

Wills Are a Recipe for Family Disaster

By Irene Seiberling
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Have you reviewed your will lately? Or has it been sitting — unchanged — for years in a safety deposit box? It may be outdated, or riddled with potential minefields, warns Les Kotzer, a Toronto wills lawyer with a focus on avoiding a family inheritance battle.

"It's very important to have your will reviewed," Kotzer emphasized. "Keep it a living, breathing document. It should reflect your wishes and current life situation."

All too often, that's not the case, Kotzer noted.

"In my practice, I do many will reviews, and I am seeing so many problems in many of the wills I review — many are homemade, others are lawyer-prepared," he said. "So many are recipes for family disaster!"

The author of several will-related books designed to help families avoid inheritance battles, Kotzer offers tips — from a wills lawyer's perspective — for making your will.

For example, watch your language.

"The words in some wills can destroy families," he pointed out in a telephone interview from his Thornhill, Ont., office.

Don't use terms like "personal effects" or "antiques" or "memorabilia," Kotzer cautioned. Be specific! Otherwise, there may be confusion, which might cause family fights.

Don't scratch out stuff in your will. Again, this can lead to confusion. Also, "if they are not done right, the court will not recognize it," Kotzer said.

For joint assets, be sure to fill out a declaration of intention. Otherwise, the assets form part of the estate, he said. (Kotzer and his partner Barry Fish have created a joint asset planning kit, which is available through their website at jointasset.com or by calling 1-877-439-3999.)

Don't create false expectations. If an item listed in your will has been lost, stolen or sold, update your will to reflect it so the intended recipient doesn't expect to get something that's no longer in your possession.

And review descriptions in your will. Make sure it's clear what you're referring to. "The painting above the fireplace" might not, for example, be specific enough.

Be sure to have backup beneficiaries and executors for your will, in the event of an untimely death.

"If you don't specify, the law will specify. Children don't always outlive their parents. Always think, 'What if?' Don't assume these people will outlive you," Kotzer said.

If you have young children, Kotzer warns against naming the same person as both guardian and executor, which gives one person access to both your children and your money. Instead, he recommends dividing the responsibilities between two people — making one the guardian and the other the executor. "Now you have a check and balance," he said.

And only appoint your blood relative as the guardian of your children, he recommended, not your brother and his wife or sister and her husband. If the couple splits up, you don't want a custody battle with your children being used as pawns of their guardians.

Take care when appointing an executor, ensuring that it's someone who understands the needs of your children. He cited an example of a girl who wanted to pursue her dream of training for the Olympics, but was denied the opportunity because the executor of her late parents' will refused to make the required funds available to her in a timely enough fashion for her to participate.

Be careful when setting up a trust fund. If you appoint one child to manage another child's money, it could create a lot of fighting between siblings. So put another party in charge, Kotzer recommended.

Don't assume good will among your children after you're gone. Sadly, dividing family assets can bring out the worst in your offspring, pitting one against the other. Family fights are all too common, Kotzer has observed in his practice. So clearly spell out your wishes. Be specific!

Take care not to create a situation of non-neutrality. Otherwise, you'll be laying the groundwork for a family fight. For example, favouring your eldest child will undoubtedly create hard feelings and resentment between your children. So, rather than giving your eldest child first pick when your personal possessions are divided, for example, have your children determine the order they make their picks by pulling a number out of a hat. "That's a neutral solution," Kotzer said.

For anyone who wants to leave the majority of their estate to one child, and only a small token to another, Kotzer warned against leaving a percentage of the estate to the latter. Even if it's only a small percentage, it gives that child the right to challenge every decision made pertaining to the estate, which can create a nightmare for the child who inherits the majority of the estate.

Instead, Kotzer recommended leaving a specified amount of money to the child who is to receive only a token. That way, the executor just needs to give him or her that amount of money "and they are out of the estate," he said.

Equality is not always fair when it comes to a will. "Be careful about just stamping an equal sign on your will," Kotzer said. For example, if one child is the parent's caregiver, while the others have little or no contact with Mom or Dad, dividing the estate equally between them all may not be the fairest solution.

Know your children. Will they be able to work together after you die — when you're no longer around to serve as referee? For example, leaving a cottage or condo to be shared by your children might not be the best decision. What if one is a neat freak and the other is a slob? "It could be a war zone," Kotzer said. "These are issues that parents must address." In this situation, conflict could be avoided by leaving the property to one child and an equivalent amount of money to the other, he said.

If you move, remember to update your will. If the wrong address is listed in your will, your wishes may not be able to be carried out. Don't assume that your new home will go to your beneficiaries if an outdated address appears in your will.

"There are so many nightmares ready to happen," Kotzer said. "Be very careful. Review your will."

Kotzer has co-authored three books, including [The Family Fight: Planning To Avoid It](#), [The Family War: Winning the Inheritance Battle](#), and [Where There's An Inheritance: Stories from Inside the World of Two Wills Lawyers](#). For more information, visit familyfight.com.