

The Startling Simplicity of Wills

People procrastinate on their estate planning for some interesting reasons.

People sometimes think that in making a will, a person must include profound statements that summarize their reasoning. Something like: “To my son, David, I leave my vintage 1976 Corvette Stingray, with the hope that in it he will travel life’s highways, full of dreams and vision.” Some people think that a will is a device to get in one final kick from the grave: “To my ex-spouse, who during my lifetime took from me all that I had to give and more, I leave absolutely nothing.”

Occasionally, wills do contain dramatic devices. I’ve seen a few. But the prose in most wills is as dull as dishwater. Wills usually read something like this: “This is my will. I appoint my spouse as my executor. I leave everything to my spouse if my spouse survives me. If my spouse has predeceased me, I leave everything to be divided among my children equally. If one of my children has predeceased me leaving children of their own, those grandchildren of mine are to split what their parent would have received had he or she survived me.”

Was that so hard to say? True, if the will has been written by a lawyer, there will be lots of legal speak about calling in, conversion, and postponement and the act in their sole and unfettered discretion (there are good reasons why we lawyers put all this stuff in—but that’s for another article). But the key elements of a will are captured in the above: Who’s in charge? Who gets your stuff? And who gets your stuff if that person is already dead? For most people, these aren’t difficult questions to answer. There’s no need for dramatic prose.

I’ll anticipate the question: “If it’s that simple, do I really need a lawyer?” A good lawyer can indeed add value to the estate planning process. Your lawyer will be there to bring to mind certain considerations you may have overlooked. When you say in your will that you leave “everything” to your spouse, do you realize that “everything” does not include jointly owned property, RRSPs, RRIFs, TFSAs, life insurance proceeds or pension benefits? Those assets are governed by different rules. And when you say “children” did you mean to include your step-children? If a person has raised a step-child from a very young age, they often do want to treat their step-child as a child of their own. If they do, they should make sure they are clear about it.

Although a good estate review is thorough, it need not be difficult. The questions I typically ask people during an estate review are questions that most people can answer off the top of their head. It is important that I know your approximate net worth. I don’t need to know down to the last dollar. Most people have a pretty good idea of what their home is worth and how much, if anything, they owe on their mortgage. They have a rough idea of what they have in their RRSP (less now than six months ago). They certainly know the names of their children and grandchildren and whether any of them have any special needs. Based on what

people tell me, I can identify whether they are candidates for a so-called “simple” will or whether they need to have some additional provisions built in to cover off their particular situations.

I often compare estate planning to exercise. It’s something that is put off and put off, but once you get started, it’s not so hard. And best of all, it feels great once it’s finished.