

Wills, Trusts & Estates

First create a will, then keep it updated

By **Stephanie Battista**

Stephanie Battista

(July 20, 2021, 11:55 AM EDT) -- "Why do I need a will?" This is a question we hear from many clients new to estate planning. It is usually followed up by a list of reasons why clients think they don't need a will, which can range from believing they are too young and don't have anything of value, to not being concerned about what happens once they are gone.

The fact of the matter is that anyone who is over 18, of sound mind and has assets, should have a will. Furthermore, after relaying the horror probate stories about the increased legal fees, adverse tax consequences, unnecessary delays and the emotional stress on loved ones when there is no will, most people then elect to make their will.

Making a will is only the first step, though. Ensuring your will is kept up to date can often prove challenging.

There are certain life events that may necessitate a call to your estate lawyer to update your will: executors may no longer be able to act; family dynamics may shift; and changes in the law all mean your out-of-date will no longer accurately reflect your true intentions.

One such life event is marriage. Your wedding planner shouldn't be the only planner you call after getting engaged — you should also be reaching out to your estate planner as many are surprised to know that presently in Ontario, marriage revokes a pre-existing will.

This, however, is in the process of changing. As part of Bill 245 – *Accelerating Access to Justice Act, 2021*, certain reforms were proposed, including repealing the law that wills are revoked on marriage. Bill 245 received royal assent this past April, and, on and after Jan. 1, 2022, marriage will no longer revoke a will. For more information on Bill 245, read our April 2021 article, *Ontario estate law gets an overdue update*. Even with this change in the law, a call to your estate lawyer may be necessary if you wish to leave something for your new bride or groom.

Just as the beginning of a new stage in life necessitates changes to your will, so does an ending. Under Ontario's current laws, a separated spouse named in a will is still entitled to receive any benefits conferred to them and is allowed to act as an executor if named. Bill 245, however, will also change this.

On and after Jan. 1, 2022, a separated spouse will be treated as a divorced spouse and deemed to have predeceased the testator, with the effect that their gift or appointment will be revoked. However, these laws still don't affect beneficiary designations for registered accounts or life insurance policies. Updating your will to ensure that your former spouse doesn't receive anything from your estate should therefore be a priority.

Personal life events aren't the only reasons you may need to update your will. You should also consider the changing circumstances of your executors and your beneficiaries. For example, if an executor dies or leaves Ontario, a different executor team may need to be contemplated.

Another example is a beneficiary who has financial problems and may not be as responsible with money as you were hoping. You may want to consider including a trust for that beneficiary's inheritance to offer more protection. On the other hand, as your children get older, the trust you set

up under your will may no longer make sense. A fully protective trust managed by an independent trustee may make sense when your children are all under 10 years old, but now that they are all over 40, you will need to reconsider and update such provisions.

Aside from changing circumstances and life events, other common triggers for an update include changes in asset holdings, increase in the value of your assets, acquisition of more complicated assets, including assets outside of Ontario, just to name a few.

It is important to take out your will every few years and read it to make sure it still says what you want. And when something major happens in your life, along with calling loved ones, don't forget to call your estate lawyer.

Stephanie Battista is an associate at O'Sullivan Estate Lawyers LLP. She practises exclusively in estate and trust law, focusing on all aspects of estate planning, including cross-border planning and estate administration in order to provide clients with sound and helpful legal advice.

Photo credit / Visual Generation ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.

© 2021, The Lawyer's Daily. All rights reserved.