



Community Legal Information Association of Prince Edward Island, Inc.

Making your Will

A will is a legal document that leaves instructions about what you want done with your **property**, after your death. Making a will is the only way to make sure that your property is distributed as you wish. After your death your property (personal possessions and real estate) makes up your "**estate**". Dying without leaving a will is called dying "**intestate**".

Why Should I Make a Will?

To dispose of your property as you wish

To make sure your property gets distributed as you wish, it is important to draw up a carefully written will. In your will you can write instructions about who gets your property and when your property is distributed to them.

You may have some items or personal treasures you would like to leave to someone special. Only a will can ensure that this happens.

If you own real estate jointly with another person in "joint tenancy" the property will automatically pass on to them when you die, by right of survivorship. If the property is owned jointly by "tenancy in common" there are no survivorship rights and your share of the property may be left in your will to whomever you name.

To provide for your dependents

Making a will allows you to set up trusts to look after your dependents. For example, if you have a child under the age of 18 years or if you have a severely disabled child.

In your will you may recommend a **guardian** to care for your children who are under the age of 18. You may also create a trust for your children giving the trustee broad powers to manage the assets of the trust for your children's benefit until they reach a certain age (specified by you) when the assets can be turned over to them. Children under the age of 18 cannot manage property themselves.

It is a good idea to hire a lawyer to make your will. Sometimes it is also a good idea to talk to a tax accountant, especially if you are creating complicated trusts in your will.



To choose who will look after your estate

Making a will allows you to choose a person called the “executor” to administer your estate. Your **executor** will:

- make funeral and burial arrangements
- make an inventory of all your assets
- pay your funeral expenses, debts and taxes
- report to **Probate** Court and your heirs and
- distribute your estate following the instructions in your will



To carry out your wishes most economically

If you die without leaving a will, the cost of settling your affairs may be greater than it would have been with a will in place. There is also no guarantee that your things will go to people according to your wishes.

Some things such as Registered Retirement Savings Plans, life insurance policies and other pension plans with named beneficiaries are not part of your estate and automatically go to the beneficiary. Jointly owned property will usually go to the survivor, although this may be challenged in some circumstances. As these are not considered part of your estate they will not be affected by your not having made a will.

Anything that is part of your estate involves a longer process if you die without leaving a will. Surviving family members must hire a lawyer to have an **administrator** appointed by the court. The administrator then distributes your property according to the regulations of the *Probate Act*. With most estates, the Probate Court procedure is longer and more expensive when there is no will.

The administrator may also be required to post a bond equal to the worth of the estate. If you die with a will, no bond is necessary.

How Do I make Sure My Will Is Made Correctly?

To make a will you must be capable of understanding what you are doing and at least 18 years old. We recommend hiring a lawyer to make your will since it is a legal document and if the proper procedures are not followed it may be invalid. You must know a lot about writing wills before you try to write a will yourself or use a blank form. Sometimes it is also a good idea to talk to a tax accountant especially if you are creating complicated trusts in your will.

The law in Prince Edward Island covers not only how you make your will, but also, what happens to your property if you die while living here. If you make a will here and later move to another province the laws of that province will govern what happens to your property. If you move to another province or buy land there, see a local lawyer about possible changes needed in your will. If you have personal or “real” property (land and building) in another country, you may want to make an international will which must be certified by a lawyer in order for it to be valid.

What Can I Put In My Will?

All real estate and personal property owned by you is controlled by your will. Life insurance, pensions or RRSPs payable to a named **beneficiary** are not controlled by your will and do not become part of your estate when you die.

What Is The Process For Making A Will?



Make an appointment to see a lawyer

Before you see your lawyer to make a will, prepare for the meeting by having the following information ready:

Full names and addresses of your beneficiaries and your children, if they are dependent.

A detailed list of all your assets and property, including insurance and annuity contracts. Include a list of debts you owe or are owed to you and the location of your bank accounts and other assets.

A general outline of how you want your property to be distributed and a list of special **bequests** if you have items you wish to go to specific people.

Names and addresses of those you want to appoint as your executor, trustee and guardians for your children. It's a good idea to name alternates in case the people you name are unable or unwilling to act as you wish at the time of your death. It is very important to speak to people you wish to act for you in order to make sure that they will accept the responsibility.



Read over your will before you sign it

Your lawyer will go over your will with you to make sure that it reflects your wishes accurately.



Sign your will

There are certain procedures, which must be followed for the proper signing of a will. Your lawyer will supervise this so that your will is valid. Two witnesses must watch you sign your will. A person who is to receive an inheritance or a person married to a beneficiary cannot act as your witness. The witnesses will also sign a "Proof of Will declaration" at the same time the will is signed. Your executor needs this document when he or she probates your will.

Where Should My Will Be Kept?

There is only one valid will and that is the one you signed. It is important to keep it together with the proof of will declaration in a safe place. Usually your lawyer will keep both documents in the firm's safe and give you a copy of your will to take home. If you choose to keep your original will, put it in your safety deposit box or other safe place. Banks will allow your executor to take your will, but nothing else, from the box. Tell your family or your executor where your will is kept.

If I Change My Mind How Do I Change My Will?

You can change your will by making a new will or by adding a **codicil**, which is the name for a paragraph containing minor changes to a will. The best method depends on how many changes you wish to make.

If there are a lot of changes, the best way to change your will is to have your lawyer write a new one. Most wills include a “clause of **revocation**” invalidating all previous wills. Destroy your old will when you make a new one. If you make a codicil, it should be kept with your will.



Sometimes changes are needed because of the law...

If you marry, your will is automatically void unless it says in it that it was made “in contemplation of the marriage.” If your will has this clause, your marriage must take place within one month of your making the will in order for your will to continue to be valid. If there is a divorce your bequest to your spouse is revoked.

Review your will regularly, especially if your circumstances change. The death of relatives, birth of children, divorce, annulment, or separation, change of residence, change of financial status or changes in tax laws are just some of the important reasons for reviewing your will.

What Else Do I Need To Think About?



Donating your body or vital organs

Arrangements for donations of your body or vital organs to science should be made with the recipient hospital or medical school, your doctor and your family.



Funeral and burial instructions

Leave instructions for your funeral in a letter separate from your will and tell your family what your wishes are, as your executor may not read your will until after your funeral has taken place.



Setting up a trust

A trust can serve many purposes. You may wish to create a trust to support a

cause you are interested in or to look after dependent family members. A Trust can:

- provide income for your children until they are adults;
- pay for your children's education;
- provide for any special needs; or
- pay for special care for a disabled child or other relative.

Your lawyer or your accountant will show you how a trust may help.

What Else Should I Know About?



Choosing your executor

Your executor is the most important person in carrying out your wishes after your death. Choose your executor for his or her ability in financial and other matters. Your executor is responsible for gathering your assets, paying your debts, and distributing your estate according to your wishes as written in your will. The executor must report to Probate Court and to your named beneficiaries.



Choosing guardians and trustees

The guardian is responsible for the care of your children under the age of 18. You should recommend a guardian in case you and your spouse should die at the same time or if you are a single parent. The trustee takes care of financial affairs for your children or any other dependents. Think about whether you wish the guardian and the trustee to be the same person.



Talking to people

Discuss these responsibilities with the people you wish to name as executors, guardians or trustees in your will to make sure that they will accept the responsibility when you die.



Looking after your family

The law expects you to think about family when you make a will and to make sure that they have been properly treated. Spouses, children and other dependents are eligible to apply for help from the Court under the Dependents of a Deceased Person Relief Act if your will fails to provide for them. If you


want to exclude a person from your will who may be a dependent, discuss this with your lawyer to find out about your legal obligations.

 **Gifts to charity**

If you wish to give to a charity that is important to you, you may do so in your will or you could add a codicil at any time you wish to do so. Life insurance policies may also be used to make donations to charities. Make sure you know the correct legal name of the charity.

 **When there's not enough money**

If you think your estate may not be large enough to go around, making a will allows you to set an order of priority on your bequests, or give everyone a percentage. If there is more money than you thought, you can make plans for this as well.

 **Taxes that must be paid**

There are presently no succession duties in Prince Edward Island. Your estate pays your income taxes for the year in which you die, and any other taxes, including **capital gains tax**, which are due. Your executor will be responsible for completing your personal and estate tax returns and paying the necessary taxes from your estate. Your executor will also hold back a certain amount from your estate until he or she receives a Clearance Certificate from Revenue Canada to say that all taxes have been paid.

 **Other costs that must be paid**

Your executor will also pay any other costs associated with probating your will. These may include probate fees, executor's fees, advertising costs, appraisal costs etc.

Legal Terms Commonly Used in Talking About Wills and Estates

There are many complex legal terms you may come across when dealing with wills and estates. This list will clarify a number of these.

Administrator: the person appointed to administer the estate of a person who has died without a will or without an executor.

Beneficiary: a person entitled to benefit from a trust, a will, an insurance

policy, an education savings or other savings plan.

Bequest: personal property given in a will.

Capital Gains Tax: a tax on the profit earned when a property is sold.

Codicil: an addition or change made to a will by a testator (the person who made the will).

Devise: a gift of land or an interest in land (real property) made in a will.

Estate: all the property a testator has the power to dispose of in a will.

Executor/Executrix: a person appointed in a will to carry out the instructions in the will. Two or more people may serve as co-executors.

Guardian: a person named in a will to take custody of a child.

Intestate: the condition of dying without having made a will.

Legatee: a person to whom a legacy is left.

Probate: a process to prove the originality and validity of a will.

Property: includes anything owned, anywhere, real or personal, legal or equitable.

Residue: what remains in an estate after every debt, trust and bequest is paid out.

Revocation: undoing something. In the case of a will, the testator making a will.

Succession Duty: inheritance tax levied against each beneficiary of an inheritance.

Testament: another name for a will.

Testator/Testatrix: a person making a will or a person who has died leaving a will.

Trustee: a person who holds property for the benefit of someone else.

This pamphlet is published by Community Legal Information (CLIA). It provides general information about wills and estates, not legal advice. Changes in law and policy occur frequently, so readers should check with a lawyer or Community Legal Information Association (telephone 892-0853 locally or 1-800-240-9798 toll-free) for up-to-date information. If you don't know a lawyer contact the [Lawyer Referral Service](#) at CLIA. This service provides a one half-hour appointment with a lawyer for \$10 plus tax.

Community Legal Information Association of Prince Edward Island is a charitable association funded by the Department of Justice, Canada; the Office of the Attorney General, Prince Edward Island; and the Law Foundation of Prince Edward Island. Its mandate is to provide Islanders with useful, understandable information about the law and the justice system. You may support the Association by volunteering, becoming a member or by making a donation.

Charitable registration number. 118870757RR0001

ISBN 978-1-894-267-12-0

February 2001