

DO I NEED A WILL?

(Do you like being in control?)

What a will is...

- ◆ Legal document
- ◆ Takes effect upon death
- ◆ Sets out what will happen with a person's property
- ◆ Can be used to address guardianship issues
- ◆ Can set out precatory wishes

What a will is not...

- ◆ Enduring Power of Attorney
 - ◆ “Property”
 - ◆ i.e. land, money, etc.
- ◆ Personal Directive
 - ◆ a.k.a. Living Will
 - ◆ Health and Medical decisions
 - ◆ Guardianship decisions (?)

Legal requirements of a will

- ◆ In writing
- ◆ In accordance with the *Wills Act**
- ◆ Signed at the “foot” by the testator
- ◆ 2 or more attesting witnesses **present** when the testator signs the will
- ◆ Witnesses sign the will in the presence of the testator

Exceptions

- ◆ Holograph Will
 - ◆ Own handwriting
 - ◆ Signed at “foot”
 - ◆ Clear intention
- ◆ Soldier's Will
- ◆ Mariner's Will

Cautions

- ◆ Pre-printed wills
 - ◆ Must follow all of the requirements of the *Wills Act*
 - ◆ Failure to do so may result in an invalid disposition or an invalid will
 - ◆ Easy to make mistakes
- ◆ Holograph wills
 - ◆ Entirely in own writing
 - ◆ Not printed on a computer
 - ◆ Failure to account for (entire) estate

Dying Without A Will

- ◆ Leaves children without a legal guardian if both parents die
 - ◆ Apprehension/foster care?

- ◆ Can create huge tax liabilities
 - ◆ No chance for tax planning

Dying Without A Will

- ◆ *Intestate Succession Act*
 - ◆ Until coming into force of new *Wills and Succession Act*
 - ◆ Determines how one's estate will be divided
 - ◆ Follows set regulatory scheme

Dying Without A Will

- ◆ Intestacy can create some problems
 - ◆ Court must appoint an administrator
 - ◆ Time consuming and costly
 - ◆ No control over changing situations
 - ◆ Must seek court direction to do something different
 - ◆ Example: care of dependent children → court directs that administrator pays for schooling/day-to-day care
 - ◆ Child wants to go to Australia to “discover” himself/herself → must apply to court for direction

Legislative Changes

- ◆ New *Wills and Succession Act* coming into force early 2012
 - ◆ If a current valid will is in place, whatever version of the Act that was in force at the time of execution of the will govern certain aspects, such as formalities
 - ◆ All new wills and intestacies after the coming into force will be determined under the new Act

Legislative Changes

- ◆ Significant Changes - Wills

- ◆ Marriage will no longer revoke an existing will
- ◆ A divorce may revoke a gift to a former spouse
- ◆ On death, a surviving spouse may claim his/her share of the matrimonial property from the estate

Legislative Changes

- ◆ Significant Changes - Intestacies
 - ◆ “All to spouse” Rule
 - ◆ If children from more than one relationship, preferential share given to spouse with remainder to intestate’s children
 - ◆ Spouse may be “disinherited” if >2 year separation and certain conditions exist

How A Will Can Give Control

- ◆ Specific gifts vs. “Rest and Residue”
- ◆ Discretion to Executor
- ◆ Directions to Executor
- ◆ Contingencies for future events
 - ◆ Trusts for minor children
 - ◆ Trusts for disabled children
- ◆ Opportunity for tax planning

Other Estate Planning Basics

- ◆ Enduring Power of Attorney
- ◆ Personal Directive
- ◆ “*inter vivos*” tax planning, family trusts, holding companies

Questions?

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