**WILL INSTRUCTIONS and QUESTIONNAIRE**

**Along with Powers of Attorney (P of A)**

V9

DATE INFORMATION TAKEN\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAMES OF TESTATOR(S)[[1]](#footnote-1)

*This questionnaire though primarily a means of the lawyer recording your instructions can be a helpful guide in preparation for the meeting.* ***The comments in italics*** *are our explanations of terms and choices you may make. A will is largely a blank sheet of paper, it can within certain limits state whatever you wish. Our suggestions are just those based on decades of experience.*

The difference between a will and a P of A

*Will you are dead you give things away. Power of attorney you are alive and give power away - but very important document determines who will manage your affairs if you are alive but cannot. Usually a P of A starts to work as soon as signed, not when you become incapacitated – choose Attorney (which is not the lawyer) very carefully*

*A will is a unilateral document. It can always be changed unless one is bound by the terms of a marriage contract.*

**INTRO QUESTIONS**

[ ] SINGLE PERSON WILL & P OF A [ ] COUPLE WILL & P OF A

AND

[ ] STANDARD SOLITARY WILL (S) [ ] **OR** PRIMARY & SECONDARY WILL

*Use primary & secondary wills generally when own shares in a private company or will be taking advantage of trust agreement – see pamphlet “A strategy to reduce or eliminate probate fees”*

[ ] NO ASSETS OUTSIDE OF ONTARIO

[ ] OR WILL ONLY AS TO CANADIAN ASSETS

*If you have assets in another country there is no assurance that your Ontario will, will be recognized. You should show your Ontario will to a lawyer in the Country where you have those assets*

[ ] NO SIGNIFICANT ASSETS ASIDE FROM house, money in various forms in a bank such as RRSP, savings car etc.

[ ] ADDITIONAL ASSETS SUCH AS AN INVESTMENT RENTAL PROPERTY

DETAILS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**TESTATOR #1 T1 FULL NAME**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*The testator is the person who creates the will. If you have multiple names check the deed to your home or passport – it is always spelt the same?*

[ ] AKA NA or AKA\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DOB

EMAIL ADDRESS

Phone # HOME\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone # CELL\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**TESTATOR #2 T2** FULL NAME\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] AKA NA or AKA\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DOB

EMAIL ADDRESS

*Huge difference between formal marriage and common law – ensure this is clarified – if you later remarry your will becomes invalid unless we take certain steps to avoid this.*

T#1 & T#2 [ ] MARRIED [ ] COHABIT SINCE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] ONLY MARRIAGE OR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*If you have been married before, or have children not with your current spouse this requires careful attention.*

**RESIDENCE**

ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

HOME VALUE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ MORTGAGE(S)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REGISTERED OWNERS [ ] JOINT TENANTS OR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*How you own your home is crucial for your will – joint tenancy means an automatic right of survivorship and the property goes to the survivor, irrespective of your will. We can search title to your home that will reveal definitely how your home is owned. A tax or utility bill will not answer that question.*

[ ] Verified by [ ] sub search or [ ] examine deed OR [ ] Client declines the $113 expense

[ ] HOME IS TESTATOR’S MAJOR ASSET OR [ ] OTHER ASSETS SKETCHED OUT BELOW

**CHILDREN**

*Children means your blood descendants or legally adopted children- step children are not included unless specified. But the word “children” or “Issue” does include children born out of wedlock even if you have no relationship with them.*

No. of Children \_\_\_\_\_\_\_\_\_\_\_\_\_\_ & ages\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANY children of which T1 or T2 are not the natural or adopted parent of

**HEALTH AND RELATIONSHIP**

Mental and Physical Health of immediate family

*The physical mental and interrelationship dynamics in the family are critical in doing a will and planning accordingly*.

[ ] everyone is mentally and physically healthy **OR**

[ ] These family members have physical or health challenges relevant to estate planning

[ ] ALL IMMEDIATE FAMILY MEMBERS ARE CLOSE AND CAN BE RELIED UPON

OR DETAILS OF FAMILY FRICTION AND DYNAMICS

**INSURANCE TRUST CLAUSE**

[ ] YES INSURANCE CLAUSE – EXTRA $500 FEE – [ ] NO INSURANCE CLAUSE

*Our law firms practical threshold for most clients is $500K or more life insurance, it is a sophisticated method of making proceeds of insurance policy governed by the detailed provisions of will , such as providing for grandchildren and encroaching on funds before they reach age 18 , yet not subject to probate fees or attack by creditors*

*IF USE INSURANCE CLAUSE – critical once will completed that you advise the insurer of the beneficiary change AND they acknowledge the change in writing*

**ASSETS OUTSIDE YOUR WILL**

Clients frequently will name beneficiaries of assets such as RRSPs, RIFFs and insurance policies. Insurance policies are a separate issue that are covered under the section titled insurance trust clause. No income tax is generally triggered by one’s death on an insurance policy death benefit payout. However, there will be significant tax and I would like that clause. **HOWEVER, THERE WILL BE SIGNIFICANT TAX** triggered by one’s death on any RRSPs or RIFF, you own unless the beneficiary is your spouse, common law spouse, financially dependent child or grandchild. Your Will **WILL** contain a clause that a. requires the beneficiary to pay the tax triggered and b. that you meant the beneficiary clause to be exactly that – that the asset flows outside the Will;

***Unless you tell us to the contrary re a. and b.***

The law generally requires the estate to pay these taxes even on an asset that flows outside the Will.

**EXECUTORS**

*the executor is the person(s) in charge of administering the terms of the will after the death of the testator. Must choose someone you trust absolutely and is responsible and diligent.*

**PRIMARY EXECUTOR**

*Your first choice, often your spouse but not if your spouse by virtue of age or some other disability not a reasonable choice*

[ ] T1 & T2 each other

OR

T1 PRIMARY EXECUTOR name relationship to T1 & city of residence

T2 PRIMARY EXECUTOR name relationship to T2 & city of residence

[ ] IF NAME MULTIPLE PRIMARY EXECUTORS GAVE THE WARNING AGAINST SAME – IF CONFLICT ENSUES ONLY A COURT CAN RECTIFY – MINOR DECISIONS CAN BECOME CUMBERSOME – SPOUSES BECOME INVOLVED - ALL EXECUTORS MUST ATTEND AND AGREE ON ALL STEPS

**ALTERNATE EXECUTOR**

*Common in close family to name an adult child to be a backup alternate executor, i.e. if the primary executor is not alive or available. DO NOT name all of them unless carefully discussed with lawyer. See warning above re multiple executors. You love them all equally so name them as equal beneficiaries*

FOR ALL TESTATORS

[ ] CHILD NAME \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City of residence\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OR

T1 ALTERNATE EXECUTOR name relationship to T1 & city of residence

T2 ALTERNATE EXECUTOR name relationship to T2 & city of residence

[ ] NO EXECUTOR COMPENSATION TO BE REFERRED TO *– Silent which means an executor could apply for such taxable compensation, that as a rule of thumb can be 5% of value of estate*

OR

DETAILS OF EXECUTOR COMPENSATION

[ ] OR BEQUEST IN LIEU THEREOF *(USUALLY Only given when the executor is not a beneficiary)*

**SPECIFIC BEQUESTS**

*Generally not a specific asset one owns now as this may not be in existence at time of death, but rather a sum of money or a sum of money to be divided amongst a class of people such as grandchildren. A bequest (gift) is not taxable, executors fees are.*

[ ] UNLESS YOU TELL US OTHERWISE – The named beneficiary of an asset ( such as an RRSP ) , to the LIMITED degree your will can enforce it, is responsible for the income taxes on that asset triggered by your death

DETAILS

**RESIDUE CLAUSE**

*The residue is the main portion of one’s estate. After debts, administration costs, taxes and specific bequest are paid.*

[ ] all to spouse and upon death of spouse to issue in equal shares per stirpes age 21

*This is the standard clause found in the majority of wills throughout the English Commonwealth, or former English colonies such as the USA. The phrase “to my issue in equal shares per stirpes” is to ones blood descendants, children grandchildren*. *Age 21 is standard but you may chose a different age or even stages. For an explanation of the term to my issue in equal shares per stirpes see our blog article:*

[*https://www.dalestreimanlaw.com/wills-power-attorney/*](https://www.dalestreimanlaw.com/wills-power-attorney/)

[ ] issue age 21 OR [ ] Issue receive at age\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OR [ ] alternatives

**SON IN LAW CLAUSE**

Let us assume you have left everything to your daughter who predeceases you leaving behind two young children and her husband.  The son-in-law clause allows the executors to release all of the money that belonged to your grandchildren to their father thus ending the estate without waiting for the children to reach the age of 21.  This title and the illustration is only an example and of course applies irrespective of gender and applies to any parent or guardian.

I DO [ ] DO NOT [ ] want my executors to have the ability to pay a child’s inheritance to a parent and thus end that obligation of the will

[ ] HENSON TRUST

*Generally used for a disabled child who will never be self-sufficient and is eligible for or receiving government assistance such as ODSP – it requires an executor whose age is almost the same or younger than the disabled child – concept is the money set aside for the disabled child is never theirs, they cannot misuse it and are far less susceptible to someone taking advantage of them. The executor can limit the money given annually to an amount less than a government maximum allowing ongoing eligibility for government assistance. A Henson Trust is usually expressed as a percentage of the residue*

DETAILS

[ ] FUNERAL INSTRUCTIONS

*A primary example is I wish my remains to be cremated*

[ ] GUARDIAN CLAUSE I appoint as guardian of a minor’s property and whom you would like child to be cared for, this is not binding on the courts but is an expression of your desire.

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**DETAILS IF DOING THE FULL TRUST AGREEMENT AND PRIMARY AND SECONDARY WILLS**

For lawyer to insert

**POWERS OF ATTORNEY or P of A**

*There are 2 kinds of P of A. one over property which means ANYTHING of value and the other is a P of A over the person – in which you appoint someone to make medical and health decisions for you*.

[ ] ATTORNEYS SAME AS EXECUTORS INCLUDING ALTERNATIVES

[ ] OR

T1 ATTORNEYS ARE

**For Property**

*Generally, but not as strenuously urged by your lawyer, not practically a great idea to have more than one, same reasons as Executor see above*

**PRIMARY ATTORNEY**

*Your first choice*

Name and relationship to T1 & city of residence

**ALTERNATE ATTORNEY**

*If the primary is not available*

Name and relationship to T1 & city of residence

T2 ATTORNEYS ARE

**For Property**

*Generally, but not as strenuously urged by your lawyer not practically a great idea to have more than one, same reasons as Executor see above*

**PRIMARY ATTORNEY**

Name and relationship to T2 & city of residence

**ALTERNATE ATTORNEY**

Name and relationship to T2 & city of residence

**For Personal Care**

*One should select a responsible compassionate giving person who will best look after the physical and health needs of the grantor – may choose more than one but if more than one must choose - can either make decisions or are they to only be made jointly*

T1 ATTORNEYS ARE

**For Personal Care**

PRIMARY ATTORNEY

Name and relationship to T1 & city of residence

ALTERNATE ATTORNEY

Name and relationship to T1 & city of residence

T2 ATTORNEYS ARE

**For Personal Care**

PRIMARY ATTORNEY

Name and relationship to T2 & city of residence

ALTERNATE ATTORNEY

Name and relationship to T2 & city of residence

[ ] YES WANT THE “PULL THE PLUG” Clause – *in essence telling your attorney – if I am only being kept alive by a machine no thanks. The rationale is to take the tough decision out of the hands of the attorney and give them direction now as to what you want - the actual wording is:*

I do not wish to have my life unduly prolonged by any course of treatment or any other medical procedure which offers no reasonable expectation of my recovery from life threatening physical or mental incapacity, except as may be necessary for the relief of suffering.

[ ] SILENT ON PULL THE PLUG CLAUSE – left to discretion of the attorney at the time

**STORAGE OF WILLS AND P OF A**

*There is only ONE original will no multiples. You will receive an unsigned copy as well as a scanned version of all of the signed documents including the will(s). You have some options on where to store the will and P of A and the mains ones are set out below. Keeping the originals in a drawer or cabinet at home is NOT A GOOD CHOICE. There can be multiple signed copies of a Power of Attorney.*

*If the lawyer retires, there are a number of young lawyers at the firm. It is hoped the firm will continue for many years. In the event the firm were to dissolve the Law Society of Ontario keeps track of lawyer’s files*

[ ] Leave originals with DS Law – no fee kept in a fireproof locked filing cabinet

[ ] taking originals with client – but kept in a bank safety deposit box

DETAILS\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] fireproof lock box at home

DETAILS\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**INSTRUCTIONS ON THE RELEASE OF THE WILL OR P OF A.**

*This is a matter of trust. A P of A can be abused. If our office is holding a copy of it are you comfortable with the attorney simply asking for it? Alternatively, are you creating an unnecessary obstacle for a trusted child as an example? Most clients do NOT ask for a medical note.*

[ ] NO Release WILL without a death certificate – except of course should the Testator while alive ask for it. *This is a standard term.*

[ ] RELEASE P OF A SIMPLY NEED WRITTEN REQUEST OF ATTORNEY

[ ] OR TO RELASE A P OF A NEED A NOTE FROM A GENERAL PRACTIONER DR. THAT GRANTOR LACKS CAPACITY TO MANAGE AFFAIRS

[ ] OR TO RELASE A P OF A NEED A NOTE FROM A SPECIALIST SUCH AS NEUROLOGIST OR GERENTOLOGIST DR. THAT THE GRANTOR LACKS CAPACITY TO MANAGE AFFAIRS

**FEES**

*The greater the complexity the greater the fee. However, a properly prepared will and associate documents can save your loved one’s significant fees, taxes and aggravation after your passing.*

***\*\* PLEASE NOTE, THE FEE THAT IS QUOTED BY THE SOLICITOR WILL BE REQUIRED TO BE PAID INTO OUR TRUST ACCOUNT BEFORE WE CAN BEGIN THE DETAILED WORK OF DRAFTING THE DOCUMENTS.***

1. Testator(s)- person making the Will [↑](#footnote-ref-1)