

# The Top 8 Reasons to Update Your Will

Major life events can have a disruptive effect upon the intended distribution of your estate. Certain events may invalidate specific gifts or even your entire will. This can result in the application of legally-mandated default distribution rules. While appropriate in some circumstances, these rules often run contrary to the intended distribution plans of testators.

Thus, while it is important to have a will, it is also important to keep your will up to date. This makes it important to recognize what life events affect your will and understand how the law typically deals with such events. The following list identifies common life events, their effect upon your will and the likely remedy.

**1. Marriage** – Marriage automatically renders an existing will invalid unless the will specifically states that it was made in contemplation of such marriage. If death occurs after marriage and a new will has not been created, the deceased spouse will be considered to have died intestate (without a will). Upon intestacy, property is allocated among beneficiaries based upon their relationship to the deceased with particular rules respecting spouses and children.

If you marry or are contemplating marriage, you should draft a new will.

**2. Common Law Marriage** – Common law marriages are not recognized in Ontario for the purposes of succession. A surviving common law spouse has no right to the property of the deceased, though such person may make a claim for dependent support.

If you have entered into a common law relationship, you should consider amending your will to provide for your common law spouse.

**3. Separation** – In the absence of a separation agreement delineating a married spouse's entitlement, separation has no effect upon the respective wills of the spouses. Therefore, any bequests made by a deceased spouse to a surviving spouse remains valid regardless of the fact that the deceased and the surviving spouse were separated at the time of the deceased spouse's death.

If you separate from your spouse, you should consider amending your will to account for the changed nature of the relationship.

**4. Divorce** – Unlike marriage, divorce does not invalidate an existing will. Divorce revokes the appointment of an ex-spouse as an estate trustee and revokes any general or specific power of appointment. In addition, an ex-spouse is deemed to have pre-deceased the testator and any gifts to an ex-spouse will be distributed by intestacy.

If you are divorced, you should consider revising your will to change appointments and provide for a new allocation of your estate.



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**5. Creation of Dependency** – If a person did not provide “adequate provision” to a dependent under the terms of their will and was providing support to such person at the time of their death or had a legal obligation to provide such support, their estate may be subject to a dependent support claim.

If you are providing dependent support or are under an obligation to provide such support, you should consider revising your will to ensure that adequate provision to the dependent is made.

**6. Death of Beneficiary** – A gift to a beneficiary who pre-deceases the testator will generally “lapse” and be transferred to the residue of the estate. The residue is all remaining property of an estate after all debts have been settled and all gifts distributed. Anti-lapse rules may prevent this outcome depending on the relationship of the beneficiary to the deceased and if the beneficiary had children.

If an intended beneficiary of your will dies, you should consider amending your will to either remove reference to the gift or allocate such gift to an alternate beneficiary.

**7. Acquisition of Share in a Private Company** – Upon acquiring shares in a private company, a testator may avoid the application of the estate administration tax on the value of such shares if the shares are distributed under a separate will not submitted for probate.

If you acquire share in a private company, you should consider the cost effectiveness of allocating such shares in a separate will.

**8. Death of an Executor** – Where the appointed executor of a will predeceases the testator and the will contains no provision for an alternate executor, the Court will select a personal representative from among the deceased’s next of kin. The Court has substantial discretion in the appointment of a personal representative.

If the executor currently identified in your will dies or moves out of the country, you should identify a new executor.

*Note: This information was prepared by Michael Otto of Loopstra Nixon. While every effort has been made to ensure accuracy, the information contained herein should not be relied on as legal advice; specific advice should be obtained in each individual case. No responsibility for any loss occasioned to any person acting or refraining from action as a result of material herein is accepted by ASA, the authors or Loopstra Nixon LLP. If advice concerning specific circumstances is required, please contact the author, Michael Otto motto@loonix.com*

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