

## What is a Power of Attorney?

**A** Power of Attorney is a document in which you give to someone else, or more than one person, the power to do for you and in your name those things, particularly financial things, you can do for yourself. They can be used in cases where you will simply be away for an extended time and want someone local to be able to deal with anything that might arise. More often they are intended for use if you reach a stage in life where, due to accident or illness or advanced age, you are no longer competent to make decisions for yourself. Compared with the alternatives of the Public Trustee or a private Order of Committeeship under *The Mental Health Act*, a Power of Attorney is an economical, simpler and more personal way to keep things going when you cannot do so.

You will generally choose one or more persons in whom you repose a great deal of trust, often immediate family members. There are a number of obligations of the person or persons appointed as your attorney. In addition, there are some options as to when the document will become effective. You should contact your lawyer for more details.

## What do I need to do?

**T**he big thing is to pick up the phone and make an appointment. This is one thing we all tend to put off and it is one thing we all know will occur one day. Once the appointment is made, the process moves forward quite quickly and often in a matter of

less than a week this is taken care of. While we recommend you review your Will at least every three to five years and that you review your Will with your accountant as well if you have substantial assets, in many cases the Will you make today will be just as valid and appropriate when you pass away as it is now. And, more importantly, both you and your loved ones can rest secure in the knowledge that everything will be in order.

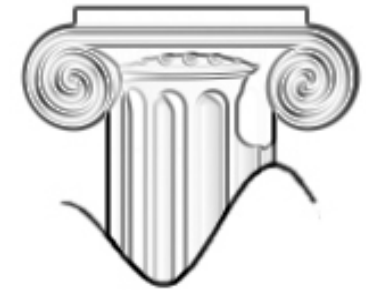
## If I agree to be an executor or attorney, will I be at risk?

**Y**ou can remain fairly secure if you obtain appropriate legal and accounting advice when the time comes for you to act. It is true that executors can become personally financially liable if they do certain things wrong, however having professional advice should avoid that undesirable outcome and, if there is an error in the advice given, in most cases you can rely upon the errors and omissions insurance carried by lawyers and accountants. The estate pays for the lawyer and accountant.

## What is a "Codicil?"

**A** Codicil is a way of making minor changes to a Will without redoing the entire Will. They were quite common in the era when Wills were handwritten or typed on a typewriter, however now that most lawyers use word processors and computers, it is often more appropriate to simply reprint the Will with the changes and sign it as a new Will.

# Wills and Powers of Attorney



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## Why do I need a lawyer?

For most people making a Will or Power of Attorney is something they do only a very few times during their lifetime. A lawyer who practices in the area of estate planning will prepare many Wills and Powers of Attorney for clients each year and must keep up with changing laws and will, over time, develop experience in dealing with the sort of issues that may arise. Your lawyer's job is to do all things a reasonable and prudent lawyer should do to protect you and ensure your wishes will be respected.

In addition, certain well-established procedures have developed over the years which lawyers know and can rely upon. Finally, lawyers must be insured, so you have a means available to recover certain losses suffered due to errors or omissions.

## Why should I have a Will?

Your Will is your opportunity to specify what you want done after your death with the things you have accumulated during your lifetime. In some cases, it is the only way to effectively provide for your loved ones. It is also an opportunity to minimize taxes and other costs of dealing with your estate and to make things simpler for those who are left to look after things. If you don't make a Will, your estate will be distributed according to the law respecting persons without a Will that is current in the province where you live. Every year the laws which impact estates grow more complex. For example, new legislation

soon to be proclaimed in Manitoba will create complex rights for common-law and estranged spouses. Without professional guidance, it is easy to "blunder" into problems.

## What about "Will Kits?"

We have all seen "Will Kits" advertised and on the surface they seem attractive, however there are several things to be aware of:

- ◆ Wills are often not as expensive as the advertising would imply. If you are paying several hundred dollars for a single Will, it is likely you have substantial assets to plan for.
- ◆ If you wish to devote the time necessary to fully understand the pitfalls and opportunities of making your Will, a Will Kit may be satisfactory. Otherwise, you can have the benefit of your lawyer's experience and broad knowledge of the law.
- ◆ One of the jobs of your lawyer is to think through the possible outcomes of what you propose to do so you are fully informed of any possible pitfalls. Wills can rapidly become quite complex when you begin to take into account things like the death of a beneficiary before you.

## What information does my lawyer need?

Generally speaking, your lawyer will lead you through the main areas where you

need to make decisions. If you need time to think something over, you can always provide answers to any questions later. Most importantly, you should be aware of what assets you own, the full legal names of all persons who might be executors or beneficiaries, and you should give some consideration to alternates. If you have "special needs" beneficiaries or unusual assets such as farms, businesses, substantial investments, you should advise your lawyer.

## What is this about a "crystal ball?"

As noted above, we recommend you consider alternate executors and beneficiaries. We encourage clients to look into the "crystal ball" and take account of what they want to happen if their first choice happens to predecease them or, in the case of an executor, be unable or unwilling to act.

Clients will sometimes say that if this should happen, they can come in and make a new Will. This is true, provided the client is still capable of doing so. If through accident or illness or advanced age, the client is no longer competent to make a Will, they are also no longer competent to change their Will. In this case, they are stuck with what they have, which may be far from what they would want.

Most lawyers try to assist their clients in making Wills that will still reflect the client's wishes even in the event of unexpected circumstances. While there is a limit to how remote a future circumstance may be to be considered, it is wise to take account of the more likely circumstances.