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Drawing up a will essential for new parents

EMILY SMART

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Hollywood loves an open-ended will, but off the silver screen, there is rarely anything funny about an inheritance battle. Family ties can be kept from unravelling with the help of a Last Will And Testament ... that is, if you have one. For harried new parents navigating a series of practical considerations and paperwork, “make a will” often lingers on the bottom of the to-do list.

“You’re so busy hour to hour it’s tough to focus on the big picture,” says London, Ont.’s Katrina McIntosh, whose son, Parker, is nearly one. Ironically, as resource co-ordinator at the Student Success Centre (University of Western Ontario), Ms. McIntosh is always planning ahead: “I spend a lot of time working on students’ futures, but it can be tough to take your own advice,” she says.

While making a will is as responsible as acquiring a health card, social insurance number and registered education savings plan for your child, it is such an emotionally and culturally laden document that it may seem a morbid exercise in worst-case scenarios for parents starting families.

Jean Blacklock, lawyer and author of *The 50 Biggest Estate Planning Mistakes ... and How To Avoid Them*, confirms this unease. “It can be hard signing your name to a document to be used when you’re not here.”

The best way to deal with any fear of death (and/or lawyers) is just to deal with it, at least so your loved ones will not be left sorting out a messy estate.

Les Kotzer, a lawyer, inheritance expert (he offers free will reviews) and purveyor of cautionary tales (*Where There's An Inheritance* is his most recent book), suggests, rather poetically, "A will is a living, breathing document." Over time, a will is as much about life as death. The passing of property, goods and memories to later generations is a form of continuity.

Beautiful and/or terrifying, the Last Will and Testament can also be a "ticking time bomb" (a Les Kotzer catchphrase). In order to craft a will that does not create problems, there are a few common issues that are easily solved on paper, if not in real life.

"It is daunting," Ms. Blacklock says. "Take it one step at a time, and do it in bite-sized pieces," she advises.

For new parents feeling overwhelmed by information, decisions and all of modern life's hazards, consider this: When it's done, it's one less thing to worry about.

Here are four common trouble spots concerning wills:

The outdated will

It is crucial to update a will to include new additions to the family; don't let your will go the way of the third child's baby book.

Social media condition us to update our statuses at every turn, but when it comes to keeping the Last Will and Testament current, it can be decades between amendments. An outdated will is nothing but trouble; if new children, a change in marital status or major purchases go undocumented, the implications can play out in court.

For example, "separation means marriage in will terms," Mr. Kotzer warns. If your will doesn't reflect your current circumstances, it opens the door for potential dispute among all involved, including those who have left the family.

Guardianship and in-laws

For new parents, guardianship can be a difficult issue. Blood relatives are often a first choice, but Mr. Kotzer points out that if a brother or sister and spouse are appointed, a marriage dissolution may result in "their custody battle over your child(ren)."

For Ms. McIntosh, the question of guardianship went hand in hand with ensuring that her son's caregivers receive financial support. She and her husband chose guardians and named them as beneficiaries in a new life insurance policy. But with this came uncertainty about the legal ramifications: "I wasn't sure what we needed, we just knew we needed something. At least we're covered until we have time to do something else," Ms. McIntosh says.

So, is she covered? Not really. Life insurance has no legal bearing on guardianship, so the will is an essential piece of the puzzle when planning your child's care. "The important thing is for parents to step back and look at what they want to achieve with regards to the care and raising of their children. Keep this separate from the issue of financial security. The law keeps these two aspects of estate planning separate," Ms. Blacklock states.

Confusion about the books

The idea that a will is a comprehensive itemized list of one's complete personal inventory is a "common misconception," Mr. Kotzer says. In addition, "equal is not to be confused with fair," he warns. Splitting strictly according to dollar value can leave one family member feeling shortchanged on sentimental value.

"Every word means something," Mr. Kotzer says, but often, that something is open to interpretation. Vague phrasing such as the words "antiques," "memorabilia" and "personal monies" plagues estate distribution. When it comes to wills, clarity is a fine balance between specificity and generality. As an example, Mr. Kotzer suggests that a phrase such as "remainder of the estate" works well to both simplify and summarize assets in a broad stroke.

What of one's digital footprint? It is increasingly important to leave instructions regarding personal electronics, data and account access details, including computer passwords and account logins. Consider photographs –

many new parents have volumes of images stored exclusively on their computers. This is the case for Ms. McIntosh, who notes, “Our entire photographic archive is digital. I would want Parker’s guardians to have access to these digital memories.”

Alternative wills

A handwritten will might appeal to those who shop local, eat farm-to-table and generally opt for alternative ways of doing things – what could be more DIY than putting pen to paper? This is called a holographic will and is not for the sloppy of penmanship.

DIY might be desirable for indie rock and wedding themes, but what may seem simplest (and cheapest) may not necessarily be best. There are a wide variety of will kits for sale, mostly online, but taking it into your own hands can lead to fists. For example, your will kit may not be written for Ontario or B.C. law (wills are a provincial matter); your will kit may not be properly notarized, and in your customization you may omit key clauses related to the issues above.

Hollywood might favour the video will for instant comedy gold (see: *Brewster’s Millions*), but across Canada, video wills are technically invalid.

If you get it right, some alternative types of wills can be just as legally binding as the one made by a lawyer, but remember, a simple mistake could leave the wrong legacy.

According to Ms. Blacklock, it’s all in the details: “Most estate planning mistakes are not of a grandiose nature,” she says. “Mistakes are usually about the little things.”

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