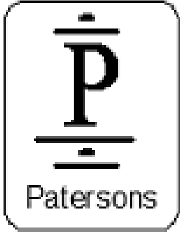

Planning Ahead to Avoid Family Fights

by Doug Paterson, Q.C.

Any experienced lawyer involved in wills and estates work will attest to the high frequency of family squabbles involving funeral arrangements and estate assets.

They happen in the best of families between even the nicest people. With a little early work and common sense planning, many such unpleasantries can be avoided.

If a maker of a will (testator) is single, a will and power of attorney is very helpful and considerate to his/her survivors. If there is no will showing who should get the estate, it only adds to the usual problem that no one really knows what the deceased owned and where it is.

If the testator resides with a spouse or partner, provincial legislation ensures the survivor will be a claimant to the estate assets. This means a will is not so critical, but it is still the preferred route and highly recommended. With a will, the testator can name the estate manager (executor/executrix), give specific gifts to specific people or charities, treat independent adult children in unequal ways if he/she wishes, and specify funeral details and methods.

Many people put off writing a will because they do not know or cannot decide who should get what. This is a poor excuse. Discuss it, think about it, but make a decision. It's so much easier on family and friends when there is an up-to-date will.

Those people residing common-law are treated as husbands and wives legally married since the July 1, 2004 Common-law Partners Property and Related Amendments Act was proclaimed.

This means they have the same rights as a married person whose spouse died without a will. Still, a will creates certainty and clarity for common-law spouses – who often have 2 or more sets of children. Besides wills and powers of attorney, common-law spouses should consider who should be on land titles, banking arrangements, investments, life insurance and specify all details in a cohabitation agreement. Common-law partners can opt out of the Family Property Act and the Intestate Succession Act through such an agreement.

Older people with older children are often scared stiff of offending a child by not naming him/her as executor of the will. Another bad excuse not to do a will! I often recommend for 2 children, that one be the lead executor and alternate power of attorney and the other be alternate executor and lead power of attorney. Or, if 3, 4 or 5 children should be considered, naming them to these various jobs in order of age - seniority is usually acceptable to all. Some of these tricks usually keep noses from being out of joint!

If a deceased has children of tender years, having a will which specifies guardians to care for them is crucial. If both parents die or the surviving parent was separated from the deceased who had custody, this is often a perfect formula to guarantee grandparents or favourite aunts/uncles will soon be competing for custody of the children. Very nasty. An up-to-date will could prevent such family-splitters from happening. But a will doesn't guarantee who gets the kids – it's still up to a Judge.