

# The Importance of Assistance

## Plan Ahead

Even though we live in the same country, the regulations that apply in the event of mental or physical incapacity, or when settling an estate can vary from province to province. This is why it is so important to know the regulations of the province where you live, to make sure your loved ones are aware of your personal and health care wishes should you no longer be able to make your own decisions and to clearly establish how your assets will be distributed after your death.

Prudent planning not only ensures that your choices are respected, it also saves your beneficiaries a lot of stress when it comes to expenses, delays and possible conflicts concerning your incapacity or death.

Plan ahead, don't leave room for chance.

## If You Die Without a Will

If you die without a valid will in Ontario, you are considered to be "intestate," which means that your estate will be distributed to your "next of kin" according to the laws of Ontario. Depending on your situation, your assets will be divided as shown in Tables 1 and 2 below (subject to the application of family law and dependant's relief claims). In addition, if you have real property in a province other than Ontario, the distribution rules of that province will apply to that real property.

In Ontario, a common-law spouse does not inherit any property under the intestacy laws. If John and Mary lived together for 30 years but were never legally married, upon John's death, his assets would be divided among his beneficiaries. Mary would receive no property from him in accordance with the rules of intestacy, though she may have some entitlement to support under family law or dependant's relief legislation.

❖ An unplanned estate could result in more expenses, delays and conflict for your beneficiaries.

**Table 1 – Dying without a will, leaving a spouse and children**

Spouse* only	All to spouse.
Spouse, relatives, no children or other descendants	All to spouse.
Child or children only	All to children in equal shares. If child is deceased, that child's issue (i.e., grandchildren, great grandchildren of the intestate) take the child's share.
Spouse and one child	First \$200,000 to spouse (preferential share); balance split between the spouse and child. If child is deceased, that child's issue (i.e., grandchildren, great grandchildren of the intestate) take the child's share.
Spouse and children	First \$200,000 to spouse (preferential share); balance split one-third to spouse and two-thirds to children in equal shares. If a child is deceased, that child's issue (i.e., grandchildren and great grandchildren of the intestate) take the child's share.
No spouse or children	See Table 2.

\* In Ontario, for distributions under the Intestacy rules, the definition of spouse refers only to legally married spouses (including same-sex legally married spouses).

**Table 2 – Dying without a will, leaving no spouse or children**

One or more parent (including if they are also survived by any other relative)	100% divided equally between the surviving parents.
One or more sibling (including if they are also survived by any other relative other than parents)	100% divided equally between the surviving siblings (where a sibling dies before the deceased but has children or grandchildren, they receive the share that would have gone to the deceased sibling).

This table continues to benefit next of kin. Where there are no ascertainable heirs, the estate escheats to the provincial government.

### Incapacity Management

In Ontario, incapacity planning includes Powers of Attorney both for financial matters and for personal and health care matters.

A Continuing Power of Attorney for Property entitles the attorney to do anything with the property of the donor that the donor could do if capable except make a will; provided, of course, that any action taken by the attorney is in the donor's best interest. This gives the attorney a great deal of power. The Power of Attorney only applies while you are alive and ceases to be effective upon your death. It is important that the attorney is someone whom you trust and who has the skills to manage your property. In addition, for older donors, it is essential to appoint a younger person, possibly as an alternate, to act if the first person selected cannot fulfill his or her duties. In some cases, it may be appropriate to appoint a trust company, such as National Bank Trust as your attorney for property.

A Power of Attorney for Personal Care gives the authority to your attorney to make health and personal care decisions on your behalf when you are no longer capable of making decisions or communicating your wishes. Usually the attorney is someone who respects your philosophy of life and who you trust to honour your wishes. Discussing your wishes ahead of time with your attorney will help him

or her understand the type of care you wish to receive and will make it easier for your attorney to make these decisions when the time comes.

If you become incapacitated without a Continuing Power of Attorney for Property, an application to the court to have a guardian appointed to look after your financial affairs may be necessary. A similar process must be followed with respect to appointing a guardian of the person if you become incapacitated without a Power of Attorney for Personal Care. These are complex, time-consuming and expensive processes that may result in lengthy delays and untold frustration, and, until your guardian is appointed by the court, your close family and friends may not be able to make medical or personal care decisions on your behalf in accordance with your wishes.

Your incapacity plan and estate plan should be made in contemplation of each other. You should seek professional legal advice in order to ensure that both plans work together so that your overall wishes are respected.

❖ Your incapacity plan and estate plan should be prepared in coordination with your spouse. You should seek legal advice to ensure that both plans work together and your overall wishes are implemented.

## Probate Facts

An Application for a Certificate of Appointment of Estate Trustee, more commonly referred to as obtaining probate, is the process whereby the court verifies that a document is the last will and testament of a person. The grant of probate from the court certifies that the will was duly proved and registered in the court and that administration of the testator's property was granted to the executor(s) named in the will. Probate provides protection to the executor and third parties who are paying out assets in accordance with the will provisions. It confirms that the will is the valid will and the executor is authorized to complete his or her duties. The application for probate includes fees payable on the value of assets passing under the will.

In Ontario the probate fees are as follows:

Table 3* – Probate fees in Ontario	
Estate value	Fee
Less than or equal to \$50,000	No fee
Over \$50,000	\$15 for every \$1,000 (or portion thereof)

\* As of December 2020.

These fees can be minimized in a variety of ways, including:

- › Gifting during your lifetime
- › Designating beneficiaries on registered plans such as RRSPs, RRIAs, TFSA's, life insurance policies or products and pension plans
- › Transferring real property into joint tenancy
- › Adding joint owners to bank and investment accounts; and
- › Transferring property into a trust during your lifetime

Please note that the above techniques do not replace the need to have a will in place. They are merely additional tools for transferring assets.

There are significant advantages and disadvantages with each of the planning techniques presented here. If you focus too much on avoiding probate fees, your plan may have unintended consequences. For example, you may create trusts in your will and also designate beneficiaries for your major assets such as your RRIF and insurance policies. The end result may be that your estate avoids probate on these assets, but there may be insufficient assets with which to establish the trusts because the assets are no longer part of your estate that is subject to the terms of your will. In many of these cases, the probate fees saved will be less than the potential benefits of trust planning and proper will drafting. In addition, transferring property into joint ownership can lead to reduced control over the assets during your lifetime and potential disputes among your heirs after your death.

✦ We strongly recommend that you have a discussion with your legal advisor before implementing any of these options to ensure they fit with your overall estate plan.

✦ Should you have any questions, do not hesitate to contact us.

514-412-8652  
1-800-463-6643, ext. 28652

[nbc.ca/estate](https://nbc.ca/estate)



The information and the data supplied in the present document, including those supplied by third parties, are considered accurate at the time of their printing and were obtained from sources which we considered reliable. We reserve the right to modify them without advance notice. This information and data are supplied as informative content only. No representation or guarantee, explicit or implicit, is made as for the exactness, the quality and the complete character of this information and these data. The present document aims at supplying with the information of general order and must be considered on no account as offering advice in investment, financial, fiscal, accounting or legal matter.

© National Bank of Canada, 2024. All rights reserved. Any reproduction, in whole or in part, is strictly prohibited without the prior written consent of National Bank of Canada.