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No will? Get one now!

Web site underscores why it should be prepared by a lawyer

November is "Make a Will" month in Ontario, and the Ontario Bar Association, Certified General Accountants, Canadian Cancer Society and Heart & Stroke Foundation have launched a public education campaign to promote a better understanding of the benefits of a lawyer-prepared will, estate planning and charitable donations.

To kick off the campaign, the bar association has unveiled its Make a Will Web site at *http://www.oba.org* in response to a growing public demand and need for accurate information on wills and estate planning.

According to a survey by Decima Research in 1999, 46 per cent of Canadian adults do not have a will. Among them, 40 per cent have children who would be left unprotected. If a good percentage of the Canadians without wills are homeowners, that's a great deal of Canadian real estate left unprotected if the owner dies.

The Web site has an excellent true-or-false quiz to test knowledge and answer common questions. The quiz targets public misconceptions about wills, and parts of it are worth repeating in this column. Each nugget of information is followed by a brief explanation taken from the Web site.

- Wills can be handwritten and still be legal. For an unwitnessed will to be valid, the whole document must be completely handwritten with no typed or pre-printed portions. Often handwritten wills leave out important parts like naming an executor or disposing of the entire estate.

- Video wills are not valid in Ontario. If you've seen it on TV, it was a U.S. program.

- Provincial family law gives your married spouse a right to share in your estate. Surviving spouses have property and support rights after death that cannot be ignored.

- A surviving spouse does not always get the whole estate if there is no will. The spouse gets the first $200,000. Any amount over that is shared with the children.

- Common law spouses do not have the same rights as married spouses if one dies without a will. Common law spouses have no rights to share in the deceased spouse's property if there is no will.

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- The government can take control of the assets of an incapacitated person who has made no prior arrangements. This rule applies unless a family member takes the time-consuming and expensive steps to gain control. A power of attorney is the simple answer here.

- A power of attorney is not a replacement for a will. All rights under a power of attorney end at death. An estate is still responsible for income tax, even if there is a will. The government always gets its cut before the beneficiaries.

- Naming children as beneficiaries of life insurance policies can save money in the long run. The insurance proceeds are free of probate fees, income tax and creditors' claims, but for beneficiaries under 18, the government will hold on to the money until the minors come of age.

- It is possible to save some tax by naming someone to get RRSP proceeds directly. This is true as long as the beneficiary is the spouse or common-law or same-sex spouse, or a dependent child under 18 or one who is permanently disabled. If anyone else is named, the beneficiary gets the full amount but the estate gets hit with the tax on it.

- Preparing your own will may not save time or money. Most lawyers prepare wills at a very reasonable cost. If there is no will, or if the home-made will is defective, the costs to the estate in terms of extra probate fees, administration bond charges, and legal fees will greatly exceed any saving by not paying a lawyer to do it properly in the first place.

- It is important to get some professional advice before leaving a cottage to one of the children. Family cottages are usually not free of capital gains tax and can create large tax headaches when both parents pass on. The advice of a lawyer and tax accountant are crucial in this scenario.

- A good way to avoid or reduce probate costs is to make sure that everything is owned jointly with other family members. Although technically correct, this is not always advisable. Probate costs are one-half of 1 per cent on the first $50,000 and 1.5 per cent of the value of the rest. Trying to avoid or reduce them by placing assets in joint ownership exposes the asset to the creditors of the new joint owner. As well, if a dispute develops with the co-owner, you lose the ability to deal with the asset yourself. If the new joint owner is a child, there may be immediate tax problems such as triggering a capital gain, and the asset is subject to a claim by the child's spouse in the event of a separation or divorce.

The Web site also notes several hot spots relating to spousal relationships. Marriage or remarriage, for example, revokes an existing will, but divorce and separation do not. A divorced or separated spouse may wind up with the estate assets if a will is not revoked, replaced or destroyed.

Ontario law does not recognize common law or same sex spouses for the purpose of estate distributions. The notion that three years of living together is as good as married does

not apply to estate distributions. The only way, in a common law or same sex relationship, to ensure that your partner receives a fair share of your estate, is by way of a properly prepared will.Anyone who owns a house or business or investments, who is married or in a relationship, who has children or who wants to benefit friends, relatives or charities should have a will. If you are in one of these categories, and don't have a will yet, do something about it now.

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