

YOUR GUIDE TO ESTATE PLANNING: MINOR CHILDREN

WHY SHOULD YOU HAVE A WILL IF YOU HAVE MINOR CHILDREN?

Without a Will:

Assets of children

In Ontario, parents are not automatically given the right to handle inherited assets of their children. Without a Will, the surviving parent or other applicant would generally have to apply to court to obtain guardianship of the property of your minor children (or pay such assets into court). This is an extremely time-consuming and costly court application.

The applicant would then need to provide periodic accounting to the court and the Children's Lawyer of Ontario, and obtain their prior permission to carry out certain activities, until the child reaches age 18.

At age 18, the child would receive the full inheritance, no matter how large. Parents often consider a windfall at such an early age to be undesirable.

Custody of children

In Ontario, parents generally have automatic custody over their children, subject to family law matters. Without a Will, the surviving parent could have custody over your minor children. However, if both you and the other parent were deceased, other family members would be required to apply to court for custody. There could be conflicts among competing applicants, creating friction within the family and discomfort for your children. In addition, the court could grant custody to a person of which you would not approve.

With a Will:

Assets of children

You can appoint who you would like to have guardianship of property of your minor children.

You can establish trusts for your children that can be managed by the executor or other trustee(s) without involving the courts or the Children's Lawyer of Ontario. The trusts can be tailored to suit your children's needs and can extend beyond age 18.

Custody of children

You can appoint who you would like to have custody over your minor children.



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