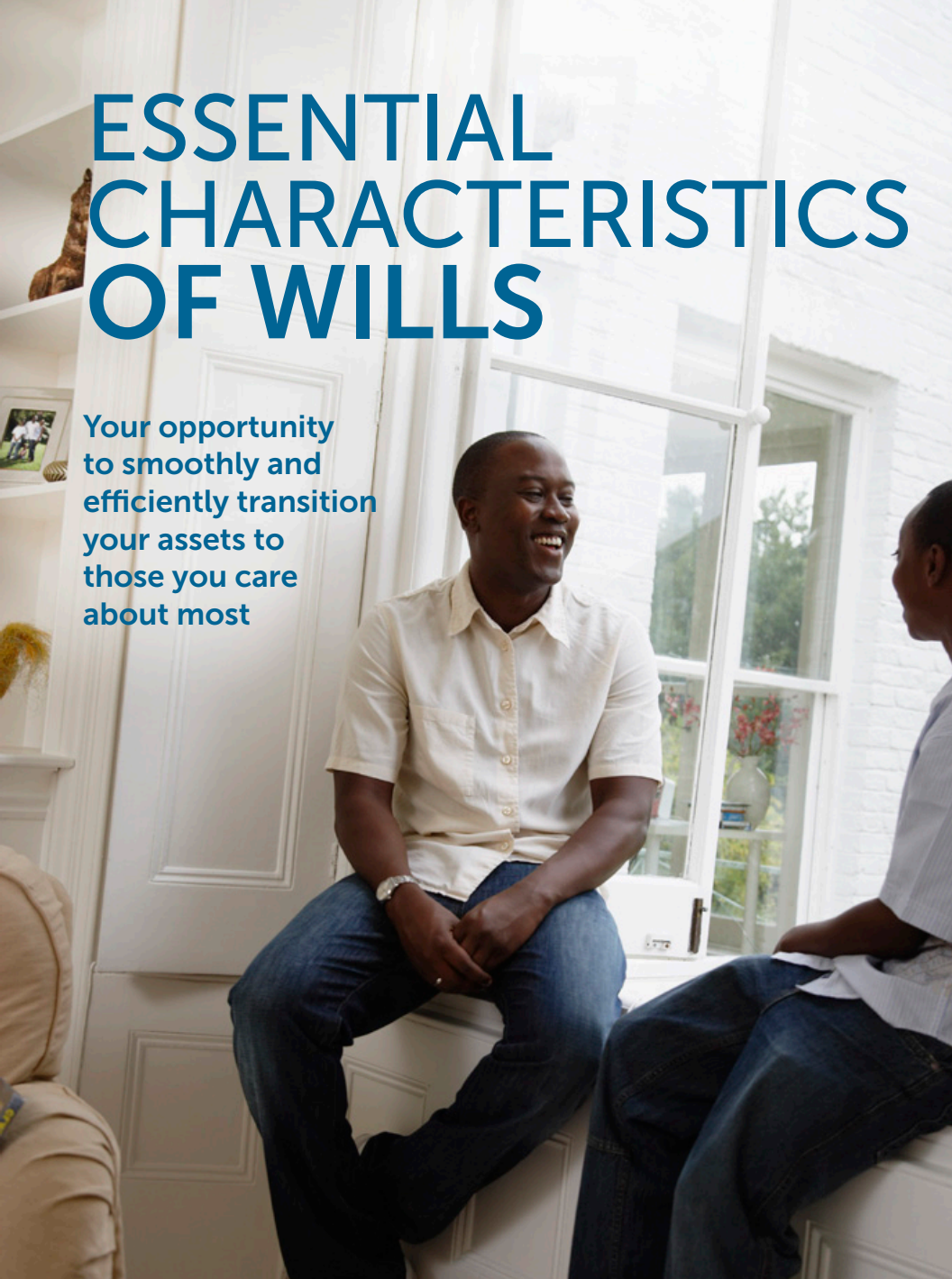


ESSENTIAL CHARACTERISTICS OF WILLS

Your opportunity
to smoothly and
efficiently transition
your assets to
those you care
about most



The Will in estate planning

Perhaps the most critically needed and most commonly misunderstood legal document in the estate planning process is the Will. It is the cornerstone upon which all estate planning is based, and it is also the touchstone – or reference point – for all other personal planning decisions.

'In' or 'out' of the estate

The Will determines who will receive the assets owned by the testator on the date of death. There are however numerous exceptions - some intentional, some unintentional – to what property falls into the estate.

Having an informed knowledge of how to create or avoid these exceptions allows a testator to structure the Will and other legal plans to assure certainty in personal and estate planning.

Ability to make a Will

Generally, the law of 'testamentary capacity' is intended to confirm that a person has both the mental capacity and the considered intention to create a Will.

Creating or 'executing' a Will

Normally, formal rules of structure, content and witnessing must be followed in order to assure that a Will is valid. Though uncommon, as an alternate to a formal Will a person can execute a 'holograph Will' which is one entirely in that person's handwriting. Generally a formal Will executed with the assistance of a lawyer is less likely to be questioned by those requested to turn over the testator's assets (eg., banks, investment dealers, etc.), or successfully challenged by disappointed/ bypassed beneficiaries.

Revoking a Will

A Will may be revoked either by a conscious act, or it may be imposed by law. Situations which may give rise to a partial or full revocation include:

- Marriage and divorce, but not necessarily separation
- Physical destruction by the testator
- At death the Will cannot be found, and was last known to be in the testator's possession
- Preparation of a subsequent valid Will

Considerations in estate planning:

- Existing or contemplated common ownership, such as joint ownership
- Family obligations & living arrangements
- Contractual claims & commitments
- Insurance & RRSP/RRIF beneficiaries
- Creditor/solvency status & concerns
- Existing formal and informal trusts
- Future trusts to be established
- Present & future gifts
- General tax implications

Quick definitions

Beneficiary/ies

One or more individuals or corporations who ultimately receive the estate property.

Estate

Formed out of the property of the testator at death.

Executor/s

One or more individuals or corporations responsible to 'execute' the Will instructions.

Probate

A court process for validating a Will (not always necessary); also used to describe the tax the court levies for the process.

Testator

Person who is making the Will.

Trust

Instructions for ongoing management (as opposed to immediate distribution to the beneficiaries) of all or part of the estate.

Trustee/s

One or more individuals or corporations responsible for managing any property which is held in trust. Usually trustees and executors are one and the same.

Will

Names executor and beneficiaries, and establishes trust terms as desired.

Guardianship of minor children

Upon the death of the last parent, a major concern is the determination of who will take care of minor age children. By naming a guardian by Will, parents can present their views to a court for a final determination that is in the children's 'best interests'; while this is not the 'final word', it has significant persuasive power. (Note that contrary to the impression left by 'do-it-yourself Will kit' advertising, children will not be arbitrarily placed with strangers.)

No Will: Intestacy

In the absence of a Will, provincial rules of succession are applied to distribute the estate. While generally running along family lines, these rigid rules can result in unintended inclusion or exclusion of beneficiaries, and often result in substantial financial costs that would otherwise not have been incurred.

Do-it-yourself Will kits

While the advertising for these kits raises awareness of the need for a valid Will, whether those choosing this route are adequately informed of their rights, obligations and planning opportunities is another matter. As well, considering their vulnerability to challenge, this route appears to lack the certainty that is key in good estate planning.

STEPUP

Providing you with the estate planning and wealth strategies that matter most, the Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team is comprised of practicing professionals whose primary objective is to support you as you help your clients reach their financial goals.

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www.empire.ca info@empire.ca