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Dying Intestate

If you pass away without a valid will and without naming an estate trustee, executor, or powers of attorney, you are considered to have died “intestate,” which can have serious consequences for the people you most care about.

We have frequently discussed the merits of preparing and drafting valid estate documentation in your appropriate jurisdiction, including a will and the related powers of attorney for property and health. The reason for this is simple: at One Sports, our estate planning process is designed to ensure that after you pass away, or if you unexpectedly become incapacitated and unable to make decisions on your own, your specific wishes will be upheld and your assets and affairs distributed to your loved ones in accordance with your wishes.

As a quick refresher, your estate is made up of the assets (and liabilities) that you own when you die. A valid will identifies who should administer your estate, who should benefit from your estate assets, and the terms in which your beneficiaries can inherit those assets.

When you create a will, you name an estate trustee or executor who is responsible for dealing with your estate and carrying out your wishes as set out in the terms of the will. He or she is also responsible for administering the estate in accordance with the laws of the jurisdiction in which it is drawn and witnessed. (Be sure to review the previous blogs that outline these various duties and how to go about choosing the right person(s) for the job.)

The requirements for a will to be valid in Canada include:

1. The will must be written in physical form. There are allowances for digital signatures, but basically all wills must be written on paper.
2. You must be over the age of majority and be of sound mind.
3. The will must be signed by you and witnessed by two other people.

You are not legally required to have a will, but there are distinct advantages to taking the time to think about your assets, your own personal life situations, and formalizing any arrangements you would like to make to ensure those you love are taken care of.

If you die intestate, without a will, your estate will be governed by the intestacy laws of the jurisdiction you are in, and the intestacy laws may not necessarily reflect your wishes. In Ontario for example, if you die without a will your estate will be distributed in accordance with Ontario’s Succession Law Reform Act (and yes, that can be as cold and impersonal as it sounds). Basically, someone will need to apply to the court to ask for authority to administer your estate and your assets may not be distributed as you’d wished.

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Here are some other examples of how dying intestate could affect your loved ones:

- The intestacy laws in each country, province, or state, are very specific about what constitutes a beneficiary. In some states and provinces, for example, common-law spouses and/or stepchildren have no automatic entitlements to any inheritance.
- If you die without a will and have minor children, and there is no legal spouse either alive or in the picture to step in, the court will make the final decision on a guardian for your children. The court may not choose a family member you trust or consider your wishes when choosing a guardian.
- Without a will, there may not be a guardian for any minor children's property, and most likely there is no power of attorney who could hold an inheritance for a minor. In this case, any minor child's share of an inheritance would be paid directly to the court as opposed to the child, with no power to encroach (to access or use the assets) and with any entitlements only beginning when the child reaches age 18. A corresponding application must be made to the court for someone to become the guardian of the minor child's property. This can be a lengthy and costly process that likely require hiring legal counsel.
- If there is no will, and you die without a spouse or descendants, then the line of succession is usually your parents, and if no parents then your siblings, and down the line to any nieces and nephews. This can lead to complicated proceedings with potentially extra costs and time delays.

Regardless of the size of your estate, making a valid will is the best way to ensure your wishes are followed for disbursing your assets, which may include real estate (your principal residence, vacation properties, etc.), digital assets (social media accounts), loyalty and reward programs, human reproductive material, or even personal items (such as jewelry) or trophies and awards obtained throughout your playing career. Failure to do so and dying intestate is probably not what you want for your loved ones.