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# QUESTIONS TO BE CONSIDERED IN PREPARING YOUR WILL

1. **Who do you want to appoint to be the Executor and Trustee of your Will?**

   We will need the full legal names of all persons you appoint in whatever position, e.g. John Henry Black – this includes the middle name. This is usually your spouse, a reliable family member or a trustworthy friend. If these are not available, you could consider a trust company or your lawyer.

   Please be sure to include the full legal names, including all middle names, of all persons named in your Will in any capacity.

2. **Who do you want to appoint to be the alternate Executor and Trustee of your Will should the first person appointed be unable to act or decline to act?**

   We recommend that you have at least 2 alternates after your spouse. This is to ensure that if both your spouse and the first alternate are unable to act for whatever reason, that you will have a third person in place to act as Trustee and Executor. If you do not, and both your spouse and the first alternate cannot act, then someone has to apply to be appointed as Estate Trustee and this means that the Will definitely has to be probated and probate fees have to be paid.

3. **Who do you want to appoint as Guardian of your infant children and/or child in need of care? Do you want to appoint an alternate Guardian as well, in case the first named Guardian is unable or unwilling to act as Guardian?**

   If you are separated or divorced, this would usually be the other natural parent of the children, unless that person is an unfit parent. If both parents are deceased, the guardian is usually a close and reliable family member. If there is no such person, usually a close and trustworthy friend is chosen.

4. **Who do you want to appoint to act as your attorney for your Power of Attorney for Property?**

   Usually, spouses appoint each other first, and then a family member or close friend as the alternate. This comes into effect upon signing the document. The purpose for the Power of Attorney for Property is to allow someone to handle your affairs should you become incapable of so doing, e.g. Alzheimer's or some other illness or incapacity.

   It is usual to appoint a reliable family member or trustworthy friend. Should no such person be available, you could consider appointing a trust company or your lawyer. Also, it is usual to

appoint someone who resides in the same city that you are in for practical reasons, but this is not absolutely necessary.

5. **Who do you want to appoint to be the substitute attorney for your Power of Attorney should the first person appointed be unable or unwilling to act? We also need to know in which town or city this person lives.**

6. **Please note that Trust Companies do charge a fee to act as Trustee and Executor of your Will, as attorney in a Power of Attorney, and as Trustee for a 'Henson' trust and that they do not like to handle estates valued at less than $250,000. They typically receive between 3 and 5 percent of the value of the estate for acting as Executor.**

7. **Who do you want to appoint to act as your attorney for your Power of Attorney for Personal Care and who do you want to appoint as your alternate attorney? We also need the town or city in which the alternate attorney lives.**

   It is best to try to appoint persons who live in the same city you live in or at least near you, as these are the persons who will have to attend at the hospital to authorize the doctors to operate on you if you are brought in after a car accident.

   This person will have to make decisions for your personal care should you lack the capacity to do so, e.g. if you are in a coma or on life support, etc. This Power of Attorney also comes into effect upon signing the document, so it is best to leave it locked in your lawyer's safe, until needed, along with the Power of Attorney for Property. If you appoint two or more persons to have your Power of Attorney for Personal Care, you can appoint them jointly, meaning they must act together, or you can appoint them jointly and severally, meaning either one can act alone.

8. **Do you want to be cremated or buried, and what type of ceremony do you want, e.g. Catholic, Protestant, etc.? Do you want your remains interred with those of your spouse? Do you have a family plot? If so, we need to know the name of the cemetery and the city in which it is located.**

   In actual practice, the executor will make this decision and your instruction in the Will indicates your wishes but has no legal force. Some persons make the choice based on religious considerations. Some have an aversion to burial or to cremation. Cremation is generally less expensive because there is no burial plot and upkeep to pay for.

9. **What do you want the age of infant inheritance to be?**

   If your children have already reached the age of majority, you must still consider at what age you would want any possible grandchildren to inherit. Some people feel that 18, since it is the legal age, is the appropriate age to receive the inheritance. Others feel that 21 is the right age. Others feel that children are not mature enough to handle a large sum until they reach the age of 24 or 25 years. Still others feel that 30 years is an appropriate age when a very large sum is involved. We usually recommend that 25 should be the age of infant inheritance.

10. **Please include the addresses and telephone numbers of the persons appointed as you Trustee and Executor, attorney for your Powers of Attorney, and those of the alternates.**

11. **Do you want to leave your organs for organ transplant?**

    This is a personal decision. Some people do not want to do this because they feel uncomfortable about it. Others are very much in favour of leaving their organs for organ transplant.

12. **To whom do you wish to leave your personal property, bearing in mind that this includes cars and boats?**

    Usually married couples leave all their personal property to each other first of all, and then, if the surviving spouse should not survive the deceased spouse for thirty days, the personal property is left equally to the children, or if there are no children, to other family members, close friends, or a charity.

    If you have a child with a disability, the child's share of the personal property is not left to them directly, but to the Henson trust. This is in order to protect the child's ODSP benefits should that child decide to sell any of the personal property. The child can have the benefit and use of the property, but the trust actually owns it, so that any income from the sale of various items of personal property that the child does not want attribute to the trust and not to the child. This protects the disabled child from losing their benefits for a period of time.

    In each Will, there is provision for a simple Memorandum to be written in the form of a letter or simple list naming certain persons to receive certain identified items of personal property. For example, if the wife wishes to leave all her personal property to her husband, but wants to leave all her clothing to her daughter, certain items of jewellery to her daughter and some friends, and a favourite painting or some other object to her son, it is simple to do so. The wife's Will would state that she is leaving all her personal property to her husband and that the persons named in the Memorandum attached to her Will are to receive the items specified.

    The Memorandum can be written as a simple list, describing each item and stating to whom it is to be left. The Memorandum is then attached to the Will (after the Will is signed) and can be changed as the testator wishes.

    We provide you with a Memorandum form. On this form there is no place provided for witnesses to sign, this is because the Memorandum does not need to be witnessed, it only requires your signature on it and the date you signed it. But because the Memorandum does not need to be witnessed it means that if anyone disagrees with what you have put in the Memorandum and challenges the Will, probate fees have to be paid.

    If you own very valuable items of personal property, such as expensive jewellery, Persian carpets, artwork, silver, crystal, china, etc., we can prepare a specific bequest (or several) in your Will leaving these items to certain named persons and this prevents anyone from quarrelling over what has been left in the Memorandum.

**13. To whom do you wish to leave the residue of your estate?**

The residue includes bank accounts, RRSPS (unless designated beneficiaries are named), your house, and everything other than your personal property.

Again, usually married couples leave the residue of their estates first to each other, and then if the surviving spouse does not survive the deceased spouse for thirty days, equally among their children. You may also wish to leave one or more Specific Bequests, either of property (such as a cottage) or money to certain children, relatives, or friends. You may also wish to leave a certain amount of money to your church or a favourite charity. Exactly how and to whom you leave the residue of your estate is your decision.

If you have a child (or children) with a disability, you will want to leave their share(s) in a Henson trust. You may have two, three, or more children. You may decide that the able children do not need as much as your child with a disability, so you may decide (if you have two children) to leave 2/3 or 3/4 of the residue in the trust for your disabled child, or some other division. You may also decide to leave the residue equally among all of your children, with the disabled child's share in the trust.

Presumably, whatever you leave to your children will be left to them "per stirpes". "Per Stirpes" means "or to their surviving children" so that if you leave something to a child per stirpes, and they do not live long enough to inherit from you, but that child has surviving children themselves, then your grandchildren inherit your deceased child's share.

We also need to know where you want your estate to go in the unlikely event that all of your children predecease you with none of them having any children who survive them. This means you have no surviving grandchildren. Some people decide to leave their estate 50% to the wife's side of the family and 50% to the husband's side, or just equally among the siblings, nieces or nephews. Some feel that their family does not need their estate and they decide to leave everything to a charity or friends. We need to go this step, because if you both die and have no children or grandchildren who survive you, and you do not name someone to get your estate, then the government gets the first bite at it.

**14. Who do you want to appoint as Trustee of the Henson trust for your child with a disability?**

You can appoint one or more persons, either jointly or jointly and severally, if you will be appointing more than one. The Trustee of the trust can be the same person as on of the alternates you are appointing as Trustee and Executor or a totally different person. You may also decide to appoint a successor Trustee of the trust, in case the first one dies or does not want to act when the time comes, or you can simply rely on the standard wording which states " that the last surviving trustee will appoint a successor trustee or trustees".

**15. You will receive a lengthy Estate Inventory Form, after you have signed your Will.**

The Estate Inventory does not need to be completed before you make decisions about your Will and is intended only to help you to itemize your estate to assist you and your Executor. In fact, you will never actually complete the estate inventory, because you will have to update it on a regular basis as you acquire and dispose of assets.

**16. You will also receive a Life Plan Guide.**

This guide jogs your mind to write down useful information about your child with a disability. Such as, illnesses, medications, doctors, likes and dislikes in foods, colours, activities, friends, etc.