agreement, then it should be specifically incorporated in the will; otherwise there are serious doubts as to its enforceability.

Powers and Duties of an Executor

The powers of the executor are derived from the will itself. Unless the will sets out the powers of the executor, they will be limited to powers given by statute or created by common law. Consequently, it is important that all wills contain basic powers, in addition to those provided by the statute so that the estate can be administered with a minimum of expense and without delay. Some of the more common administrative provisions and powers include the following:

- o power to retain and sell assets
- o power to pay debts
- o power to encroach on capital for the benefit of a beneficiary
- o power to invest
- o power to deal with real estate
- o power to distribute the estate in specie
- o power to borrow
- o power to make income tax elections



Letters Probate and Administration

Letters Probate is a document under the seal of the Court given to the executor which certifies that the will was properly proved and registered in the Court and that the administration of the deceased's property has been given to the executors. Essentially, Letters Probate is evident of the executor's authority to deal with the property of the deceased. Persons dealing with the estate will usually require Letters Probate as proof that the executor has the authority to deal with the estate assets.

The application is to be accompanied by an Affidavit of Execution, sworn by one of the witnesses that he or she together with the other witness saw the testator execute the will.

Before Letters Probate is granted by the Court the fees of the court must be paid. Fees are usually based on the value of the estate and are about \$5 per thousand in most provinces.

Special Clauses

(a) Illegitimate Heirs

The Succession Law Reform Act of Ontario eliminates the distinction between illegitimate heirs and legitimate heirs. This legislation applies to any Will made on or after March 31, 1978 unless a contrary intention is expressed in the Will. Accordingly, unless the will specifically excludes illegitimate children, an executor is required to search for the illegitimate heirs of the testator. This presents practical problems and is expensive. For example, if a bequest is to be divided among a testator's grandchildren, the executor must search for the legitimate and illegitimate children of the testator's legitimate children, and the legitimate and illegitimate children of the testator's illegitimate children. The executor cannot distribute the bequest until he has determined all the grandchildren. This may delay the bequest indefinitely since there is no central registration for illegitimate children.

To avoid the expense and delay that could result the testator should include a clause in his or her will that excludes members of any class of beneficiaries that trace their relationship to the testator outside of marriage. In cases where a testator wants to benefit an illegitimate heir, he can refer to that person by name and include the person so named as a member of any particular class.

(b) Insurance Clause

Insurance legislation in most common law jurisdiction provides that a declaration in a will is effective to appoint a beneficiary under a life insurance policy.

Attacking the Validity of a Will

The validity of a will is generally contested for the following reasons:

- (a) failure to comply with legal formalities;
- (b) the testator's lack of testamentary capacity (or testamentary intent); and
- (c) undue or improper influence that negates the testator's testamentary capacity.

Property Passing Outside the Will

It is important to understand that certain types of property will pass outside the estate of the deceased and will not be governed by the will. In some respects, this is an advantage as such property will not be subject to estate settlement costs such as probate fees, executors' fees and solicitor's fees. Examples of property passing independently of the will are:



1. Where a life insurance policy is payable to a named beneficiary, upon the death of the like insured, the proceeds pass directly to that and do not become part of the policyholder's estate. Where the policyholder makes a declaration for insurance purposes in a will, the same is true. However, if the named beneficiary is dead, or if the policyholder designated his estate as beneficiary, the proceeds become part of the residue of the estate.
2. Registered Retirement Savings Plan, Pension Plan and profit-sharing benefits when there is a named beneficiary.
3. The termination of life interests, where, for example, a widow is entitled to the income but not the capital from her husband's estate, then on her death those assets will be dealt with under the terms of her husband's will.
4. Any property held by the deceased as a joint tenant and not as a tenant in common passes automatically to the surviving joint tenant or tenants. The deceased's interest does not form part of his estate and will not be affected by the will.
5. Property which the deceased has agreed to sell in the event of his or her death. For example, property which is subject to buy-sell agreement entered into while the testator was alive. The estate or executor will have a legal obligation to fulfil the sale commitments.

Structure of a Will

The following is a brief description of the various provisions. The numbering below corresponds to the numbers of the paragraphs of the sample will -- attached.

- (1) Statement of the document being the will and identification of the testator.
- (2) Revocation of former wills.
- (3) Appointment of executors and trustees with the appointment of a contingent executor and trustee to act if the first choice is unable or unwilling to act or predeceases the testator.
- (4) Devise the property to the trustees in trust to carry out the testator's wishes including:
 - (a) to sell and retain assets - unless the will specifically authorizes the executor to retain non-authorized investments, all assets must be converted to investments authorized by law for trustees,
 - (b) to pay debts ,
 - (c) to deliver specific bequests of personality,
 - (d) to pay legacies,
 - (e) to deal with residue,
 - (f) to establish any trusts.
- (5) Designate beneficiaries under Registered Retirement Savings Plans, etc.
- (6) Forgive promissory note and indebtedness.
- (7) Designate beneficiaries under life insurance policies.
- (8) Establish trust for minors - without such a clause any share of a minor must be paid into Court until the child reaches the age of majority.
- (9) Payments for minors.
- (10) Appointment of guardian for minor children.
- (11) Investment powers. In the absence of a clause expanding the investment powers, the trustees are restricted to investments prescribed by the Trustee Act which tends to be conservative investments.
- (12) Power to deal with real estate.
- (13) Power to distribute shares in specie or in kind; otherwise, the trustee will be obligated to sell all assets.
- (14) Power to borrow.
- (15) Power to make income tax elections and allocations such as the preferred beneficiary election.
- (16) Illegitimate children's clause - In Ontario, a child born outside of marriage has the same status as a legitimate child unless a contrary intention is expressed in the will. This clause indicates a contrary intention.
- (17) Testimonium clause where the testator acknowledges signing the will and dates the will.
- (18) Attestation clause where the witnesses declare that they have seen the testator sign or acknowledge the will in their joint presence.



Dependent's Relief

Most common law jurisdictions have enacted legislation to protect the interests of dependents of the deceased. The general principles are common to most jurisdictions, however, specific reference should be made to the statute for specific definitions and limits on protection.

In Ontario, dependants' relief provisions are contained in Part V of The Succession Law Reform Act, 1977. In general terms, the law in Ontario provides that when a person dies, whether with or without a will, and has not made adequate provisions for the proper support of his dependants, a dependant can make an application for a share of the estate. The Court may order that such provisions as it considers adequate be made out of the estate of the deceased for the proper support of the dependent. In effect the Court will override the will to ensure that a dependent receives proper support.

Dependents

In most jurisdictions, dependents include spouse, children, and other blood relations. In Ontario, dependents means lawful spouses and common law spouses, parents, children, brother or sister to whom the deceased was providing support or was under a legal obligation to support. Recall that illegitimate children are included as children.

Extent of Interest

There is no maximum support for a dependent in Ontario. In some jurisdictions, dependents are limited to their share on an intestacy.

Test

In Ontario, in simple terms, the test is whether adequate provision for the proper support of the dependents has been made. The Court will consider such things as the assets and means of the dependents, the capacity of the dependent to provide his or her own support, the age and physical and mental health of the dependent, the standard of life of the dependents, any agreement between the parties, etc.

The Relief

In Ontario, if the Court finds that the provisions falls below adequate support, it may order periodic payments, lump sum payments, transfers of property, possession of property, etc.

The effect of the order is to provide for the dependents, which may result in delaying the distribution of the estate to the beneficiaries under the will.



Sample of a Basic Will

ANALYSIS: This is a Simple Will. It contains the appointment of an Executor and Trustee.

The bulk of the estate is transferred to the wife if she survives the Testator. If the wife predeceases the Testator the estate goes to the issue of the Testator in equal shares. The will contains various powers to the Trustees. It also contains an insurance declaration, guardian appointment and a clause to forgive debts.

1. **THIS IS THE LAST WILL AND TESTAMENT** of me, Bill Smith, of the City of Toronto, Province of Ontario.

2. **I HEREBY REVOKE** all Wills and testamentary dispositions of every nature or kind whatsoever by me heretofore made.

3. **I NOMINATE, CONSTITUTE AND APPOINT** my wife, Jane Smith, sole Executrix and Trustee of this my Will, but if my said wife should predecease me, or die within a period of thirty days following my death, or without having provided this my Will or if for any reason is unable or unwilling to act then **I NOMINATE, CONSTITUTE AND APPOINT** my brother, Fred Smith, to be the Executor and Trustee of this my Will in the place and stead of my said wife. I hereinafter refer to my Executor and Trustee whether original or substituted as my "Trustee."

4. **I GIVE, DEVISE AND BEQUEATH** all my property of every nature and kind and where so ever situated, including any property over which I may have a general power of appointment to my Trustee upon the following trusts, namely:

(a) To use her discretion in the realization of my estate, with power to my Trustee to sell, call in and convert into money any part of my estate not consisting of money at such time or times, in such manner and upon such terms, and either for cash or credit or for part cash and part credit as my said Trustee may in her uncontrolled discretion decide upon, or to postpone such conversion of my estate or any part or parts thereof for such length of time as she or he may think best, and I hereby declare that my Trustee may retain any portion of my estate in the form in which it may be at my death (notwithstanding that it may not be in the form of an investment in which trustees are authorized to invest trust funds, and whether or not there is a liability attached to any such portion of my estate) for such length of time as my said Trustee may in her discretion deem advisable, and my Trustee shall not be held responsible for any loss that may happen to my estate by reason of so doing.

(b) To pay out of and charge to the capital of my general estate my just debts, funeral and testamentary expenses and all estate inheritance and succession duties or taxes whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever that may be payable in connection with any property passing (or deemed so to pass by any governing law) on my death or in connection with any insurance on my life or any gift or benefit given or conferred by me either during my lifetime or by survivorship or by this my Will or any Codicil thereto and whether such duties or taxes be payable in respect of estates or interest which fall into possession at my death or at any subsequent time; and I hereby authorize my Trustee to commute or prepay any such taxes or duties. This direction shall not extend to or include any such taxes that may be payable by a purchase or transferee in connection with any property transferred to or acquired by such purchaser or transferee upon or after my death pursuant to any agreement with respect to such property.

(c) To deliver to my wife, Jane Smith, if she survives me, all articles of personal, domestic and household use or ornament belonging to me at my death.

(d) To my friend, John Jones, if he survives me, the sum of ten thousand dollars (\$10,000.00)

(e) To pay or transfer the residue of my estate to my said wife, if she survives me for a period of thirty days, for her own use absolutely.

(f) If my wife should predecease me, or should survive me but die within a period of thirty days after my decease, I direct my Trustee to divide the residue of my estate among my issue alive at the death of the survivor of me and my said wife in equal shares per stirpes, provided that the share each child of mine who shall be living at the death of the survivor of me and my wife shall be held and kept invested by my Trustee and the income and capital or so much thereof as my Trustee in her uncontrolled discretion considers



advisable, shall be paid out to or applied for the benefit of such child until he or she attains the age of twenty-one years when the capital of such share or the amount thereof remaining shall be paid or transferred to him or her, any income not so paid or applied in any year to be added to the capital and dealt with as part thereof, and provided further that if such child should die before attaining the age of twenty-one years such shares, or the amount thereof remaining, shall be divided among the children of such child who survive him or her in equal shares, or if such child should leave no child surviving him or her, among my issue alive at the death of such child in equal shares per stirpes.

5. I hereby designate my wife, Jane Smith, as my beneficiary under Registered Retirement Savings Plan No. 83472 issued by The Royal Bank to receive all proceeds payable thereunder or as a result of my death.

6. To release and forgive unto George Johnson all sums whether for principal or interest and whether secured or unsecured which at the time of my death may be owing by him to me and to cancel, discharge and deliver to him any and all securities or evidence of such indebtedness, any expense incidental to any such cancellations and discharge to be paid out of my residuary estate, and provided that if the said George Smith shall predecease me his personal representatives shall be entitled to the benefit of this gift as though he had died immediately after my death.

7. **I DIRECT AND DECLARE** that if my said wife shall predecease me the proceeds payable by reason of my death with respect to Group Policy No. 84320, Certificate No. 47321, issued by the London Life Insurance Company, shall be payable and paid to my Trustee and shall be held by my Trustee upon the same terms and conditions as if such proceeds had formed part of the residue of my estate disposed of by the terms of paragraph 4(f) of this my Will. This declaration shall be a declaration within the meaning of the Insurance Act.

8. **IF ANY PERSON** other than a child of mine should become entitled to any share in my estate before attaining the age of majority, the share of such person shall be held and kept invested by my Trustee and the income and capital, or so much thereof as my Trustee in her absolute discretion considers advisable, shall be used for the benefit of such person until he or she attains the age of majority.

9. **I AUTHORIZE** my Trustee to make any payments, for any person under the age of majority to a parent or guardian of such person or to anyone to whom she in her discretion deems it advisable to make such payments, whose receipt shall be of sufficient discharge to my Trustee.

10. **IN THE CASE** of the death of my wife, **I HEREBY CONSTITUTE AND APPOINT** my said brother, Fred Smith, to be the guardian of the person and estate of my children during their respective minorities.

11. **I HEREBY DECLARE** that my Trustee when making investments for my estate shall not be limited to investments authorized by law for Trustees but may make any investments which in her controlled discretion she considers advisable and my said Trustee shall not be liable for any loss that may happen to my estate in connection with any such investment made by her in good faith.

12. **SO LONG AS** any real or leasehold property forming part of my estate shall remain unsold, my Trustee shall be at liberty to let or lease the same from month to month, year to year or for any term of years and subject to such covenants and conditions as she shall think fit; to accept surrenders of leases and tenancies, to expend money on repairs and improvements and generally to manage the property; and with a view to the sale thereof to give any options they may consider advisable. My Trustee shall also be at liberty to renew and keep renewed any mortgage or mortgages upon any of my real estate or to borrow money on any real estate upon any mortgage or mortgages to pay off any mortgage or mortgages which may be in existence at the time of my death or any renewal thereof.

13. **MY TRUSTEE** may make any division of my estate or set aside or pay any share or interest therein, either wholly or in part, in the assets forming my estate at the time of my death or at the time of such division, setting aside or payment, and I expressly declare that my Trustee shall in her absolute discretion fix the value of my estate or any part thereof for the purpose of making such division, setting aside or payment and her decision shall be final and binding upon all persons concerned.



14. I **AUTHORIZE** my Trustee from time to time to borrow money upon the security of all or any of my estate in such manner, on such terms and conditions, for such length of time and for such purpose connected with my estate as she in her absolute discretion from time to time may deem advisable.

15. I further give to my Trustee in addition to all other powers contained in this my Will power to make all such allocations, elections and distributions as she shall deem in her absolute discretion to be in the best interests of my estate as a whole and specifically any allocations and elections as may be necessary under the Income Tax Act of Canada and the provisions thereof in force from time to time. Where any specific funds, shares or residue are created under my said Will, my Trustee shall have the absolute power of determination as to the specific assets which shall form such fund, share or residue, as the case may be. I specifically exonerate my Trustee from any responsibility with respect to any such allocations or elections which may result in liability to my estate or any beneficiary thereof if she acts bona fide in the exercise of such power.

16. **UNLESS OTHERWISE SPECIFICALLY PROVIDED**, any reference in this my will or in any codicil hereto a person in terms of a relationship to another person determined by blood or marriage shall not include a person born outside marriage, nor a person who comes within the description traced through another person who was born outside marriage, provided that any person who was born outside marriage but whose parents subsequently married one another shall not be regarded as a person being born outside marriage but shall be regarded as having been born in lawful wedlock to his or her parents, provided further that any person who has been legally adopted shall be regarded as having been born in lawful wedlock to the adopting parent.

17. **IN TESTIMONY WHEREOF** I have to this my last Will and Testament, written upon this and five preceding pages of paper, subscribed my name this 2nd day of January, 1987.

18. **SIGNED, PUBLISHED AND DECLARED** by the said Testator, Bill Smith, as and for his last Will and Testament, in the presence of us, both present at the same time, who at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Bill Smith _____

Name _____

Name _____

Address _____

Address _____