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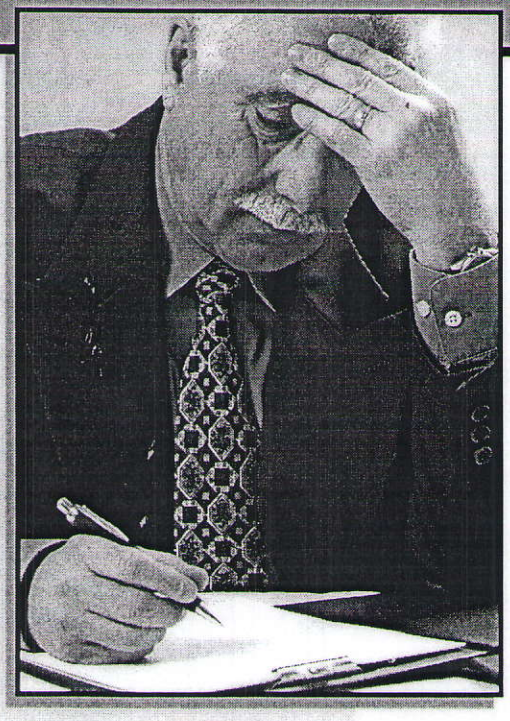
Writing Your WILL



This booklet is for people who are wondering if they should write a will. It explains what is involved in making a will.

If you die without a will, it usually costs more. This means your loved ones may receive less. If you die without a will, it's often more complicated and time-consuming for the people who outlive you to settle your estate.

The purpose of writing a will is to pass on your belongings to your loved ones according to your wishes and with as few problems as possible.

You should not rely on this booklet for legal advice. It provides general information only.

- Paulo has no children of his own. He wants to leave his belongings to his niece and nephew in case he dies. To make sure, he writes this in his will.
- Bill's mother died and now he's having problems. He can't remember everything she told him about what she wanted done with the things she owned. He wishes she'd written a will.
- Maria is writing her will. Both of her sisters want her to leave her opal ring to them. The ring originally belonged to their mother, and is a family heirloom. Maria knows that unless she is very clear in her will about who should have the ring, there will be trouble later.

FREE

What the Words Mean

Assets: Money, property, possessions, a business —everything you own.

Beneficiary: A person or organization you leave something to in your will.

Codicil: A document made after the will that changes some things in your will.

Estate: Everything you own at your death.

Executor: The person you appoint to carry out the instructions in your will.

Probate: The court procedure that allows financial institutions and other organizations to rely on the will as being the last will you made.

What is a will?

A will is a legal document that leaves instructions about what you want done with everything you own at your death. Everything you own at your death is called the estate.

A will gives you some control over what will happen to what you own. By having a will, you can make sure that the things you own go to the people you want to have them. A will can be useful for people who outlive you. They can then feel sure that they are carrying out your wishes.

What are the requirements for making a will?

Because you won't be around to explain what you meant, your instructions in the will need to be clear.

- You need to be an adult. Generally, you must be 19 or over to make a legal will.
- You need to be mentally capable of managing your own affairs.
- You need to agree with the contents of the will at the time you make it. If someone misleads you or puts pressure on you, the will is not legal.

For example, if someone tricked you into signing a will but you thought it was a power of attorney, the will would not be legal. If someone forced you to make a will so that he or she could benefit from it, the will would not be legal.

At some point when you are writing the will you should be alone with the lawyer, Notary or other person who is helping you. You need to be able to speak freely without being afraid of hurting anyone's feelings.

When should I make a will?

You can make a will at any time. You should make a will if you marry or if you start a family. Even if you don't marry or have children, or don't have many assets, it's still a good idea to make a will so that you can leave your belongings to the special people in your life.

Also, you should make a will when you are in good health. To make a will, you need to be mentally capable. Your mental capability can be affected by illness, accidents or drug treatment.

What does a will look like?

The law sets out some rules that must be followed:

- The will must be in writing – typed or handwritten.
- You must sign the will at the end, in front of two witnesses, and you must tell the witnesses that the will is yours. If you are unable to sign the will (because of illness or disability) you can ask someone to sign it for you in front of you, and in front of the two witnesses.
- The two witnesses must sign the will in front of you and in front of each other.
- You and the witnesses should initial each page of the will.
- You should mark the date on your will.

Who can be witnesses to my will?

The two witnesses must be at least 19 years old and must be mentally capable. A witness must not be a beneficiary (someone you are leaving something to in your will) or married to a beneficiary.

The witnesses do not need to read the will. All they have to do is watch you sign your name to the will, and sign the will themselves in front of you.

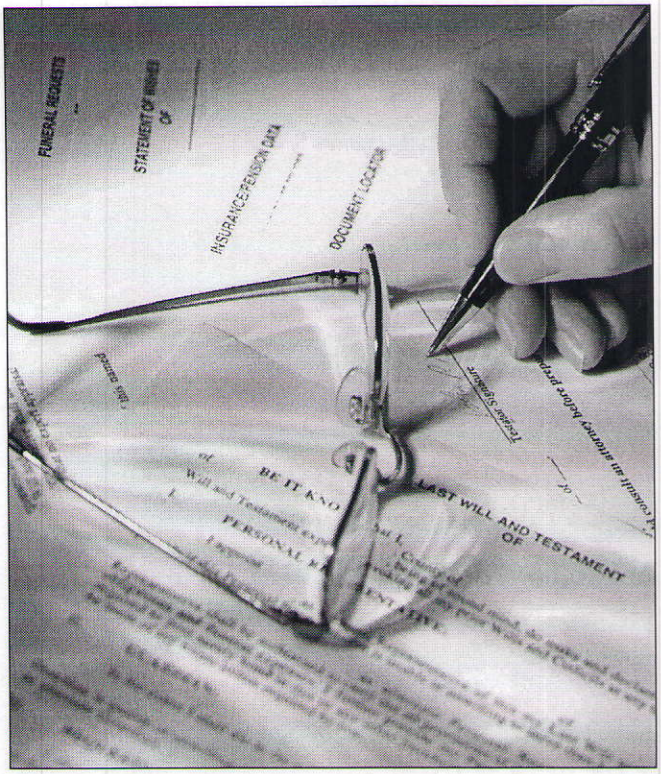
Overview of a will

Typically, a will has several sections:

- The will appoints the executor. This is the person who is responsible for carrying out the instructions in the will. You appoint someone you think may outlive you. It's wise to also appoint a person to be back-up executor, just in case the executor dies before you.
- The will says who gets your property and under what conditions. The people to whom you give your possessions and property are called beneficiaries.
- The will says who gets any property that remains after all the beneficiaries have been given their share.
- The will can include other details as you wish. For example, people should name a guardian for their underage children.
- A new will normally cancels any other will you had in the past.
- Unless you state in the will your plan to marry a specific person, if you marry or remarry after the date you signed your will, your will is automatically cancelled.

How detailed do I have to get in my will?

You need to be clear about exactly who the beneficiaries are. You can't say, for example, that



you want to leave everything to "hungry children in Africa."

But you don't have to write down everything. You only need to be specific about who should get what if there is something of great value and you want to make certain it goes to a particular person.

For example, you might want to say who should get your great-great grandfather's gold watch. You may not want to say exactly what should happen to your alarm clock.

What doesn't go into the will?

A will often isn't read until after the funeral. You need to tell someone what kind of ceremony you want when you die, and whether you want to be buried or cremated. If you own assets in joint tenancy, they do not form part of the estate. For example, if you and your spouse own the house as joint tenants, or have a joint bank account, it goes directly to the spouse on your death.

Usually RRSPs and RRIFs don't form part of the estate, because in the RRSP or RRIF you name a beneficiary. When you die, the bank or trust company transfers the RRSP or RRIF, or pays it out to the beneficiary you named. If you have life insurance that names a beneficiary in the policy, the same thing happens.

What is an executor?

Your executor is the person you name to carry out the instructions in your will. Your executor may need to get a document from the Supreme Court called a Grant of Letters Probate.

Probate means that the court confirms that everything necessary has been filed, and that financial institutions and the land title office can rely on the will. Some estates that involve only a small amount of money (under $25,000) may not need to go through probate. The executor can check with the Court Registry.

An executor is responsible for settling your affairs. This usually involves selling some assets, preparing the final tax return, paying any outstanding debts, applying for the Canada Pension Plan death benefit, and distributing the estate. How much time this takes depends on how complicated your affairs are.

Who should I choose to be my executor?

An executor needs to be a reliable adult. Most people ask a family member or close friend to be their executor. You can also appoint a lawyer, a private trust company or the Public Guardian and Trustee as executor. An executor can be one of your beneficiaries.

Your executor can be someone who does not live in the province, but all procedures to settle the estate will be done in BC.

Sometimes an executor finds that the job is too much. He or she then has the option of employing a lawyer. There is also the possibility of help from the Office of the Public Guardian and Trustee. Their address and telephone number are on page 8.

What is important when choosing an executor?

An executor needs to be someone you trust and who has the ability to carry out the instructions in your will. It's best if he or she is also familiar with your situation and your wishes.
Choose:

- someone you trust;
- someone you think will outlive you; and
- someone who is able to carry out your instructions.

Make the job easier for your executor

- Ask the person if he or she is willing to be your executor.
- Discuss your wishes with the executor, including burial and cremation.
- Register your will, and tell your executor where the original will is kept. It would be a good idea to keep it somewhere where others can access it.
- Keep an up-to-date, detailed record of all that you own and all that you owe. For example, bank accounts, RRSPs or RRIFs, insurance, real estate, and pension benefits. Note any items which are owned in joint tenancy or which name a specific beneficiary. These are dealt with outside the estate, so the executor does not have to manage them.
- Talk to family members, the beneficiaries, or anyone who may be entitled to a share of the estate. Explain what your plans are. This will prevent problems later.
- Review your will and your choice of executor every few years or when your circumstances change.
- Update the will if there are any changes.

Choose an alternate executor

It is very important to name an alternate or back-up executor in your will. If the executor is unable or unwilling to act, the alternate can take over.

Can more than one person act as executor?

You can appoint more than one executor in your will. However, all executors must agree to this arrangement. For some matters, one of the executors can act "to bind the estate" (tie up details), such as arranging the funeral. In most other matters, all executors must agree and must act together.

If you appoint more than one executor, consider if they will be able to work together. You should discuss your wishes with both of them. It's best if you can do this with them together. If one executor dies, the other one can act alone.

Sometimes people choose three executors so if there are disagreements, the executors can vote and the majority will decide. However, you need to say in the will that this is what you want. You also must say that the executor who doesn't agree with the other two will still go along with the decision and sign any necessary papers. (This is called a majority rule clause.)

Can I change my will after I've made it?

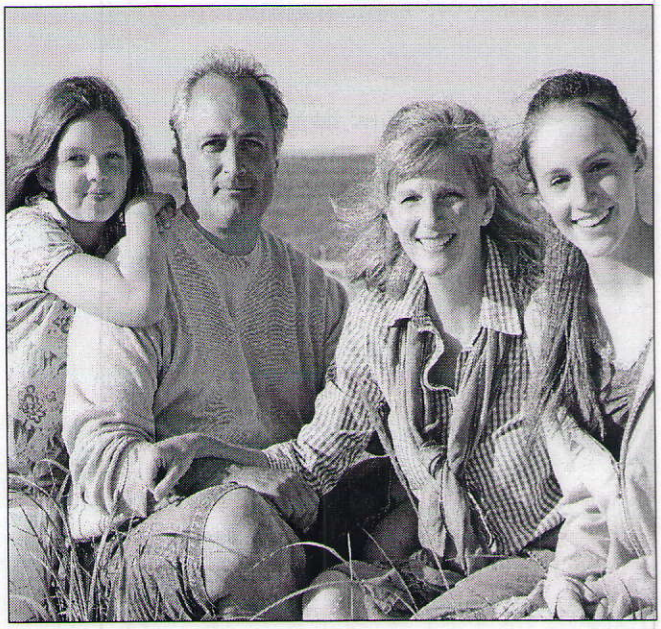
You can make a new will at any time. Or you can change the will you've made by signing a separate document, called a codicil. To be legal, the codicil has to meet the same requirements as the will: it must be in writing, and be signed by you and two witnesses who are not beneficiaries. You don't have to use the same two witnesses you used for your will. The codicil must refer to the will it is amending.

You can also cancel a will. You can cancel a will by destroying the original. Or, you can cancel a will by drawing up a signed written document, with two witnesses. A new will normally cancels any previous will. If you marry after you made a will, the will is cancelled unless it states the person's name and your plan to marry. This does not apply for common-law relationships.

Does the law say I have to leave my estate to my family?

In general, you are free to leave your estate to whomever you want. Only a spouse (including common-law spouse) or your children can dispute the arrangements you make in your will. They have to apply to the Supreme Court within six months after the will has been probated. They have to prove in court that the will does not provide for them adequately.

If you want to leave a spouse or child out of your will, you should explain this in a separate document or letter, kept with your will. You need to show that you have considered them and your obligation to provide for them. This does not guarantee that they will not receive something if they dispute the will in court. You should seek legal advice from a lawyer.



Divorced spouses generally have no legal claim to dispute the arrangements made in your will. Other relatives who are left out also generally have no claim.

Do I have to get legal help to make a simple will?

A simple will does not cost very much and you may find that a lawyer or Notary Public is the safest way to avoid mistakes.

Ask a lawyer or Notary how much it will cost before you decide to give the job to him or her. To find a lawyer or Notary, please see page 7.

Where should I keep my will?

You need to keep it in a safe place that is fireproof, waterproof, and tamper-proof. The executor needs to know where it is, so that he or she can easily find it after your death.

How do I register my will?

You can register your will with the provincial government Wills Registry service. The law does not require this, but it's a good idea because it shows where you have put your current will.

To register your will, you (or the lawyer or Notary) need to file a Wills Notice with the Wills Registry, Division of Vital Statistics. To find the nearest office, look in the blue pages at the back of the white pages of your telephone book under Government of British Columbia and Vital Statistics. Do not send a copy of the will, just send the Wills Notice.

What happens if I die without a will?

If you die without a will, someone, usually a spouse or child, needs to file documents in the Supreme Court Registry that ask the court to appoint him or her to administer the estate.

If there is no will, the law sets out who will inherit. The estate goes to the government only if no relatives can be found.

If there is no one who can administer the estate, then the Public Guardian and Trustee takes responsibility.

Do I have to make a will?

The law does not say that you have to make a will. However, by making one you can make sure that your wishes about inheritance are respected.

If you die without a will, there is no legal way of knowing what your wishes are. The Supreme Court then has to appoint someone to deal with your estate.

How is a will different from power of attorney, or representation agreement?

A will takes effect only after you die. A power of attorney and a representation agreement are two types of authority you can give someone to act on your behalf for financial matters when you are still alive and cease to have effect when you die.

How is a will different from a living will?

Currently, a living will has no legal effect except in cases of emergency medical treatment that goes against a person's religious beliefs. A living will is only an expression of your wishes if you become seriously ill or injured, and are unable to make healthcare decisions. You must make a representation agreement to allow someone to make healthcare decisions for you.

At the time of this writing, the BC Government is looking to support the effect of Advanced Directives for medical treatment. Check with a lawyer or Notary Public to find out when the changes take place.

Where Can I Get More Help?

Community Groups

In many communities there are people who have detailed information about legal issues that affect older people. Ask your local seniors' centre, community information centre, public library, or Royal Canadian Legion.

A Notary Public Near You

You can go to a Notary for help with making a will and executing affidavits. To get the name and telephone number of a Notary Public near you,