

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 will in Manitoba, you are considered to be "intestate," which means that your estate will be distributed to your "next of kin" according to the laws of Manitoba. Depending on your situation, your assets will be divided as shown in Tables 1 and 2 below. In addition, if you have real property in a province other than Manitoba, the distribution rules of that province will apply to that real property.

❖ 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,* no children	All to spouse.
Spouse with children who are the issue of them both	All to spouse.
Spouse with children who are the issue of the intestate only	If there is a child that is not also the child of the surviving spouse, the spouse gets the greater of \$50,000 or one-half of the estate, plus one-half of the remainder of the estate. The children of the intestate receive equal shares of the remaining estate (if one or more children are deceased, their issue will receive the shares of the deceased children per capita at each generation).
No surviving spouse, but surviving children or other issue	All to children in equal shares. If one or more children are deceased, their issue take the shares of the deceased children per capita at each generation (i.e., grandchildren and great grandchildren of the intestate).
No spouse, partner or children (or any other issue)	See Table 2

* For the purposes of this table, a spouse means a person who was married to the intestate or a common-law partner. A person is a common-law partner of an intestate if the couple has:

1. registered their relationship as a common-law relationship; or
2. cohabited together in a conjugal relationship for a period of:
 - (a) at least three years; or
 - (b) at least one year and they are together the parents of a child.

** Issue means all lineal descendants of a person through all generations.

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

<p>No spouse, partner or children (or any other issue)</p>	<p>Parents, in equal shares, or all to the surviving parent. If no parent is alive, to the issue of the parents, to be distributed per capita at each generation. If none, half of the estate to paternal grandparents in equal shares or all to the survivor, and if none, to the issue of the paternal grandparents, and half of the estate to the maternal grandparents in equal shares, or all to the survivor, and if none, to the issue of the maternal grandparents, to be distributed per capita at each generation.</p>
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Preparing for Incapacity

In Manitoba, incapacity planning includes an Enduring Power of Attorney for property and financial matters, and a Health Care Directive for health care and medical treatment matters.

The Enduring Power of Attorney authorizes the attorney to make financial and legal decisions on your behalf. Your attorney can do anything with your property that you could do when capable, with certain restrictions, such as making or altering a will or making gifts on your behalf. Further restrictions on the authority of your attorney may be set out in the Enduring Power of Attorney document. The Enduring Power of Attorney only applies while you are alive and ceases to be effective upon your death. It is important that your attorney is someone you trust and someone who has the skills to manage your property. In addition, for older adults, it is essential to appoint a younger person, possibly as an alternate to act in the event 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 Health Care Directive allows you to give instructions for the health care and medical treatment you wish to receive or not receive if you become unable to make health care decisions. In a Health Care Directive, you may appoint a proxy to make specific health care decisions on your behalf when you are no longer capable of making such decisions on your own or communicating your wishes. Where a Health Care Directive does not give directions for specific circumstances, your proxy must make the decision for you according to your wishes expressed when you had capacity, or if the proxy has no knowledge of your wishes, then the proxy is to act in what he or she considers is in your best interests.

❖ 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

Probate is the process by which an executor applies to the Superior Court of Justice in Manitoba for confirmation that your will is valid under the laws of Manitoba. The Court will confirm that your will is valid under the laws of Manitoba by issuing a "Grant of Probate."

As of November 6, 2020, the government has eliminated fees and charges relating to applications for probate in the province of Manitoba.

... 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



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