

# HAMON LAW OFFICE

BARRISTER AND SOLICITOR • AVOCAT  
NOTARY PUBLIC • NOTAIRE PUBLIC

*Practice concentrated in Family Law*

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Saturday, April 5 2014

\* <<client's name>>

Dear <<client's name>>:

**Re: Wills and Power of Attorney(s)**

Thank you for your \*e-mail of yesterday's date. I will be pleased to prepare a Will and Power of Attorney(s) for \*you and your spouse and aid in execution.

You are about to discover that there is more to preparing a Will and Power of Attorney(s) than the local corner store "fill in the blanks" forms would have you believe. An effective Will and Power of Attorney(s) requires an exhaustive look at your family and financial situation. It requires some time given to consider and document your circumstances. Further, as recent legislative changes have new implications for Wills and Power of Attorney(s) <sup>1</sup>, this involves careful drafting in order not to prejudice your beneficiaries. But don't worry. Your phone call to me has evidenced your desire to do it right. Since you are prepared to make the effort, you will be satisfied with the result.

This letter is a guideline preparing you to instruct me on your Will and Power of Attorney(s). In doing this, I draw on my clients's suggestions. Clients have told me that they have appreciated an opportunity to take time to consider the beneficiaries and the managers of their estate, and the caregivers for the people who are important in their lives. When foreseeing any possible complications, this time of reflection was important to make good decisions. They have told me that they do not wish to be rushed through an important decision because they realize that today's decision could help or hinder those whom they leave behind tomorrow. I agree with this conclusion and wish to give you this opportunity.

To this end, I enclose a copy of a check list for your preparation. Don't worry if you do not understand a question. Read it carefully and fill it out as best as you can. This information will give me the opportunity to evaluate your circumstances, and allow me to help you draw up a Will that most closely suits your needs. This list can be emailed or faxed to me, or if you wish, you can simply hand it to me at our next meeting.

**Power of Attorney(s)**

There is a common misconception in estate planning. Most people think that it is more important to have a will than a power of Attorney(s). Given the expense of the will, a few ask me if it is possible to do without a power of Attorney(s). Unfortunately, the simple answer is "No".

A little background first. There are two different documents implicated under the title, "Power of Attorney". Both require anticipating an emergency within your lifetimes.

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<sup>1</sup> These four Acts have received royal assent, and have been in force since April 3 1995. Power of Attorneys under the present *Power of Attorneys Act* executed prior to April 3 1995 will continue to be valid under the new Acts and will not be subject to the new legislated checks and balances.

Further, recent legislative changes have new implications for Power of Attorney(s), requiring careful drafting in order not to jeopardize your health or your assets.

If you die without a will and you have surviving spouse and/or children, the Succession Law Reform Act R.S.O. 1990, Chapter S.26 will ensure that your family will inherit your estate, although your estate may end up spending thousands of dollars to have "someone" appointed as a trustee and to have your estate administered. So, all in all, it is not fatal to die without a will (forgive me the pun!).

But on the other hand, if you step outside your home and get hit by a car and become incapacitated, the consequences are startling and staggering. First, without a Power of Attorney for Property, the Province will manage your property for you at great expense. Yes, even though your spouse and children may still be around and competent, they will not have authority to manage your property<sup>2</sup>.

Similarly, if you are incapacitated, and don't have a Power of Attorney for Personal Care, any doctor or hospital are significantly unfettered to provide medical care .... or not provide any medical care ... as he, she or it deems appropriate. What a nightmare! Do you really want a hospital or doctor imposing their morals and beliefs on your care in your incapacity? Absolutely not! And this is why a Power of Attorney for Personal Care is so vital.

If you have a child or children who are not of age of majority, or are thinking of having children, please think about who you would like to care for your children even if you have a spouse, a partner, in the event of your death or incapacity. Chose someone keeping in mind that it would be good if it was likely that they would be around in the event of your early incapacity. Have two choices, in the event that your first pick is not available. Then ask for their agreement. I advise you to prepare a letter for each documenting the reasons why you think that they would be a good guardian. This will help in the necessary court application at the time of your death or incapacity.

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### **Estate planning. Having your own Will(s) - What can this accomplish?**

1. You can know and plan for, in advance, your potential tax liability on your life.
2. Depending on where you live, you will minimize probate or land transfer fees.
3. You still maintain control of your assets while passing the benefit of them onto your family members.
4. You can achieve significant tax savings during your life by distributing income among your family members as you choose.
5. The transferred assets will be protected from claims of any potential creditors or matrimonial claims.
6. Family members with special needs may be provided for during your lifetime and on death more appropriately.
7. You can minimize the impact of challenges to your estate on your death, but still distribute your estate how and whenever you choose.

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<sup>2</sup> It is possible for a family member to bring an application to have authority removed from the Province but this may be labourious and expensive.

## Considerations:

If you have any small specific gifts to individuals or organizations in mind, prepare such a list by hand or by mechanical means. This can be incorporated into your Will. Note that this list is not essential and your Will will be valid without it.

Once you have completed the forms, please give me a call and arrange for an appointment. At the appointment, the information that you have written down will be entered, and I will sit down with you and discuss your instructions. I will be at your complete disposal for any questions that you may have.

To complete the form, hit "reply" in your email program and scroll down and fill in the information. Once you have completed the form, please email it back to me. Once I review your information, I will call you to discuss your instructions. Then, I will prepare drafts of the wills and power of Attorney(s) and send them to you. Finally, we will meet in Ottawa to have the documents properly signed and witnessed. Throughout, I will be at your complete disposal for any questions that you may have.

After these are signed, I will take the documents with me to scan them at my office. Then, I can send the originals to you or send you a scanned copy of the signed document. Your choice. Most clients decide to have me keep the original in a fire proof environment to ensure document integrity, protection against fraud and a point of reference for their estate trustee. There is no further charge for keeping the original documents.

**IMPORTANT:** An unlimited power of attorney for property is like giving someone the keys to your entire property not just for a single isolated transaction. It is a powerful document and thus potentially perilous. Cases have been documented where named attorneys have bilked the grantor out of significant portions of their estate. As there has been a significant amount of fraud concerning Power of attorneys, I strongly recommend that the original be left with me to help prevent fraud.

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It is my desire to serve you as competently and as comfortably as possible without costing you an arm and a leg. I guarantee that I will act on your instructions, and deliver to you a highly competent product. I want you to be pleased with the work that's done.

The charge for a very basic ordinary Will is \$250.00 plus disbursements of photocopying, laser printing, and postage. If the Will involves children, the Will becomes more complicated and frequently more expensive. \*And provided that tge will is "basic", to prepare the Will for both yourself \*and your spouse, the fee will be \$350.00 plus disbursements and tax. For the Power of Attorney(s), I will reduce my fees from \$100.00 per Power of Attorney(s) to \$75.00 per Power of Attorney(s).<sup>3</sup>

Please note that I am able to offer you this low rate premised on the calculation of time required to prepare a very basic will. As such I anticipate that I will be spending up to one and one-half hours on the following: to send out my introduction package, to take your instructions, prepare the will from my precedents and to meet with you

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<sup>3</sup> For two Power of Attorneys, the cost would then be \$150.00 plus tax; for four Power of Attorneys, the cost would be \$300.00 plus tax.

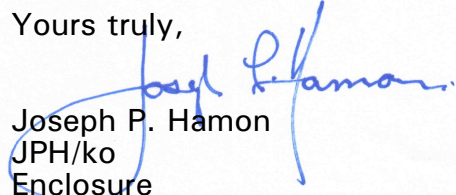
and have the will executed. If complications should arise, and the hours indicated herein are to be exceeded, you will be advised and our fees may be increased. Please note that it is impossible for me to estimate work that is non-standard. You should be made aware that my usual hourly rate is \$300.00, \$40.00 for support staff and \$90 for my paralegal graduate.

Finally, as you are an Ottawa client, I may confirm that I am able to continue to serve Ottawa clients despite the closure of my physical Ottawa office. \*Be assured that I will be able to meet with you at your convenience in Ottawa without further charge to yourself.

Finally, I and a number of my clients are Christian. Should you wish to have a will with a christian orientation, please let me know.

I look forward to hearing from you shortly.

Yours truly,



Joseph P. Hamon  
JPH/ko  
Enclosure

C:\ASSOC\assoc\WILLS\!intro.wp Monday, November 7 2011