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Community Legal Information Association of PEI, Inc.

# Making Your Will

**Community Legal Information Association of PEI, Inc.**

902-892-0853 or 1-800-240-9798

[www.cliapei.ca](http://www.cliapei.ca)      [cia@cliapei.ca](mailto:cia@cliapei.ca)

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 land or buildings) 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 make a carefully written will. In your will you can write instructions about who gets your property and about when your property is distributed to the people you leave things to ("beneficiaries").

You may have some items or personal treasures you would like to leave to someone. 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

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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 such 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;
- 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 be 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. It may also be 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,  
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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 of 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 amounts 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 the 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 may also sign a “Proof of Will declaration” at the same time the will is signed. Your executor may be asked for 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 the will, 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. 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;
- 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 in order 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 to 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 legal terms you may come across when dealing with wills and estates. This list will clarify a number of these terms:

**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 (male) /Executrix (female):** 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 cancelling all or part of the will.

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

**Testament:** another name for a will.

**Testator (male) /Testatrix (female):** 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.

## Making Your Will Worksheets

**Important: These worksheets cannot be used as a will.** A will is a legal document that leaves instructions about what you want done with your property and belongings after your death. Making a will is the only way to make sure that your property is distributed as you wish. Completing this workbook will help you think about what you want to include in your will. You can take this booklet with you to your lawyer's office when you make your will.

**Name in full:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Occupation:** \_\_\_\_\_ **Date of birth:** \_\_\_\_\_

**Marital status:** \_\_\_\_\_

**Full name & address of spouse or partner:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Full names of dependents**

**Age**

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**Full name and address of executor or executors**

You can name more than one person, or you can name a law firm or trust company to act for you. You must specify whether they can act as alternates or must act together. Ask if they are willing to be your executor before you name them.

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**Assets**

List your assets or all the things you own. Include real estate, bonds, bank accounts, insurances, vehicles, household property.

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**Liabilities**

List your liabilities, or all the things you owe. Write down how much is owed, to whom, and if it is insured.

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**Conditions**

Are there any specific conditions you would like in your will? For example, you might want an heirloom passed on to someone, but not until that person reaches a certain age.

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**Beneficiaries**

List the names of your beneficiaries, their relationship to you (for example, friend, son) and what you would like each of them to receive. This could be a specific bequest or gift, like land or money, or it could be a percentage of your estate.

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**Guardianship**

If you have a child or other relative who needs a guardian, you can name a guardian in your will. Be sure to ask the person if he or she is willing to be guardian and get this in writing. Give the full name and address and relationship to you. The appointment of a guardian must be confirmed by the court, but this lets the court know your wishes.

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**Common disaster or limited survival**

If partners die at the same time (or one shortly after the other) from a common disaster like a car accident, your executor needs to know what you want done with your property. For example, it may be that you will want another family member to inherit your estate, or you may want trusts to be set up for your children. List here what you want to happen.

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**Personal Mementos**

These instructions are often not in the body of the will but on an attached sheet so changes can be made more easily. List any small things of value to you and name the person you would like to have the item.

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**Important Information to have available**

**Document**

**Location**

Will \_\_\_\_\_

Birth certificate \_\_\_\_\_

Marriage certificate \_\_\_\_\_

Divorce papers \_\_\_\_\_

Safety deposit box \_\_\_\_\_

Funeral plans \_\_\_\_\_

Prearranged Funeral \_\_\_\_\_

Deeds \_\_\_\_\_

Tax returns \_\_\_\_\_

Insurance policies \_\_\_\_\_

Mortgages \_\_\_\_\_

Burial plot \_\_\_\_\_

Health care directive \_\_\_\_\_

**Advisor Name      Contact Information**

Doctor \_\_\_\_\_

Lawyer \_\_\_\_\_

Banker \_\_\_\_\_

Accountant \_\_\_\_\_

Insurance agents \_\_\_\_\_

Stockbroker \_\_\_\_\_

Other \_\_\_\_\_

Children / Contact information / Grandchildren

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other pamphlets in this series are:

Wills and Estates – Information for Executors

Wills and Estates - Information for Administrators

You may also be interested in the series, “Putting Your Affairs in Order”, which covers the following topics:

- Wills;
- Powers of Attorney;
- Consent to Treatment;
- Health Care Directives;
- Moving to a Community Care Facility or Nursing Home;
- New Relationships: Legal and Safety Concerns;
- Preventing Abuse and Neglect of Older Adults;
- You and Your Grandchildren.

All of these publications can be found at [www.cliapei.ca](http://www.cliapei.ca) or can be ordered by calling Community Legal Information Association (CLIA) at 902-892-0853 or 1-800-240-9798.

*This pamphlet contains general information about the law. It is not a complete statement of the law in this area and is not a substitute for legal advice. To receive legal advice, you need to speak to a lawyer.*

Community Legal Information Association of PEI, Inc. (CLIA) is a charitable organization that receives funding from the PEI Department of Environment, Labour and Justice, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you can telephone CLIA at 902-892-0853 or 1-800-240-9798, visit our website at [www.cliapei.ca](http://www.cliapei.ca) or email us at [clia@cliapei.ca](mailto:clia@cliapei.ca). You can also find us at: [www.facebook.com/CLIAPEI](http://www.facebook.com/CLIAPEI), [www.twitter.com/CLIAPEI](http://www.twitter.com/CLIAPEI) and [www.youtube.com/CLIAPEI](http://www.youtube.com/CLIAPEI).

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