



# What You Don't Know Can Really Hurt Your Family



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## What Everyone Should Know About Failing to Make a Valid Will

### Dear Mariana:

My mother just passed away and she had no will. She has a common-law partner and, besides me, one other child. What happens now?

Sincerely,

Mourning in Bronte

### Dear Mourning:

We are sorry to hear the passing of your mother. As she has passed away intestate (without a will), she has left you in quite a pickle. Because she did not have a will, the *Ontario Succession Law Reform Act* governs how her property will be distributed to her surviving relatives.

Someone will need to be appointed as her personal representative so her estate can be distributed. Under the *Estates Act*, your mother's common law spouse, or her next of kin (in decreasing order of kinship) can apply to be her personal representative. There is no fixed rule for choosing between two people of equal claim who want to be appointed the estate trustee. A Court must decide, upon application from the interested parties.

To become your mother's personal representative, the applicant must apply to the Superior Court of Justice and pay the estate administration taxes. If the application is approved, the court will issue a document known as a *Certification of Appointment of Estate Trustee without a Will*. This document gives authority to the personal representative to manage and distribute the estate, and it will be used to prove they have the authority to deal with the legal and financial matters associated with wrapping up the estate.

Under the *Ontario Succession Law Reform Act*, you and your sibling will each inherit 50% of your mother's estate each.

Currently, in Ontario, when there is no will, a common-law partner

has no right to inherit anything from their deceased partner. However, under the *Succession Law Reform Act*, your mother's common-law partner can make a claim in Court to seek support from the estate as a dependent. In order to make this claim, your mother and her common-law partner would have to be considered spouses under the *Succession Law Reform Act*. To be considered spouses under the *Succession Law Reform Act*, they must have cohabited for at least three years or have been in a relationship with some permanence and had a child together. If your mother's common-law partner meets one of these tests then they would have to make a dependent support claim by filing a *Notice of Application* with the Court. This claim can be made based on financial need, or on legal, or moral and ethical obligations, and must be supported with an Affidavit and documented evidence provided by your mother's common-law partner. If the Court decides that they are a dependent spouse, has a legitimate need for support, and that your mother did not provide adequate provision for support, the Court may order a certain amount of money to be paid to her common-law partner out of the estate. A judge can award a lump-sum payment, periodic payments, or a transfer of a specific asset to a surviving common-law spouse. The Application for dependent support must be filed within six months of the Certificate of Appointment of an Estate Trustee (executor) being granted.

As you can see from all of this, it is very often a tragedy upon grief when a person dies intestate, without a proper will, as your mother did. You will likely be facing a long and expensive legal battle now with her common-law spouse. That is not the way any of us want to be remembered: leaving a giant, expensive, stressful mess for our loved ones to clean up. After the year we all went through in 2020, now is the time more than ever to ensure you have left your affairs in good order. Put in place a proper will now, so that, when you're gone, your family can celebrate your wonderful sense of humour, and reminisce about your barbeque skills or your killer apple pie; not grumble about the legal and administrative nightmare you left for them to clean up. As we always say to our clients: "*How do you want to be remembered?*"

## Is Your Will Up To Date?

Do you have a Power of Attorney in the event you become incapacitated? We can help.

**Call 905-825-2268 Today**

