

McMaster, McIntyre & Smyth, LLP

FAQ: I would like to get a Will and/or Powers of Attorney drafted, what do I need to do?

Contact us to arrange an meeting and consider the following:

- A. Preparing for Your Meeting
- B. Who to bring to Your Meeting
- C. What to bring to Your Meeting (or Send before Your Meeting)
- D. Considerations

A. Preparing for Your Meeting

- Prepare for the meeting by considering the matters in Part D below.
- You do not have to know all the answers before the meeting. Part of the reason for having a meeting is to allow your lawyer to advise you about alternatives and discuss the pros and cons of each.
- You are retaining your lawyer to draft YOUR WILL and/or YOUR POWERS OF ATTORNEY. You may consider input from your lawyer, your spouse, your children and others. However, the decisions are yours to make and you need to be comfortable in your decisions.
- Do not make decisions because your spouse, your children, or others told you what to decide.
- Your lawyer will give you recommendations but will never tell you what to do.
- If circumstances change or if you simply change your mind, you can change your Wills and Powers of Attorney at any time so long as you are capable. If any of the information that your provided to us in relation to the quote changes.

B. Who to bring to Your Meeting

- If you and your spouse want to have your wills and/or powers of attorney prepared together, then you should both be at the meeting.
- Although there are exceptions, it is generally preferred that no one else attend the meeting. The attendance of a third party (such as any of your children) who may be named in your Will and/or Powers of Attorney, may be considered suspicious to the Court if anyone challenges your Will and/or Powers of Attorney. If you bring a third party, they should be prepared to wait outside of the meeting.

- Remember, if a Will is ever challenged, you will not be around to give evidence of your wishes.

C. What to bring to Your Meeting (or Send before Your Meeting)

Bring Parts A to G of our [Wills and Powers of Attorney Client Information Form](http://www.mmslawyers.com/pages/resources) which can be found at <http://www.mmslawyers.com/pages/resources> to the meeting or send them before the meeting.

In addition, bring the following, if they are available, or be prepared to provide them after the meeting:

- A copy of any existing Will(s) and Power(s) of Attorney.
- A copy of any marriage contract or co-habitation agreement with your spouse.
- A copy of any separation agreement or court order with any former spouse.
- If you are divorced and have not remarried, a copy of the divorce order or certificate of divorce.

D. Considerations

1. Estate Trustees (also known as Executors)

Consider:

- Who do you want to look after your estate?
- Should that be one person or more than one? Estate trustees must act unanimously.
- What if a named person dies or is otherwise unable or unwilling to act?
- Have you asked whether he/she/they are willing to act?

2. Guardians (if you have minor children)

Consider:

- Who do you want to look after your children?
- Should that be one person or more than one? If naming a couple, what if they separate?
- What if that person dies or is otherwise unable or unwilling to act?
- Have you asked whether he/she/they are willing to act?
- Will the care of your children cause a burden to them?
- Do arrangements need to be made to avoid that burden?

3. Beneficiaries

Consider:

- Who do you want to benefit from your estate?
- Is a person to receive a specific item? If so, what if you no longer own it when you die?

- Is a person to receive a specific dollar amount or some specific formula amount? If so, what if your estate changes significantly in value (either increase or decrease)?
- Is a person to receive a percentage or set share of your estate? Each person does not need to receive the same share.
- What is to happen if any of them die before you? Who do you want to look after your children?

4. Trusts for Minors, Young Persons and Others

If a minor or young person is to be a beneficiary, then a trust should be set up. A trust can also be set up for other beneficiaries too. In each case, consider:

- Who is to look after the money (the "Trustee(s)")? The estate trustee(s), the guardian(s), one or more other persons? If more than one person, majority rules or unanimity?
- At what point should the trust end? When the person becomes an adult (18 years) or some older age or upon a certain event?
- What should happen if that person dies before the trust ends?
- Should the Trustee(s) have discretion in making distributions before the trust ends? Or should the distribution follow a formula at specific intervals?

5. Attorneys for Property (Finances etc.)

Consider:

- Who do you want to look after your financial affairs if you are incapable?
- Should that be one person or more than one? If more than one: do they have to work together (joint) or can any one of them act (joint and several)?
- What if a named person dies or is otherwise unable or unwilling to act?
- Have you asked whether he/she/they are willing to act?
- Are there to be any conditions or restrictions on their ability to act?

6. Attorneys for Personal Care (Medical, etc.)

Consider:

- Who do you want to look after your medical affairs and other personal care decisions if you are incapable?
- Should that be one person or more than one? If more than one: do they have to work together (joint) or can any one of them act (joint and several)?
- What if a named person dies or is otherwise unable or unwilling to act?
- Have you asked whether he/she/they are willing to act?
- Are there to be any conditions or restrictions on their ability to act?
- Do you have any specific wishes or advance directives?