



Will Drafting by Jodi L. Wyman

There are many specific rules when doing a Will, but they are often misunderstood.

The first rule is that you must be of sound mind. This is not a very high standard, but you do need to understand what a Will is, what it does, what you have for assets, and who has a claim to them. For example, if a person who has three children prepares a will and leaves out one of the children, the Will could be challenged on the basis that the person must not have been of sound mind if they forgot they had one child.

A person signing a Will (the “testator”) must be free from any duress or undue influence by any person.

They must be over the age of 18 years to prepare a Will unless they are in the military or married.

The Will must be signed at the end and it must be witnessed by two people who are not beneficiaries under the Will and who are not married to anyone who is a beneficiary under the Will. The testator and the

witnesses must all see each other sign the Will. It is then a good idea to have the witnesses sign statements confirming their role.

Although it is possible to prepare a legally binding Will using a do-it-yourself Will kit, problems can arise when testators important clauses or more commonly forget to follow the rules for having the document properly signed and witnessed.

The Wills Act does allow the Court some discretion if mistakes are made. If the Will is executed without the formal requirements, such as being properly witnessed, the Court can order that the Will is still valid. This can save the document from being ignored if all of the requirements are not met. It would however mean hiring a lawyer and going to Court, which could be a costly and time consuming process.

In Manitoba, a “holograph” will is also legally binding. It is a document that is written entirely in the testator’s own handwriting and signed at the

end. This sort of Will is handy in an emergency or as a temporary measure until a formal Will is made. There are however numerous potential problems. For example the person preparing the holograph Will may forget to include an executor, may omit certain assets or as a result of poor wording the document may have unintended consequences.

When someone marries or enters into a common-law relationship, their Will becomes void. The other important rule to remember about Wills is that a spouse is entitled to receive half of the estate to be calculated as if there was a divorce. If the Will does not provide for this equal accounting, the spouse has a remedy through the Court. This is true for common-law spouses as well. If you divorce, the Will would be interpreted as if your spouse had predeceased you.

Anyone who is engaged, in a common-law relationship or who is separated should ask a lawyer about the implications of their situation.