



## **Do You Need A Will? (Second Edition)**

### **Why do I need a will?**

The legal term for an individual who dies without making a will is an "intestate." In Newfoundland and Labrador, the property of an intestate is distributed in accordance with the *Intestate Succession Act*.

This Act contains a number of scenarios for the distribution of the deceased person's property. For example, if an intestate dies leaving a spouse and one child, the spouse will receive one-half of the estate. If the intestate leaves a spouse and more than one child, the spouse will receive only one-third of the estate.

It is important to remember that this does not apply to matrimonial property, such as the matrimonial home, which may become entirely the property of the surviving spouse.

The *Intestate Succession Act* applies to cases of death occurring after June 14, 1951. That Act provided for a number of other circumstances in which the intestate's parents may inherit, or siblings, nephews and nieces.

### **How do I make a valid will?**

If you want to ensure that your estate is distributed as you wish, you should consider making a last will and testament. There are a number of valid ways in which to make a will.

There are a number of valid ways to create a will. It is possible for a person to create a will themselves, either handwritten and signed by the one who wrote it, or with the aid of a will kit. However, it is a good idea to consult with a professional to ensure that it conforms to the requirements of the *Wills Act*.

It is a good idea to consult with a professional prior to making a will. Keep in mind that if you attempt to prepare your own will and it is invalid because it has not been properly prepared, your property may then be distributed in accordance with the *Intestate Succession Act*.

Financial institutions generally have estate planning departments or you may wish to consult with an accountant who can advise on investing your estate to provide income for your beneficiaries and minimizing tax liabilities. The will document itself is prepared by your lawyer.

Professional legal advice in the preparation of your will should ensure that you consider all likely possibilities in determining how you want your property distributed after your death. For example, if you have minor children, you may wish to provide that their share of your estate is held in trust for them until they reach a certain age



and appoint a guardian to look after them. A lawyer can also assist in determining what property will form part of your estate.

### **Do I need to update my will?**

If you have a will prepared for you, review it regularly to determine whether any changes are necessary. An obvious example will be if you have Children since making the will. Also your will may be invalid because of a subsequent marriage, unless the will contains a declaration that is made in contemplation of marriage.

Many lawyers charge a flat fee for the straight forward preparation of a will. You can contact different lawyers to inquire about fees prior to deciding who you want to prepare your will.

### **How to Contact Us:**

If you would like further information on this subject, or any of PLIAN's services including our Lawyer Referral Service, please contact our office at:

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*This pamphlet provides general information only. If you are thinking of making a will, we strongly advise you to seek professional advice. If you require particular legal advice, contact a lawyer.*