

Multiple Wills Might Be an Idea For You But One Advantage is to Disappear in 2016

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How many wills do I need?

On the surface, it might seem like a simple question but the answer can be anything but.

Depending on the circumstances, you may not need a will at all; one will would be sufficient, or multiple wills could be in order. While the decision would be based largely on one's circumstances, personal preferences could come into play as well.

It may not be necessary to have a will at all if your assets are held in joint tenancy. For example, if spouses were to hold their assets (such as their home, bank accounts and investments) jointly, no will is required. By law, if one spouse dies, the other is entitled to full ownership of the asset. No court approvals are necessary. All that is usually required to demonstrate the transfer of ownership is proof of death.

This principle operates in the same way with a single parent who wishes to hold assets jointly with his or her children. What you gain in simplicity, however, is lost in flexibility, since the joint tenant is the only person who may inherit the assets on your death.

If you wish to have greater flexibility in disposing of your assets on death, such as transferring them to others or imposing terms and conditions, a will is required. If your assets are all held personally, a single will should suffice.

Through a will, you can dispose of your assets in any way you choose, such as transferring outright ownership or setting up trusts for minors or infirm beneficiaries. Things get more complicated with a will because you would have to appoint executors who would look after the administration of your estate. In order to transfer this power to your executors, the will would have to be submitted for Letters Probate wherein the court validates the authority given to the

executors. This process takes some time and, when a will is submitted for probate in Ontario, Estate Administration Tax (often referred to as “probate fees”) is levied at the rate of roughly \$15,000 per \$1,000,000 of assets in the estate. One reason that people often do not want to probate a will is because the probate fees can become significant quickly.

An answer to the probate fee issue lies in a second will. Probate is required where assets such as real estate and investment accounts are held personally. In order to transfer these assets, a purchaser of real estate or a financial institution will require proof of the executors’ authority to act. However, if you have significant assets in a corporation such as an operating business or an investment holding company, no such authority is required. The transfer of the shares of such a company can be done privately with only the approval of the company’s directors required. For this reason, clients often prepare what is known as a Primary Will to deal with their personally- held assets which require probate and a Secondary Will to deal with shares of private companies which do not require probate. Only the Primary Will is submitted for probate and is subject to probate fees. The Secondary Will is not subject to probate and the value of the shares of the private company is not subject to the Estate Administration Tax.

Another reason why you might want a Secondary Will is to generate tax savings. An estate is considered a trust for tax purposes and, like an individual, is subject to tax at graduated tax rates.

The estate would not reach the top tax rate in Ontario until it had well in excess of \$100,000 of income. A Secondary Will, if appropriately drafted, can constitute a second trust with its own graduated tax rates, thus spreading out the tax burden. Careful drafting is required in order to ensure that the Canada Revenue Agency would not consider the two trusts to be one taxpayer.

In addition, although the Minister of Finance has announced a proposal to take away these graduated tax rates for estates, the proposed measure, if enacted, will not come into effect until 2016 and will give an estate the graduated tax rates for 36 months in any event.

So, the question of how many wills might be advised for you is not such a simple question after all. Your personal circumstances and choices will dictate what is right for you but, again, as always, proper planning is required.