

HERTZBERGER & ASSOCIATES

Barristers and Solicitors

30 Duke Street West, Penthouse, Kitchener, Ontario N2H 3W5

GREGORY C. HERTZBERGER, B.A. (HONS.), LL.B.
A. NICHOLAS SIMPSON, L.L.B.

Tel: (519) 570-1944

Fax: (519) 570-0989

www.hertzbergerlaw.com

ghertzberger@hertzbergerlaw.com

nsimpson@hertzbergerlaw.com

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Dear Client,

We are pleased to provide the following information to you for consideration in planning your estate. In the event that you pass away without a Will, your estate will be distributed to members of your family in the proportions prescribed by provincial law (the law of *Intestacy*). While this may or may not be according to your wishes, this manner of distribution will usually cost the estate more and there will therefore be less money available for distribution to the family.

A Will, therefore, is used to distribute assets according to your wishes upon your death. It also names parties you choose to administer (look after) your property. The “Executors” file tax returns, pay any debts owing by the estate, and, finally, distribute the remaining assets of the deceased’s estate as set out in the Will, and as required by the Court. The Will can also be used to provide “special instructions” for the distribution of specific property and heirlooms in the event that you and your spouse pass away at the same time.

A Will is used to defer, minimize, or, in some cases, eliminate taxes upon death. Business interests can be protected and the value maximized by providing details for the businesses disposition, continuation or winding up.

Most important, in my opinion, is that the Will allows you to express your wishes as to whom you want as guardians for your children. Relatives may not always be the best choice for a Guardian, and consideration must be given to the financial situation for the potential guardian, as well as his/her health, age, willingness, and ability to care for your children. It also allows you to establish an Infant’s Trust and name an individual of your choosing to administer the Trust on behalf of the kids. This maintains control of the money in the estate, and will also allow you to direct at what ages your children will receive their inheritance.

There are many technicalities surrounding the drafting and execution of a Will and you are strongly advised not to rely on any document not prepared by a lawyer. If an error is discovered, it will be too late for it to be rectified then. The Will must be signed and witnessed by two individuals. There are those who cannot be witnesses, including: the named executor, beneficiaries, and anyone under the age of 18.

The Will should be updated or changed if necessary at various stages throughout your lifetime, as

Monica Jewer
Real Estate
mjewer@hertzbergerlaw.com

Alicia Huot
Real Estate
ahuot@hertzbergerlaw.com

Lee-Anne Gadd
Corporate/Commercial
lgadd@hertzbergerlaw.com

Rhonda Vaughan
Wills/Estates/Matrimonial
rvaughan@hertzbergerlaw.com

Elizabeth Almeida
Corporate/Commercial
ealmeida@hertzbergerlaw.com

your circumstances change from time to time. Marriage, separation and/or divorce usually require you to make a new will.

The Will you have when you have young children will be different than the Will you have when your children are grown, as their financial circumstances differ and they have dependants of their own. You may also give directly to grandchildren at some point.

Powers of Attorney

A Power of Attorney is a document in which you name a person or persons to act on your behalf in the event that you become physically or mentally challenged. Please be aware that there is no formal supervision of the attorney. The party chosen must therefore be trustworthy. You can end (revoke) a power of attorney you have given at any time, but you must have the legal capacity at the time you elect to do so. If a power of attorney is being abused, steps can be taken to have the power of attorney revoked by court order.

If you don't have a power of attorney, and you become incapacitated, the government will step in and manage your affairs and later, after court proceedings, one or more individuals will be appointed to manage your affairs. This costs money and it will be at your expense. You will have no input into who will be appointed to manage your affairs.

Attorney for Property

A Power of Attorney for Property deals with assets such as bank accounts and real estate, while a Power of Attorney for Health Care authorizes an individual to make decisions on your behalf with respect to Health Care, nutrition, shelter, clothing, hygiene or safety.

Please consider the foregoing carefully and consult a lawyer in order to ensure that your decisions are based on proper review of your particular situation. In most jurisdictions your spouse and dependant children will have some claim on your estate. In some jurisdictions your adult children may have some claim on your estate. A dependant unmarried (common law) spouse may have a claim. Also, on death, some of your assets may not go through your will, but may pass directly to named beneficiaries. If the foregoing are all taken into account, your estate will be protected and your wishes for those you love and those you don't will all be taken care of efficiently, without wasted time or money.

Yours very truly,
HERTZBERGER & ASSOCIATES

Gregory C. Hertzberger
GCH/rv