Blaney McMurtry LLP

PUBLICATION

Wills and Powers of Attorney in a Social Distancing Environment

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Concern over COVID-19 and its potential impact has given many people concern over whether they “have their affairs in order.” Lawyers and financial advisors are getting inquiries about how to deal with wills and powers of attorney, often from those who are the most vulnerable or their loved ones. In an era of imposed social distancing, and total shut down of access by visitors to hospitals and care facilities, there are many challenges if it is considered urgent that a new will or power of attorney is to be signed.

Ontario law has strict rules regarding the proper signing of Wills and powers of attorney. Both types of documents must be signed in the physical presence of two witnesses with all persons seeing each other sign. Also, there are restrictions on who can witness Wills and powers of attorney.

You need to be at least 18 to make a Will and have the required legal capacity. No one can provide Will instructions on your behalf. Wills cannot be witnessed by the following persons: any beneficiary or spouse/partner of a beneficiary; any person who is under the age of 18. The estate trustee can be a witness, but it is not recommended.

You need to be at least 18 to make a power of attorney for property and 16 to make a power of attorney for care, and have the required legal capacity in both cases. No one can provide instructions on your behalf.

Powers of attorney cannot be witnessed by the following persons: the grantor; children of the grantor or persons the grantor has treated as his/her child; persons appointed as attorney or their spouse/partner; persons whose property is under guardianship or who have a guardian of the person; any person who is under 18 years of age.

In all of these scenarios, physical presence is required and video conferencing, remote document signing and other methods available for distance execution of contracts are not available. To create a valid will or power of attorney, even in times of social distancing, physical presence is needed.

There are ways to achieve a validly executed will or power of attorney, with witnesses present but separated by glass windows or doors, extra measures used to sanitize pens and desks and telephone and/or video phone connections to make sure that the necessary steps are followed, but these need to be considered in each individual case. The take away needs to be “use caution” and “get professional advice.”

Note: The information provided is based on Ontario law, and the laws of Canada applicable therein. However, it does not constitute legal advice or create a solicitor-client relationship. Readers are encouraged to consult a member of Blaneys' Wills and Estates practice group for advice specific to their circumstances. We are available by telephone and electronically during the COVID-19 crisis.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.