



Common Estate Planning Myths

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By Dorothy Hagel

Anyone, who has dependents or assets needs to have proper financial and estate plan. The dependents include a spouse and often a former spouse. Here are few estate planning misconceptions that could put the whole family in a turmoil.

1. I do not need a will because my wife will get everything anyway...

This may not true if you have children. Under the Succession Law Reform Act that governs the division of assets of persons who die without a will, the spouse of the deceased is entitled to the first \$200,000 from the estate and then the remaining portion of the estate will be divided between the spouse and children (or grandchildren, if their parents no longer live) of the deceased. Hence, if the estate is more than \$200,000, the spouse will not be getting it all.

This may prove very contentious when the spouse is not the first spouse and the children are a result of previous unions. Often, there is a substantial distrust or even dislike between such parties. The surviving spouses may find themselves facing financial difficulties or having the move out from their home. Lengthy litigation may eat up substantial portion of the estate that may be facing a spousal or other defendants' claims for support.

There are many estate planning solutions that would secure proper support for the surviving spouse while also securing the inheritance for the children, but a valid will forming part of a careful estate plan is needed to take advantage of these solutions.

2. We have been living common-law but it is the same like married, right?

Not in Ontario. When there is no will and the estate is distributed under the intestacy laws, in Ontario, the rights of common law spouses and legal spouses differ significantly. While a common law spouse will be entitled to launch a claim for support from the estate, the common law spouse is not otherwise entitled to share in the estate. The common law spouse will not be getting the \$200,000 preferential share of the

estate and will not participate in distribution of the estate in intestacy under the Succession Law Reform Act. It is therefore extremely important for anyone living in a common law relationship to ensure that they have valid wills specifying the desired distribution of their estates.

3. I recorded my wishes in a video and posted it on Facebook. I do not need a will anymore...

Unfortunately a video recording on Facebook does not constitute a valid will. Unless the laws change in the future, the last will has to be in writing.

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