



Lancaster, Brooks & Welch LLP
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Your Will and Power of Attorney



Accessibility and Convenience

Lancaster, Brooks & Welch LLP have offices in both St. Catharines and Welland which are conveniently located in the downtown core.

Regular office hours are Monday to Friday from 8:30am to 5:00pm.

We are happy to make appointments at other times to satisfy our clients' needs.

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What is a Will?

A Will is a legal document that specifies what is to happen to a person's assets after death. It can also make other provisions.

Who can make a Will?

Anyone over 18 and mentally competent can make a Will.

Who is an Estate Trustee?

The person you choose to carry out the terms of your Will is your estate trustee. They must be trustworthy and legally of age (over 18). Usually people choose close friends or relatives and, if the estate is complex, sometimes professionals such as lawyers, accountants or trust companies. More than one person is often appointed or an alternative designated in case the first is unable to act for any reason.

Are Wills for today or tomorrow?

Both. You should base your instructions on present circumstances and the possibility you might die shortly after signing, regardless of age or health. Wills should be reviewed as personal and family circumstances change. You can add simple amendments (codicils) or you might have to make a new Will.

What about children and custody?

Wills can be used to set up trusts for young children should both parents die prematurely – a prime reason parents of young children should have Wills. Friends or relatives are normally designated to act as custodial parents.

What is a specific bequest?

Provision in a Will for the distribution of certain items or gifts to named individuals or charities is called a specific bequest. Wills can also mention funeral arrangements and anatomical gifts, although this is not recommended, as often the Will is not reviewed until after the funeral.

Can I prepare my own Will?

Yes, but it is not recommended. Printed forms are available at stationery stores and on the internet. Hand-written Wills are legal in Ontario, but rules regarding signing are complicated and mistakes often result in the Will being invalid. Proper wording can also be tricky and confusion is common. As a result, the home-made Will can often be found to be valid but unclear as to its meaning. A further advantage of using a professional is that he or she can later attest to the capacity of the person if it becomes an issue.

Is all my property distributed according to a Will?

No. Two main categories of assets are not distributed according to your Will. Property can pass to a named beneficiary in documents such



as insurance policies, some RRSPs and other similar investment documents. Jointly-owned property and joint bank accounts may pass directly to the surviving owner, subject to the doctrine of resulting trusts.

What if I die without a Will?

The distribution of assets of a person dying without a Will (intestate) follows an inflexible formula set by law, takes longer to process and can be more expensive. Having a Will is usually more economical and assures that your wishes will be followed.

What are Powers of Attorney?

Powers of attorney are documents in which a mentally competent adult can appoint someone to look after certain matters in the event of future incapacity, caused by illness or accident. There are two types: Power of Attorney for Property and Power of Attorney for Personal Care.

Who can be an Attorney?

Usually one names a spouse, child or close friend. It need not be a lawyer. The attorney for property must be at least 18 years of age and the attorney for personal care must be 16 or older. The attorney should be trustworthy and preferably close at hand. It is possible, and sometimes advisable, to name more than one person.

What can be accomplished with a Power of Attorney?

The designated attorney for property has authority to give an individual or trust company authority to handle specific financial or property matters.



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You can provide that this authority will survive any future period of mental incapacity or that it takes effect if you are certified incompetent. By designating this person, you avoid complicated applications to the office of the Public Guardian and Trustee to name a statutory guardian for property. The person you designate as having power of attorney for personal care can give direction concerning medical treatment or health care. This can be specific and subject to certain restrictions or it can be general.

Is the Power of Attorney limited in any way?

In a Power of Attorney for Property, you can limit the time frame in which the power can be used, or you can limit the assets the attorney has authority over. For personal care, you can specifically limit authority to act. Although a power of attorney is generally activated in times of mental or physical incapacity, it can be a useful tool if you cannot be physically present to complete a business transaction.

Are Wills and Powers of Attorney necessary?

Yes. Power of Attorney operates during one's lifetime and the Will operates after death. For reasons of economy, documents are normally prepared and signed at the same time.

Do I need a Power of Attorney for Property if I have signed one at my bank?

Yes, it's a good idea to sign a form at your bank, but this only pertains to transactions and assets at that bank. The general Power of Attorney for Property is a much broader document and can be used for all legal transactions.

What about the Power of Attorney forms I can fill out myself?

The forms available widely are legal as long as they are filled out and witnessed properly. Certain people cannot witness Powers of Attorney documents and the directions and restrictions contained in Powers of Attorney must be clear. We recommend you check with a lawyer.

At Lancaster Brooks & Welch we recommend that everyone should have a properly drawn Will and Power of Attorney for Property. Power of Attorney for Personal Care should be considered as well, perhaps after family discussions. Once these matters are discussed, prepared and signed, your affairs are in order and peace of mind results. Any of our Estates lawyers are happy to answer further questions.

The information provided in this brochure is designed to provide topical information of a general nature only. You may wish to discuss any specific matter with your lawyer and you should feel free to do so at any time. This material is provided for information purposes only, not as legal advice, and is not intended to be exhaustive of your rights under the relevant legislation.

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