

WILLS

What is a will?

A will is a legal document that describes how you would like your affairs dealt with after your death, including distribution of your property and assets. The purpose of a will is to appoint someone to administer your “estate” by following instructions in the will to deal with your property, debts, taxes, etc.

There are five requirements for a valid will:

1. the will must be made in writing;
2. the will-maker must be over the age of 18;
3. the will must be dated and signed;
4. the will must be signed in the presence of two witnesses; and
5. the will-maker must have testamentary capacity. This means the will-maker is aware of the nature and effect of the will.

Why it is important to have a will?

It is important to have a will because it is your last declaration on how your estate will be administered after your death, and how you would like your belongings to be dealt with. If you do not have a will, [*The Intestate Succession Act \(Manitoba\)*](#) would take effect and provide direction on how to distribute property. Under this Act, distributions of property and assets are made to spouses, common-law partners, and other family members according solely to family structure. As a result, no one in your family or otherwise has control of who manages your estate after your death, and you cannot ensure the distribution of the estate is equal and fair, or that certain property or assets go to certain family members.

Although it can be difficult to think about wills, many people find that drafting a will gives them a sense of peace, confidence, and empowerment. Drafting a will can be a caring act that ensures your loved ones are looked after according to your wishes and may help to avoid uncertainty or disputes regarding your estate among your living relatives.

Key terms

In your will, you will appoint an executor and one or more beneficiaries:

Executor: the person that the will-maker appoints to collect their property on death and distribute their estate based on instructions in the will.

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Beneficiary: the person(s) and/or entity(ies) who are designated to receive the benefits of property belonging to another person in the event of their death. Beneficiaries can family members, friends, and other individuals or entities, including not-for-profits and charities – for example, you might want to gift money or property to a cause you are passionate about.

Testamentary capacity: the will-maker must be aware of the nature and effect of the will – “testamentary capacity” it is the ability of a person to make a valid will.

Estate: all personal and real property (i.e. everything of value) that an individual owns before death – including their home, real estate, bank accounts, cash, investments, insurance proceeds, art collections, antique items, and any other assets or entitlements.

How to include intellectual property in your will

As intellectual property is considered personal property, you can pass it in your will by including specific instructions to the executor in your will. Once intellectual property rights are passed on and inherited by the designated beneficiaries, the beneficiaries become the new owners and will be entitled to benefit from any income generated by the intellectual property as though they were the original owner or creator. For example, if you’ve drafted a book manuscript, you can pass the copyright to one or more persons in your will, allowing them to receive the revenue generated from its publication.

Revisit your will after major life events

After you've drafted a will, it's a good idea to revisit it every few years to see if there are any revisions you'd like to make. This is especially a good idea after significant life events, like the birth of a child, a marriage, or a divorce, to ensure your will reflects your current wishes and circumstances.

Can I make my own will?

While it is not an easy task, you can make a will on your own. However, if it is not done correctly, it may not have the effect you want or not be enforced – which is why most people seek legal assistance when writing their will.

Where should a will be kept?

A will should be kept in a safe place, such as a safety deposit box. In addition, it would be wise to inform your executor of where the will is and possibly provide them a copy.

How do I change my will?

You can change your will by making a new one or by making a codicil – a document that changes part of your will.

What information should I gather before seeing a lawyer to make a will?

Before seeing a lawyer, you should itemize:

- everything you own that will be part of the estate
- everything you own jointly
- who you want to benefit in your will (including their names, addresses, and occupations)
- who you want as executor(s)

Is my executor entitled to be compensated for being an executor?

Yes. The executor is entitled to a fair and reasonable compensation depending on the size and complexity of the estate.

Please fill out an [online intake form](#) with the Manitoba Legal Clinic for the Arts for assistance in drafting or reviewing a will!