



How to Avoid the Worst Financial Blunder

You Can Make When Preparing Your Will



Edward Olkovich Law

Certified Specialist, Estates and Trust Law

For your protection

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Message from Ed Olkovich



Your loved ones count on you to avoid the worst financial mistake ever. I wrote this report to help you; it gives you the keys to form your own financial intentions.

I have written several estate books to help people make better decisions, including *The Complete Idiot's Guide to Estate Planning in Six Simple Steps for Canadians* and [**Estate to the Heart: How to Plan Wills and Estates for Your Loved Ones.**](#)

Since 1978, I have practised law in my Toronto law firm. I am one of Ontario's few Certified Specialists in Trusts and Estates Law and I also sit on the Law Society of Ontario's specialist board that certifies all specialists. In addition, I edit Carswell's legal text on Executor Duties and Compensation.

I have spoken to the media, professionals and public audiences across Canada. I work hard to improve my clients' experiences preparing their wills, or handling estate administration and estate lawsuits.

My memberships include the Law Society of Ontario, Ontario Bar Association, American Bar Association and the Society of Trust and Estate Practitioners (STEP). I am a past member of the Canadian Association of Professional Speakers. I still find time to travel and play tennis at Toronto's Boulevard Club.

A handwritten signature in black ink, appearing to be 'Ed Olkovich'.

Edward Olkovich, B.A., LL.B., LL.M., C.S., TEP | [**MrWills.com**](http://MrWills.com)

The Worst Financial Blunder You Can Make

"The art is not in making money, but in keeping it"

– Proverb

You are part of the world's greatest demographic shift. Aging populations will pass billions in wealth to the next generation, and that means you will either transfer or receive family money in an inheritance. Failing to plan for this transfer is a mistake. And not making proper wills can be your biggest financial blunder.

What's your plan to protect your family's money after your death? We all know how bitter squabbles develop over family money. Estate family fights can start once you are gone, regardless of how much money is at stake. You don't have to be rich to need a will.

Perhaps you don't care what happens. You don't want to talk about wills or estate plans, and think that you'll get around to dealing with it some day. Okay, I understand. However, your loved ones can suffer because you put things off. Last-minute plans are often rushed and contain mistakes – and that makes estate disputes over your money even more likely.

Your assets, real estate, business and investments that you've worked your whole life for can disappear. Your money can be wasted on unnecessary taxes and legal fees. Who's legally in charge of your money if you don't have a will? The answer is no one.

I see estate disputes that squander money and tear families apart. Blended families, stepchildren, common law partners and dependants are today's reality. They add complexity to transferring money by your will.

If you make your will online, is that good enough? Court costs to interpret do-it-yourself wills can top tens of thousands of dollars. Sometimes your mistakes can't be fixed. Invest in legal advice from an experienced estate lawyer. Save your family and money from disasters.

This report helps you understand the simple keys to making your will. Don't be afraid. Just turn the page to get started. It's that simple.

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“We make a living by what we get,
but we make a life by what we give.”

– Winston Churchill

Glossary

Beneficiary – Person or organization who benefits. You can be a beneficiary if you are left something in a will. You can also designate or be designated a beneficiary under life insurance policies, pensions or registered investment plans.

Blunder – Mistake you make carelessly. Especially serious when you don't name executors in your will. Executors protect your loved ones and your money.

Estate – Whatever you leave behind when you die: your assets less your debts and taxes. You don't have to be rich to have an estate.

Estate Trustee – Another name for executor in Ontario. Your estate is frozen on your death unless you have estate trustees or executors named in your will. It can also mean the persons who handle trusts created in wills.

Executor – Also called estate trustees in Ontario. This is your estate's legal representative named in your will, if you have one.

Income Taxes – At death, certain property is treated as income for income tax purposes. It is deemed disposed of at fair market value and taxed even if gifted. This means assets such as RRSPs can be treated as income.

Intestate – Nine-letter dirty word meaning you died without a will. This is a blunder. The government writes your will for you and takes all it can in taxes. Government rules decide who gets what and who is in charge of your money. Don't be fooled thinking this is what anyone wants.

Probate – Legal process that proves who shares and administers your estate. Probate or estate courts have jurisdiction over estates when someone dies with or without wills.

Will – Legal document you sign to deal with your estate. You appoint executors who manage and distribute your estate to beneficiaries after you die.

Worst – See Blunder above.

Key 1: Start Right to Finish Right

Making your will is easy if you know how to get started.

Don't start off on the wrong foot like Diane did.

Diane is a busy mother of twins. She wants her children to be protected should something happen to her. Diane incorrectly believes, "Making a will is easy because everyone gets the same will."

Diane's mistake, unfortunately, is a common one.

There is no one-size-fits-all will you can use. No off-the-shelf or online will can meet everyone's needs. Don't learn this the hard way.

The first key to making your will is to start right. You need to find your starting line.

Why You Are Special

Everyone comes to the starting line with different needs and assets.

That's why making your will is personal and is different from everyone else's will.

You need a different will when you're 75 than when you're 35 with young children.

Here's a way to see more clearly why you are special. Start by answering these three short questions about yourself.

You Are Special? Circle Your answers.

1. Are you:

- Single
- Married
- Widowed
- Getting married
- Separating
- Going through a divorce
- A common law partner
- Specify other _____

2. Who is to benefit in your will?

- Your spouse or adult children
- Education of minor children
- Care for a disabled spouse or adult child
- Financial support of your local homeless shelter
- Sale of business to your business partners
- Supporting searches for cures
- Protection for Eddy and Teddy, your Siamese cats
- Securing your own needs in old age
- Specify other _____

3. Your estate includes:

- House, vacation home, rental property
- Boat, car or art
- Investments
- Bank accounts
- Retirement or pension funds
- Life insurance
- Your business
- Jewels, coins or dolls
- Specify other _____

By answering those questions, you just identified why your needs are different from everyone else's.

Start by Reviewing What You Own

You can do this by drawing a circle on a piece of paper. Imagine this circle contains everything you own. I call this your estate pie. Your estate contains three kinds of assets.



Your estate pie includes your **will assets**, your **joint assets** and your **designated assets**. Will assets are distributed according to your will. Your designated assets are pensions, insurance and registered investments. You designate named beneficiaries to receive these assets outside of your will. Getting advice on who to designate as a beneficiary can save you a bundle of taxes.

Joint assets such as your home pass to surviving joint owners. Anything that is not designated or joint is controlled by your will. That's why it is critical to understand what assets are referred to in your will.

Your estate can be worth thousands or millions of dollars. Regardless of what you own, it all fits into this pie.

The more valuable your pie, the more professional advice you need. This is particularly important if you are in a second marriage, have investments or own a business.

Saving taxes is an important advantage of making your will. This will become clear in the next key, **Avoid Falling into Major Tax Traps**.

Key 2: Avoid Falling into Major Tax Traps

Do you know the biggest tax mistake you can make? Neither did Karl, a 72-year-old mechanic who was set to undergo open-heart surgery. Karl wanted to avoid provincial probate tax. Were those the only taxes he had to consider?

Karl told his lawyer, "Register my children as joint owners to my condo."

"Was that the best thing to do?" Karl asked his lawyer after the operation.

What do you think? I'll give you my answer in a moment.

Don't Jump on the "Avoid Probate Bandwagon"

Probate certifies who's in charge of your estate. This process can protect your estate from abuse and fraudsters.

Don't jump on this bandwagon. Probate taxes are not the biggest tax problem you need advice about. Federal income taxes can be as much as 50%. On the other hand, in Ontario, provincial probate tax is calculated roughly as 1.5% of your probate estate.

Are you thinking of putting your child on title to your home? Watch out! Remember Karl who transferred his condo into joint ownership with his children?

Karl needed to consider the income tax consequences to his transfer.

You need independent legal advice before transferring your property into joint ownership with your children. This means getting advice from your own lawyer — not your children's lawyers.

You should be aware of the many dangers of joint ownership. Using joint ownership to avoid probate can create other problems. For instance, it means you lose control over your property.

Court Decisions Confirm the Dangers

Despite your best intentions, joint ownership won't prevent bitter and costly legal battles among your children.

You may end up disappointed – just like Karl. He learned – too late – that his children's creditors can lay claim to his condo as it is jointly owned. You don't want to buy back your own property from your child's creditor or partner, do you?

Another issue with joint ownership is that it creates income tax problems. These can crop up when you transfer property, like a cottage. This is property that can be subject to capital gains tax. Karl or his children may be on the hook for significant income taxes.

If you transfer taxable property and receive nothing in return, your estate still has a tax issue. The government deems you sold the property at fair market value and uses that value to calculate your tax bill.

Taking a piecemeal approach to making your will without tax advice is wrong. Instead, **you need to see the big picture**. Consider the income tax consequences when you transfer assets into joint ownership. There may be other tax-saving strategies you can use to reduce your tax bills.

Keep in mind, though, that income tax laws change daily. How are you going to stay on top of the latest rules and regulations? It makes good sense to rely on professionals to give you proper advice.

They can also help ensure that you don't pay more in taxes than you need to. Taxes can eat up your money and destroy your loved ones' dreams. Planning now will enable you to provide for those you love, including your favourite charities. You can save taxes and give the government less.

How can you do that? I'll explain as we talk about wills.

Key 3: Prepare Valid Wills

Simon had no clue how to divide his estate. He was going on a trip to Vancouver and wanted to make his will before he left. He considered going online instead of having a lawyer-prepared will.

Most online will programs include disclaimers specifying that they are not responsible for what you do with their forms. Like everyone who uses a do-it-yourself will, you may believe that you protected your family. How do you know if your online will has errors? What will your family do if there are mistakes or problems?

There are things Simon probably did not consider about online services.

Use lawyers to prepare your will if...

I can never recommend online will services. However, these providers should tell you not to use their service if:

1. You're going to be married.
2. You have a history of cognitive impairment.
3. You are separated from your partner.
4. You have a common law spouse.
5. You've recently been hospitalized.
6. Your estate may have a recreational home, rental property or business.
7. You need multiple wills to save probate tax.
8. You own or will inherit assets outside of Canada.
9. You need help choosing executors.
10. You have minor children or dependants with special needs.

Online will forms carry risks that some people choose to ignore because they want convenience and low prices. Remember, these services cannot give you any tax advice. The information they supply is no substitute for individual legal advice. Consider finding will lawyers in your price range. It is no secret that you usually get what you pay for.

Get Help to Make Your Will Decisions

Chances are, you aren't qualified to judge the quality of your online will. What is missing? What did you leave out or forget? Do you know if you cheated yourself or your loved ones?

Lawyers are insured in case they make a mistake. Plus, they must take professional education courses each year to keep up with the law.

The charities you wish to benefit usually suggest you use a lawyer. In short, your best investment for everyone is a lawyer-prepared will.

Remember, **without a will**, your estate is distributed not as you wish, but as the government decides. Without a will, you have no say in:

- who gets what
- who is in charge of your affairs
- when your estate is divided

Want to know three things you must decide to make your will?

Things You Must Decide

Decide these three things to make your will:

1. Who will be in charge of your estate (executor)
2. Who gets what (beneficiaries)
3. Who your executor and beneficiaries will be in case the ones you name are not around (backups)

If you have minor children, you also need to name their custodians or guardians. Without a will, minors' money must be paid into court.

Lawyers Can Answer Your Questions

Your will is your most important financial tool. Don't underestimate the legal skills required to prepare this document: It's a job for professionals, not amateurs.

Wills protect assets from costly court cases. Invest in protecting your loved ones from uncertainty and hardship by consulting a lawyer.

Do-it-yourself online wills are not a good way to protect your family. Though they seem like a good idea at the time, most homemade wills have flaws that laypeople cannot identify and that can be impossible to fix. Those mistakes can make your will invalid.

The Trick to Wills is Having a Valid One

Do not forget that wills are legal documents.

You may not grasp all applicable laws when you make your will. Anyone who makes a will must comply with all formal legal requirements. That means having an understanding of family, property, estate and tax laws.

Legal documents are interpreted, challenged and contested in courtrooms every day – including DIY wills. If your will is challenged and is found to be invalid, your spouse and children may not get what you intended.

Invest in proper, lawyer-prepared wills. That way, you can avoid simple mistakes and save your loved ones from trying to fix problems in costly court cases after your death.

It's equally important to ensure you put the right person in charge of your money.

Turn the page to find out why.

Key 4: Choose Executors to Manage Money

When you are no longer around, who will pay your bills? Who will control your estate and ensure that your loved ones get what they need? Who do you trust with all your passwords and to sign your tax returns?

This is the job of your estate's legal representative or executor. In Ontario, we also use the term estate trustee with a will.

Imagine you have a daughter, Ann, an accountant, who lives on the west coast. You have a son, Bob, still living at home with you.

Who should be the executor in charge of guarding your estate?

Do Your Homework — It Pays Off

Should it be Ann? Or Bob?

I will help you answer this personal question in a second.

But first, can you answer these **questions about executors**?

- When should you use a corporate or professional executor?
- What's the most important quality to look for in your executor?
- How do you prepare your executor?

Knowing the answers to these questions is crucial to ensuring your estate is managed as you wish.

Where Should You Look for Executors?

People think choosing executors is easy. However, if you make the wrong choice, everyone could end up paying for it. That's why it's critical to choose wisely among family, friends and professionals.

There are three key guidelines to keep in mind when choosing executors:

1. Family comes first: Always consider family members first. They are probably also your beneficiaries and therefore have an interest in winding up your estate quickly and economically. That said, there are also many reasons to avoid using family members as executors. For instance, family can be disqualified because of conflicts of interest, living out of province or age.

Experienced estate lawyers can help you make the right choice between Ann or Bob.

2. Consider professionals or trust companies if you:

- Have assets that require special skills or long-term management
- Need someone to operate a business until it is sold
- Have an estate that may be contested or involved in lawsuits

3. Choose trustworthy executors: Honesty and reliability are key factors in choosing executors. Perhaps Ann and Bob should work together as co-executors.

Keep in mind that most executors learn on the job. Do you require experienced executors? For example, second marriages and blended families create special challenges. Is it Bob or Ann or both together? Get a second opinion from your lawyer if you aren't sure about your choice.

You may be wondering: Can wills prevent family fights?

In most cases, my answer is yes. However, your will must also satisfy your legal and moral obligations. Find out how in the next key.

Key 5: Stop People from Fighting

Jack worked hard to earn his money as the owner of a small printing business. "I can do whatever I want with my money!" he said. "I'll make my will as I please."

Do you think Jack is right?

You may not realize that people can challenge your will.

In some jurisdictions, judges can basically rewrite wills. This can happen if Jack fails to honour his **legal and even moral obligations** in his will.

Normally, such obligations extend to:

- married spouses
- dependants (persons you must support)
- children with special needs
- common law partners

In our scenario, Jack and his common law partner, Marg, had been together for 12 years. Marg was financially dependent on Jack.

When Jack passed away suddenly without a will, Marg was left worrying how she could support herself.

"Jack promised me I would never have to worry about money," she said.

Because Jack did not make a will, Marg was forced to sue Jack's children from his first marriage to get support.

If you ignore your legal obligations in your will, you're asking for trouble. Don't expect your spouse to automatically inherit everything if you haven't made that provision in your will. Instead, they may end up with lawyers in court fighting for what they need.

Guess who paid for all the lawyers in the dispute over Jack's money?

Provide for Your Beneficiaries and Your Dependants

Don't ignore your legal obligations. Otherwise, your money, like Jack's, could be wasted on courts, lawyers and delays.

Each province has laws to protect dependants, married spouses and common law partners. Their legal rights can override terms in your will.

Your will may need to hold money in trust for vulnerable persons. You may require special trusts to benefit beneficiaries who can't manage money, such as discretionary or Henson trusts. Your executors can also be trustees of these trusts. You will need special legal advice to create trusts.

With the right professional advice, you'll be able to avoid conflict, grief and trips to the courthouse.

Now let's wrap up with the final and most important key.

Key 6: Take Action Now!

This last key requires you to take action now!

John and Jillian, both in their 30s, were going on vacation. They were not taking Heather, their three-year-old daughter, with them.

Suddenly, they realized that they had no will, guardian or trust set up for their daughter. They needed to do something, but weren't sure what was involved, how much it would cost or how long it would take.

Taking action now involves these steps:

1. Get Legal Advice to Make Your Wills

Prepare a list of concerns you need to address, including:

- Planning for minors
- Providing for beneficiaries
- Reducing taxes

Lawyers should be able to help clarify your choice of:

- executors
- guardians
- beneficiaries

Doing a little homework now will save you time and money later.

2. Obtain Referrals to Estate Lawyers

Ask friends, accountants and lawyers for referrals.

Search law firm websites to find lawyers with estate experience. Interview lawyers you're considering hiring. Reach out by email, telephone or in person.

Inquire about any lawyer's qualifications, work arrangements and how to get appointments.

Bring your background documents (e.g., separation or shareholder agreements) to the appointment. Make a list of your questions.

Confirm with your lawyer when draft documents will be prepared. Be sure to review your will before your appointment to sign.

What does it cost to create your will?

Legal fees depend on:

- the experience of your legal advisors
- the complexity of your circumstances
- the local fees charged in your area

You can find capable estate lawyers in most price ranges.

Congratulations! You now know the keys to avoid the worst financial blunder you can make.

Keep the ball rolling. Make your will NOW!

To your will making success,

Ed Olkovich,

Certified Specialist in Estates and Trust Law

MrWills.com

Need additional help?

If you have an urgent legal matter, it's important to get legal advice immediately. Only a lawyer can assess your particular needs and protect you from suffering any loss.

Book an Appointment with Ed

If you are an Ontario resident, you can book an initial in-person consultation with Ed in his Toronto office. The appointment is 45 minutes and **\$375 Cdn.** You will be asked to pay the \$375 (includes HST) in advance to book your appointment as well as sign and return an [Agreement for Initial Meeting Legal Services](#).

To book your appointment, please call

416.769.9800 (local)

1.877.679.4557 (toll-free)

or book online at:

MrWills.com/contact