

YOUR CATHOLIC LEGACY

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AN EXERCISE IN GRATITUDE

LEGACY SOCIETY MASS AND LUNCH 2024

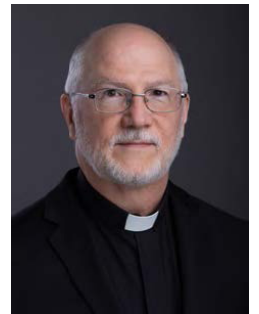
PROTECTING LOVED ONES IN ONTARIO:
THE CHALLENGES AND MERITS OF DEVISING REAL PROPERTY IN A LAST WILL AND TESTAMENT



Archdiocese
of Toronto

An Exercise in Gratitude

BY REV. JOHN-MARK MISSIO



It was not difficult for me to know what to put in my will when the time came to think about who to name as beneficiaries. Half would go to family, of course, but I felt that the other half should express my gratitude for the gift of faith that was nourished as I grew up, and which has been a central part of my life wherever I have found myself.

The parish in which I grew up and participated in with my family was a constant, weekly place of encounter with God, and encouraged and promoted my relationship with Jesus Christ in so many ways. When I reflect on the gift of faith that was nurtured in my local parish community over those formative years, I can see how deeply and intricately my Catholic faith was reinforced Sunday after Sunday, therefore I cannot help but give thanks. I wish that community and every parish to flourish so that as many of the next generation as possible might have the same gift of faith that brings so much meaning to my life.

Once I realized the awesome effect that parish life had had on the gift of faith I had been given, and saw that I had then been given the privilege to live it out in unique adventures at St. Michael's Choir School and at St. Augustine's Seminary, it made sense that I would want my gratitude to be seen in those Archdiocesan schools that contribute to our life of worship in very special ways.

Continued on Page 6



Protecting Loved Ones in Ontario:

the Challenges and Merits of Devising Real Property in a Last Will and Testament

BY ERIC J. BUNDGARD

When it comes to ensuring that your loved ones are protected after your death, a well-drafted Last Will and Testament (Will) can be one of the most important tools. A Will can outline how your estate will be distributed in an orderly manner, including real property such as the family home, land, rental properties, and cottage assets. In Ontario, there are specific considerations to keep in mind when drafting a Will to ensure that your real property is distributed in a way that safeguards your loved ones' interests. Below are some essential steps to consider when devising real property in Ontario through your Will.

1. Clearly Identify the Real Property in Your Will

The first step in protecting your loved ones is to clearly identify any real property that will be included in your Will. Real property, such as a family home, rental properties, or cottage, should be specifically described in detail to avoid confusion. This may include the property's address, legal description (as recorded in the land registry), and any other identifying features. This ensures there is no ambiguity regarding what property is being distributed.

Without clear identification, there is a risk of disputes among beneficiaries or the possibility that the property

might not be distributed as intended.

2. Choose the Right Beneficiaries

One of the most critical decisions when devising real property is determining who will inherit it. This decision may hinge on personal preferences and family dynamics. In Ontario, you can leave real property to a single beneficiary or gift it to multiple beneficiaries.

When selecting beneficiaries, keep in mind their ability to manage and care for the property. For example, if you have a child who is not yet financially independent, it may be wise to set up a trust to manage the property until they reach a certain age or maturity. Moreover, property ownership can be burdensome. Consider the scenario of a parent devising a beloved cottage property in Ontario to an adult child now resident in Alberta, fully engaged in their own family - rearing responsibilities and career demands. While the child may appreciate the gesture of the gift, the realistic prospects of that child returning regularly to Ontario to enjoy and maintain the property may be slight.

It is always recommended practice to discuss with your proposed heirs of a devise of real property whether they really would want that property, and all the cares and

burdens which property ownership entails. They might prefer to receive its value instead.

3. Use a Trust to Protect the Property

In Ontario, a testamentary trust can be an effective means to protect real property for future generations or vulnerable beneficiaries. A testamentary trust is created through your Will. It only comes into effect after your death. It allows you to appoint a trustee who will manage the property on behalf of the beneficiaries according to the terms of the trust you set.

This approach is particularly helpful if you want to:

- Ensure the property is kept in the family for future generations.
- Protect vulnerable beneficiaries who might not be equipped to handle the responsibilities of owning real property (such as an enfeebled spouse maintaining an income property).
- Provide for minor children or individuals with special needs by specifying that the property will be managed on their behalf.
- Help offer protection for the property from seizure via possible future claims by creditors against an heir – including equalization claims made by an ex-spouse upon breakdown of an heir's marriage.

4. Consider Joint Ownership and Right of Survivorship instead of Devising by Will

Ontario law recognizes joint ownership of real property, which can impact the distribution of your estate. If the property is owned jointly with another person (e.g., a spouse, child, or friend), and if the title includes a true and full right of survivorship, your property interest automatically will pass to the surviving joint owner upon your death, bypassing the Will (i.e., it does not form part of your estate's assets for distribution under your Will).

This can be a beneficial estate planning strategy if you want a specific person to inherit the property without the possible need for probate of the Will. However, you should also be aware of potential issues that can

emerge if not adequately addressed. For instance, if while living you transfer your property into joint ownership with your future heir, you can face some loss of control respecting the property: should you change your testamentary plans and instead wish to sell it before you pass, your now joint owner may object. Furthermore, unless you have documented clearly your intention to gift your interest in the property to your joint owner, there is the potential for disputes among beneficiaries after your death regarding whether your surviving owner actually holds the property for the benefit of your estate. As well, there could be adverse tax consequences triggered now by the transfer of the real property into joint ownership with another person while you are living: potentially the loss of favourable tax treatment regarding a future disposition of the asset, or the obligation to pay now a capital gains tax. It thus is important to ensure that your Will, and related documentation to evidence your true estate plan intention, accounts for such possibilities if you want to retain some control over how the property is passed on and the consequences of that. While joint ownership of real property suitably can advance your estate plan objectives, it must be considered carefully and with focused forethought on its array of possible consequences.

5. Be Aware of the Further Tax Implications on Death

In Ontario, the death of the owner of a capital asset – such as real property – triggers a “deemed disposition” of the property under tax laws. That may result in the property being subject to capital gains tax, in particular where the property cannot be accorded the principal residence exemption. It thus is important to consider possible tax implications when devising property by your Will. If the property has appreciated in value since its purchase, your estate may be required to pay capital gains tax on its increase in value. This can be a burden on your estate (and loved ones) in many ways:

- If your estate has insufficient cash assets to pay the capital gains tax, your loved ones may have to loan the estate the necessary funds to pay the tax.
- The estate might have to sell the property to cover the tax obligation, thus defeating your intention to devise the property.

Protecting Loved Ones in Ontario:

- If your intention is to treat all your heirs relatively equally in receiving value from your estate, that intention could be defeated. If the estate pays the tax and an heir receives the gift of the property, without careful planning inequality in treatment among the heirs may result: one lucky heir has received by devise the full value of the real property, while effectively the other estate beneficiaries could be seen as having borne the tax burden associated with it.

Additionally, even a home which was a principal residence of the deceased, and which thereby can receive the benefit of the principal residence exemption from capital gains tax on the deceased's passing, can still attract the obligation to pay capital gains tax while in the hands of the estate. Imagine a scenario in which such a home, devised by Will, is not transferred to the named beneficiary until 2½ years after the deceased's death.

Over the intervening time, the market is rising, and the property has appreciated considerably. Strictly speaking, upon its transfer from the estate to the beneficiary, a taxable capital gain is triggered in respect of that appreciation in value, which the estate alone could be liable to pay.

To help mitigate such problems, you might consider strategies such as the following:

- Leaving the property to a beneficiary who can afford to pay the tax without selling the property (e.g., including provisions in the Will for the beneficiary, not the estate, to pay the tax and associated costs of its transfer from the estate).
- Setting aside funds or life insurance to cover tax liabilities.
- Structuring the distribution of your estate in a way that minimizes taxes through tax planning strategies, such as gifting the property to a charity by Will, or by establishing a trust when you are still living to hold the property.

6. Be Aware of Changing Property Values, and Whether You Still Retain the Property at Death

If your intention is that all beneficiaries essentially should share equally the value of your estate, caution is advised when not all heirs receive a devise of real property by Will. When developing your estate plan, consideration should be given not only to the present values of the assets you propose to gift by your Will but also to the potential future change in relative value of all your assets. The concern is best illustrated by two scenarios. Suppose you have two children – a son and a daughter - whom you wish to treat equally under your Will. Today, you own a home worth \$500,000 and cash or near-cash investments worth \$500,000. You construct a Will today devising the home to your daughter and gifting your “cash” assets to your son. In the first scenario, you die today. You rest content that your children essentially each would receive equal value as their inheritances. However in the second scenario, you die ten years hence. By then, your home has appreciated in value to \$1,000,000. However, over the intervening years, you also have eroded your “cash” assets to help pay for your living expenses. They have been depleted in value to \$200,000. By your Will, your daughter thus receives value of \$1,000,000 from your estate, and your son receives value only of \$200,000. A very unequal distribution, one perhaps which you had not envisioned, and one perhaps which creates unnecessary tensions between your children in the result.

An equally stark consequence could result should you not own the devised real property at the time of your death (i.e., you disposed of it earlier). In a variation of the foregoing last scenario, unless your Will made provision for the future fact of your not owning the real property asset at your death, your daughter would receive no inheritance whatsoever from your estate.

Care and attention in Will-drafting can mitigate or eliminate such presumably unintended consequences of unequal sharing of value from the estate when real property assets are devised by Will to only select beneficiaries, or if you do not own the devised asset at your death.



7. Consider the Impact of Ontario's Succession Law Reform Act and/or the Family Law Act

Ontario's Succession Law Reform Act ensures that certain individuals who have been financially dependent on the deceased, such as spouses and children, have a right to challenge the Will if they are left out or feel inadequately provided for. If you have a spouse or children who are financially dependent on you, they may have the legal right to claim a share of the real property or the estate, even if the Will does not include them as beneficiaries.

To help avoid such dependent's claims, you should:

- Make provisions for all dependents in your Will to help prevent potential claims.
- Consider having an open conversation with your family about your wishes to avoid misunderstandings.
- Seek legal advice if you have concerns about the validity of your Will or the rights of potential claimants.

Spouses have additional protections under the Family Law Act, which can curtail the freedom of a testator/spouse to devise real property effectively. These can be of special interest not only in the circumstances of a first marriage, but particularly in situations wherein the testator's marriage is a second one, and where the "loved ones" whom the testator wishes to favour with the devise may be children from the first marriage.

Under the Family Law Act, the matrimonial home presents as a special category of property. Whether or not the surviving spouse has titled ownership to the property, he or she has certain prescribed occupancy rights respecting it. Moreover, the surviving spouse may have claim to equalization of the value of the property between the estate and the surviving spouse, even if the property is devised to a person other than the surviving spouse.

If your objective is to devise real property by Will to a loved one other than your surviving spouse, it may be advisable to create a legally-valid domestic contract between you and your spouse with suitable terms to help reduce the scope for complications and to promote the succession of the gift without undue hindrance.

8. Appoint a Competent, Trustworthy Executor

Choosing a competent and trustworthy executor is crucial when distributing your real property. The executor will be responsible for ensuring that your wishes are carried out according to your Will, including transferring ownership of your real property to the beneficiaries. Make sure to select someone who is organized, responsible, and ideally familiar with real estate matters. Better still if your executor resides in the jurisdiction in which you live, or in which your real property is located. If you believe your estate will be complex, consider hiring a professional estate administrator or lawyer to help execute your wishes in

Protecting Loved Ones in Ontario:

the future administration of your estate.

9. Review and Update Your Will Regularly

Life and its circumstances change over time. Family dynamics, property acquisitions or dispositions, capital appreciations or depreciations of key assets, or even changes in the law, may necessitate or render advisable updates to your Will. It is crucial to review your Will regularly to ensure it reflects not only your current wishes and circumstances, but also the wishes of your proposed heirs or devisees of real property. This is especially important after major life events such as marriage, divorce, the birth of children, the relocation of your children (or more broadly your key heirs), or significant changes in your financial situation, including asset valuations.

An outdated Will could result in unintended consequences, such as properties being distributed to the wrong person or being subject to unnecessary taxes or, as highlighted earlier in this article, a grotesquely unequal distribution of asset value to your heirs.

10. Seek Appropriate Legal Advice

Seeking legal advice from a skilled estate planning lawyer is essential when devising real property by a Will in Ontario. A lawyer can help ensure that your Will is legally valid, that your real property is properly accounted for, and that your wishes are clearly communicated. They can also advise you on minimizing estate taxes, dealing with potential legal challenges, and structuring your estate in a way that best protects the interests of your loved ones.

Conclusion

Devising real property through an appropriately constructed Will can be a powerful means to protect your loved ones and ensure your assets are passed on fairly, and according to your wishes. By clearly identifying your property, considering tax implications, using trusts where appropriate, canvassing the wishes and expectations of your heirs, and ensuring that all legal requirements are met, you can provide for your family

and minimize future disputes. With careful planning and professional guidance, you can leave a legacy that offers security and stability to your loved ones for generations to come.

Eric J. Bundgard is a lawyer practising in estate planning and estate litigation with the Toronto-based law firm of Evenson Bundgard LLP. The information contained in this article is for general education on matters of interest only and is not intended to be relied upon as legal or financial advice for any specific purpose. For specific guidance and advice, readers are encouraged to consult their own legal and financial advisers.

*An Exercise in Gratitude***CONTINUED FROM PAGE 1**

Last but not least, ShareLife is such a broad and amazing way to reach out in faith to those in need, as a gesture of loving faith to the broadest spectrum of humanity, that I wanted my gratitude to help that effort in some way. Using an approach like this, working out your beneficiaries in your will can be not just a practical matter, but a kind of prayer, as you think about leaving a legacy of faith that expresses itself in charity.

Fr. John-Mark Missio is a priest of the Roman Catholic Archdiocese of Toronto, where he is currently pastor of Precious Blood Parish, Scarborough. He was Director of St. Michael's Choir School in Toronto from 2004 to 2009 and Director of Liturgy and Vice-Rector of St. Augustine's Seminary, Toronto from 2012 to 2020.



JOIN THE

Legacy Society

If you have included your parish or favourite archdiocesan charity in your Will or estate plan, please let us know. Through the Legacy Society of the Archdiocese of Toronto, we would like to say a special thank you.

All Legacy Society members are invited to the Annual Legacy Society Lunch and Mass by the Archdiocese of Toronto. They will also receive:

- A hand-crafted cross, blessed by His Eminence Frank Cardinal Leo.
- A personal letter from Cardinal Leo and a certificate acknowledging their intention.
- Invitations to Legacy Society functions and other special events.

Let your legacy be a testament of your faith! To learn more about the Legacy Society, please contact the Development Office.

All calls are confidential. All Legacy Society members have the option of remaining anonymous.

Legacy Society 2024

BY MICHAEL PENAFIEL

On Thursday October 3rd, the Archdiocese of Toronto's Development Office held its annual Legacy Society Mass and Lunch at St. Edward the Confessor Parish in Willowdale. It was hosted by Pastor Msgr. Pat O'Dea and Mass was celebrated by Central Auxiliary Bishop, Most Rev. Robert Kasun, CSB. After Mass, Msgr. O'Dea shared the many historical elements that were incorporated into the parish. He explained the history and meaning of various sculptures and paintings that are located around the church. For example, the participants learned that the current altar at the parish was once used at St. Michael's Cathedral Basilica.

During the lunch portion of the event, Msgr. O'Dea continued to go through the rich history and growth of St. Edward the Confessor Parish and the surrounding neighborhood. The parish was named after its first pastor, Father Edward Kelly and officially held its first Sunday Mass on December 22nd, 1922 in Lansing, now Willowdale. After the Second World War, a new church was built to accommodate the growing congregation, and it opened its doors to the community in 1952. Due to continued growth in the following years, a new building was necessary and so the current one on Churchill Avenue was constructed and opened in 1988.

Over 40 Legacy Society members took part in this year's Mass and Lunch with opportunities to connect and spend some quality time with other faithful members. Membership in the Legacy Society is open to anyone who has included any part of the archdiocese in their estate plan or has an intention to do so. If it is you, please let us know and join the Society!

The Development Office of the Archdiocese of Toronto can provide a list of Catholic Advisors should you require one. Please contact us for further information.



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Your Catholic Legacy, the planned giving newsletter of the Archdiocese of Toronto, is a free publication to keep parishioners informed about issues related to estate planning and the many tax-smart and creative ways they can support their parishes and Archdiocesan charities. While all articles are researched and come from reliable sources, you should always consult your own advisors before making a gift.