

THE WILL KIT

Introduction

Simply stated, a Will is a legal instrument executed by a competent person in the manner prescribed by the various provincial statutes. All real estate, cash, and other property owned by you—such as automobiles and household goods—should be transferred to others either by Will, by operation of law, through joint ownership with the right of survivorship, trusts, gifts, insurance, or other estate-planning methods.

Every married, single, widowed, or divorced person over the age of majority should have a current, valid Will. Most married persons, with or without children, generally wish to leave their entire estate to their surviving spouse.

Some of the benefits you will gain by having a current, legal Will are:

- You may choose those persons you wish to receive your property and assets.
- Your personal effects, memorabilia, and family heirlooms will go to those you have chosen.
- Someone you know and trust will administer your estate, locate your assets and pay your bills.
- Depending on your marital status, you will be able to name the custodian of any minor children.
- The possibility of costly and lengthy estate litigation is reduced.
- Your executors will be aware of your wishes regarding burial or cremation and funeral services.

Keep in mind that Wills do not have an expiration date. This means that a Will you prepare at age 30 will possibly still be valid in every respect when you are 60 or older. Carefully review your Will at reasonable intervals due to factors such as these:

- Your property values change;
- A death or a change of competency of your Estate Trustee or your beneficiaries;
- A change in your marital status;
- You move to a different province or country;
- You acquire property in another province or country;
- A substantial increase or decrease in your financial resources;
- You wish to add other dependents such as a child or an elderly parent;
- You make a change in your life insurance program;
- You inherit or purchase property;
- A change in inheritance or tax laws in your province; and
- A change in your wishes regarding the distribution of your estate.

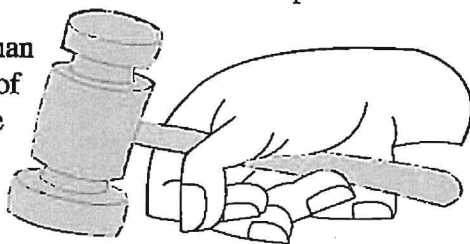
Remember, you can change your Will whenever you want, provided you still have the "mental capacity" to do so. You can either draw an entirely new Will or you can add a codicil to the existing one.

It's important that you give serious consideration to the selection of your Estate Trustee—the person who will be responsible for the administration of your estate and distribution of assets to your beneficiaries. The demands that will be put on that person can be difficult and time consuming.

Legal Requirements of a Will

As a general rule, a simple Will is adequate for most people, married or single, provided there are no complicating circumstances requiring professional advice.

A standard basic Will avoids the costs and inconveniences that result from you dying intestate—or without a Will. It enables you to appoint your own personal representative (Estate Trustee) to administer your estate, to leave your estate to those whom you choose rather than those dictated by the laws of your province, to minimize the cost of administering your estate and to avoid the possible expense of court-required performance bonds.



If there are minor children involved, your standard basic Will deals with the appointment of a custodian, and specifies the creation and terms of a trust fund to be used for their support until they reach an appropriate age.

Statutory Limits of Wills

The laws of each province vary, but the following terms and conditions are most frequently applicable in all provinces. The age requirements are as follows:

Alberta:	18
British Columbia:	19
New Brunswick:	19
Manitoba:	18
Newfoundland:	17
Northwest Territories:	19
Nova Scotia:	19
Nunavit:	19
Ontario:	18
Prince Edward Island:	18

Quebec:	18
Saskatchewan:	18
Yukon Territory:	19

Exceptions are made in some provinces for minors who are married or have children.

1. Relatives and Dependents:

In some provinces the laws generally provide that the spouse and children of the testator and certain other close relatives have the right to apply to the courts for an increased share of the estate where the Will does not make adequate provisions for them. The courts have the power to

alter the disposition of the estate to provide for the applicants.

2. Marriage and Divorce: In some provinces, if a person marries or divorces, or enters into or leaves a common law relationship, after making a Will, the Will may be entirely void, or certain parts of it may be void. The many potential variances preclude our giving you the particulars related to each province.

3. Witnesses: Subject to certain exceptions in some jurisdictions, if a beneficiary named in a Will or the beneficiary's spouse witnesses the Will, the validity of the Will is not affected, but the beneficiary may lose his/her interest under it.

Safekeeping of Your Will

The signed original copy of your Will should be kept in a safe place where it is available to you in your lifetime, and to your Estate Trustee after your death.

Keeping it in a safety deposit vault could delay its availability to your Estate Trustee.

Revocation of a Will

You can revoke a Will either with a revocation clause or a different disposition of property in a later Will or by marriage, or entering into a common law relationship. A Will may also be revoked by cutting, burning, erasure or any other physical act which essentially destroys the Will.

Charitable Donations

If you wish to leave money or property to religious, educational, or other charitable organizations, be certain that particular charity has been approved as "charitable" by tax authorities and note the exact legal name of the charity. For example, a bequest made to "Fight Cancer" could be claimed by more than one charitable organization.

A THOUGHTFUL MEMO

A simple memo included in your Will could be critical to the settlement of your estate. Important matters such as, "Where you keep your cheque book," "What do you owe on your car" and "What about the real estate investment you planned to make" should be covered in a memo to accompany your Will. Here are the most important items you should include in such a memo.

- **Banks.** Provide the name of your bank and the account number, and location of cheque book and banking records. Also include the number and location of any safe-deposit boxes.

- **Credit cards.** List all of your bank and other credit cards by number and expiration date. Note where you keep the cards and payment records for each.

- **Life insurance.** List the names of the health, life, auto, home and burial insurance compa-

nies, policy numbers, the location of insurance documents and how to reach the contact person.

- **Pension.** List the names of pension sources, government and civilian, the location of relevant documents and how to reach the contact person.

- **Military records.** Reveal the location of important discharge papers, service records, citations and decorations.

- **Real Estate.** List your home and other holdings with the mortgage status of each, how to reach the lender, the account numbers and the location of relevant documents.

- **Social Security.** Include your Social Insurance number, ask your family to notify them of your death and to ask about lump-sum death or other possible survivor benefits.

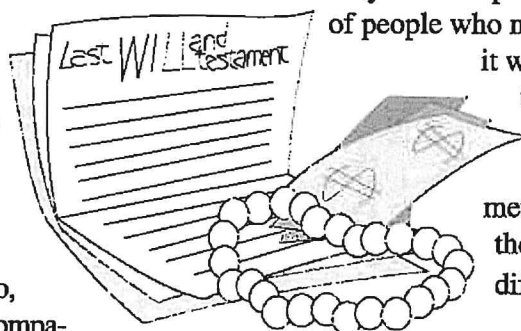
- **Investments.** List all your stocks, bonds and mutual funds with account numbers and names and addresses of your brokers.

- **Motor Vehicle.** Provide the location of the title and if the vehicle is financed the location of loan documents and status of the payments.

- **Tax records.** Provide the name of your tax accountant and if relevant the location of tax records, current and past.

You might want to include additional information such as the funeral or memorial service desired. A list of preferred speakers and pallbearers would also be helpful.

We suggest, for security purposes, that you only make copies for the limited number of people who need this information. And it would be wise to update this memo at least twice a year. Your survivors will truly bless your memory for having made their lives easier during a difficult time.



Writing Your Will

To simplify the writing of your Will, follow these numbered instructions. They match the related, numbered paragraphs in the blank Will Form provided in your Kit.

First, write or type your full, legal name on the blank line at the top of your Will Form. Next, fill in your full, legal name and your city/province of residence on the lines provided below that. If you have assets in any name other than your legal name indicate this by adding in brackets, "Also known as _____"

Note: Should you wish to delete any specific instruction noted in your Will Form, simply draw a line through the text you wish to delete *before* the Will is signed. Both you and your witnesses must sign or initial all such deletions.

1. Appointment of Personal Representative (Estate Trustee): Your Estate Trustee should be someone you trust to see that your estate is properly and legally handled in a timely manner. An alternate Estate Trustee should also be named. If your estate is small, you may wish to name your spouse, a close relative or a good friend as your Estate Trustee. This person can also be appointed the guardian of your minor children, or you can name a different person

to act as a guardian. We recommend you seek professional legal counsel if you have any concerns about also naming the person as guardian. If your estate is sizeable and involves major assets such as real estate, bank accounts, stocks, bonds, and other significant items, you may wish to consider the use of a trust company.

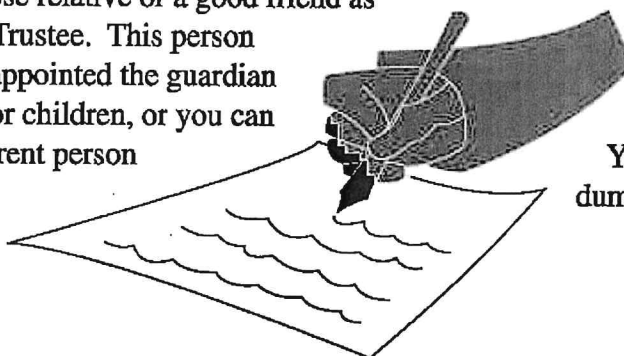
2. Instructions for Your Estate Trustee:

a. Debts: The law imposes an obligation to pay debts and the general statement about debts in your Will Form stipulates that act.

b. Household Gifts and Personal Effects: These are personal effects such as clothing, furniture, jewellery, antiques, art and other household goods. Simply name the beneficiary and list the items you wish to leave to that person.

c. Cash and Specific Gifts: This includes cash and other financial gifts such as stocks and bonds. List each specific beneficiary and designate exactly what property you want to give to each.

d. Real Estate: Disposing of your real estate in your Will requires very careful detailing of its "legal" description and any other relevant characteristics such as mortgages and rental income. See the example in the Sample Will. You may require an addendum to cover those.



Note: If you have no specific intentions regarding household goods, personal effects, cash, other specific gifts and/or real estate, simply add an "N/A" (i.e., "Not Applicable") in each relevant numbered paragraph. You must complete the "Residuary Estate" paragraph specifically and carefully.

e. Residuary Estate: This category includes all assets that are left over after all other gifts have been addressed. Also, any assets added to your estate after you wrote your Will and any items which you gave to beneficiaries who predeceased you.

3. Administrative and Trust Provisions: This section addresses other important issues, such as:

a. Trusts for Minor Beneficiaries: If any of your children or other beneficiaries are too young to receive their inheritance, you must select an age at which you feel such inheritance can be made. Secondly, since a young beneficiary may survive you but die before reaching the age you have selected, you must identify one or more alternate beneficiaries to receive that inheritance.

All references to "children" in this Will Kit relate exclusively to those who are biologically or legally adopted children of the testator.

b. Custodian of Children: A very important decision. Name the person(s) you would want to have custody of your

children and name an alternate, just in case.

c. Estate Trustee Powers: Your Estate Trustee will require administrative "powers" in order to better administer your estate, without which expensive court proceedings to acquire such "power" may be required. Included in your Will Form are common administrative powers that your Estate Trustee may resort to if needed.

d. Community of Property: In some provinces beneficiaries under a Will who separate or divorce may have to share with their estranged spouses the interest income earned on the gifts or money they inherited unless the Will which created the gift contains a statement excluding such interest income.

4. Signing Your Will: You may sign your name either in its full, legal form as you did at the beginning of the Will Form provided, or in the manner you normally write your signature.

You and both witnesses should also initial the bottom right-hand corner of the first page of the Will.

Next, sign and date only the original form you completed. It is dangerous and inadvisable to have more than one original signed copy of a Will.

Your Will must be signed in the direct presence of at least two persons who are mentally competent and who have attained the age of majority in the province where the Will is made, and are not beneficiaries named in your Will, or the spouses of any beneficiaries. All of the witnesses must be present at the same time as you, and each other, and must sign the Will where indicated, after you sign.

**EASY AS
123**

Note: This sample Will, made by a "Jane Doe," illustrates how easy it is to complete your own Will. Study it for guidance purposes only, keeping in mind that the bequests and terms noted are there for illustrative purposes only and are not meant to represent legal advice or to suggest the manner in which you might allocate your own bequests.

SAMPLE ONLY

Last Will of Jane Doe

I, Jane Doe of Ottawa, Ontario, declare this to be my Last Will. I revoke all previous Wills.

1. **Personal Representative/Estate Trustee:** I appoint my husband Tom Doe to be the personal representative (referred to as "my Estate Trustee") of this Will and of my Estate and of any trusts established by this Will. However, if my first-named Estate Trustee cannot, for any reason, act or continue to act as such, I appoint my sister Alice Smith to be my Estate Trustee instead.

2. **Instructions to Estate Trustee:** I give all of my property and assets (collectively referred to as "my property") wherever located and in whatever form to my Estate Trustee, in trust, to deal with as follows:

(a) **Liabilities:** My Estate Trustee shall pay all of my liabilities, including my testamentary and funeral expenses, and my taxes, from my general estate (unless otherwise specifically stated in this Will).

(b) **Household Goods and Personal Effects:** My Estate Trustee shall distribute the following of my household goods and personal effects to the following persons who survive me:

All of my household goods and personal effects to my husband Tom Doe, if he survives me, and, if he predeceases me, then instead among my children who survive me, in equal portions, and falling agreement, those items in dispute shall be sold and the proceeds of sale shall be distributed as part of the residue. However, in spite of the foregoing, my "grandfather clock" shall in any event be transferred to my sister Alice Smith, if she survives me.

(c) **Cash and Specific Gifts:** My Estate Trustee shall pay cash gifts as follows:
The sum of three thousand dollars (\$3,000) to the Salvation Army (Ottawa Chapter).

(d) **Real Estate:** My Estate Trustee shall deal with my real estate as follows:

If my brother Sam Smith survives me, all of my interest in my rental property described municipally as 123 Maple Lane, City of Fredonia, Province of Ontario (legal description: Lot 15, Plan 27, City of Fredonia, County of Stormont, Province of Ontario) shall be transferred to him and any outstanding mortgage on that property shall be discharged from funds comprising my general estate. If my brother Sam Smith predeceases me, then his son Paul Smith shall be the beneficiary of this gift instead.

(e) **Residue:** My Estate Trustee shall pay or transfer all of the remainder of my estate ("the residue") as follows:

All to my husband Tom Doe, if he survives me, and if he predeceases me, then instead among my children who survive me, in equal portions (provided that if any child of mine predeceases me leaving a child or children surviving me, then the equal portion which would have gone to such child of mine shall instead be shared equally by such deceased child's children who survive me).

3. **Administrative and Trust Provisions:** The following administrative and trust provisions shall, if relevant, apply to the terms of this Will:

(a) **Trusts for Beneficiaries Under Certain Age:** If any beneficiary of my estate is under the age of 23 at the time of my death, my Estate Trustee shall hold and invest such beneficiary's share or interest, in trust, until the date that such beneficiary attains the said age ("the distribution date") when the share or interest shall be given to such beneficiary. However, at any time or times prior to the distribution date, my Estate Trustee may, exercising unrestricted discretion, encroach on any amount (including all) of the net annual income and/or capital of the trust for the benefit, maintenance, education, and welfare of the beneficiary, capitalizing any unapplied net annual income, and any such payments may be directed to such beneficiary's parent or guardian. If such beneficiary, having survived me, dies before the distribution date, what then remains of his or her share or interest shall be divided and distributed to the following person(s):

Such beneficiary's brothers and sisters then alive, in equal portions, but if none survive such beneficiary, then instead to St. John's Church on Main Street in Ottawa.

(b) **Custodian of Children:** I appoint my sister Alice Smith to be the custodian of any minor child of mine and, to the extent permitted by law, the guardian of such minor child's property. I appoint my brother Sam Smith as the alternate if the first-named person cannot, for any reason, act as such.

(c) **Estate Trustee Powers:** My Estate Trustee shall have all of the available powers, as and when necessary, to properly and efficiently administer my estate, including power to: sell my property (other than as specifically gifted above) for cash if and when necessary; or postpone such sale; invest my property in any type of investment whatsoever until disposed of; manage, maintain, repair, and improve my property; settle claims and debts; carry on any business; make income tax elections; borrow, lend, and lease; and be reimbursed and remunerated for undertaking such office.

(d) **Community of Property:** Subject to provincial law, no gift under this Will, nor any future income, profits, and appreciation realized by such gift, shall constitute "net family property," nor be part of any "community of property" as between any beneficiary and his or her consort.

I have signed this Will (2 pages) at Ottawa, Ontario on the 25th day of June, 20 02.

SIGNED in our presence and attested by us in his/her presence and in the presence of each other.

Jane Doe

(your signature)

Witness Signature Paula Smith
Print Name Paula Smith
Street Address 12345 6th St.
City Ottawa, Ontario
Occupation Civil Servant

Witness Signature Alex White
Print Name Alex White
Street Address 2071 3rd Avenue
City Ottawa, Ontario
Occupation Accountant

Last Will of _____

I, _____ of _____, _____, declare this to be my Last Will. I revoke all previous Wills. (city) (province)

1. **Personal Representative/Estate Trustee:** I appoint _____ to be the personal representative (referred to as "my Estate Trustee") of this Will and of my Estate and of any trusts established by this Will. However, if my first-named Estate Trustee cannot, for any reason, act or continue to act as such, I appoint _____ to be my Estate Trustee instead.

2. **Instructions to Estate Trustee:** I give all of my property and assets (collectively referred to as "my property") wherever located and in whatever form to my Estate Trustee, in trust, to deal with as follows:

(a) **Liabilities:** My Estate Trustee shall pay all of my liabilities, including my testamentary and funeral expenses, and my taxes, from my general estate (unless otherwise specifically stated in this Will).

(b) **Household Goods and Personal Effects:** My Estate Trustee shall distribute the following of my household goods and personal effects to the following persons who survive me:

(c) **Cash and Specific Gifts:** My Estate Trustee shall pay cash gifts as follows:

(d) **Real Estate:** My Estate Trustee shall deal with my real estate as follows:

(e) **Residue:** My Estate Trustee shall pay or transfer all of the remainder of my estate ("the residue") as follows:

3. **Administrative and Trust Provisions:** The following administrative and trust provisions shall, if relevant, apply to the terms of this Will:

(a) **Trusts for Beneficiaries Under Certain Age:** If any beneficiary of my estate is under the age of _____ at the time of my death, my Estate Trustee shall hold and invest such beneficiary's share or interest, in trust, until the date that such beneficiary attains the said age ("the distribution date") when the share or interest shall be given to such beneficiary. However, at any time or times prior to the distribution date, my Estate Trustee may, exercising unrestricted discretion, encroach on any amount (including all) of the net annual income and/or capital of the trust for the benefit, maintenance, education, and welfare of the beneficiary, capitalizing any unapplied net annual income, and any such payments may be directed to such beneficiary's parent or guardian. If such beneficiary, having survived me, dies before the distribution date, what then remains of his or her share or interest shall be divided and distributed to the following person(s):

(b) **Custodian of Children:** I appoint _____ to be the custodian of any minor child of mine and, to the extent permitted by law, the guardian of such minor child's property. I appoint _____ as the alternate if the first-named person cannot, for any reason, act as such.

(c) **Estate Trustee Powers:** My Estate Trustee shall have all of the available powers, as and when necessary, to properly and efficiently administer my estate, including power to: sell my property (other than as specifically gifted above) for cash if and when necessary; or postpone such sale; invest my property in any type of investment whatsoever until disposed of; manage, maintain, repair, and improve my property; settle claims and debts; carry on any business; make income tax elections; borrow, lend, and lease; and be reimbursed and remunerated for undertaking such office.

(d) **Community of Property:** Subject to provincial law, no gift under this Will, nor any future income, profits, and appreciation realized by such gift, shall constitute "net family property," nor be part of any "community of property" as between any beneficiary and his or her consort.

I have signed this Will (2 pages) at _____, _____ on the _____ day of _____, 20____.

SIGNED in our presence and attested by us in his/her presence and in the presence of each other.

(your signature)

Witness Signature _____
Print Name _____
Street Address _____
City _____
Occupation _____

Witness Signature _____
Print Name _____
Street Address _____
City _____
Occupation _____

Checklist for Your Estate Trustee

BEFORE PROBATE

- Obtain all chequebooks and bank records for financial information.
- Give notice of death to all interested parties.
- Notify utilities, charge accounts, credit card firms, and other business accounts of the demise of the decedent.
- Check insurance coverage of decedent and file appropriate claims.
- Give post office a *Change of Address Form* so mail addressed to the decedent comes to your address.
- Copy the death certificate for use in probate of the estate.
- Copy the Will for beneficiaries, tax authorities, and others.
- List the contents of any safe deposit box.
- Make a preliminary estimate of decedent's estate to determine what form of probate will be required.
- Review any litigation, claims, or other controversies relating to decedent's property or other interests.
- Make an inventory of all personal property and arrange for its storage or distribution.
- Assemble data on all property owned by the estate that will not be a part of the probate process.

AFTER PROBATE

- All cash should be accounted for, put to work earning interest, used for estate obligations, or distributed to persons who are to receive it.
- Assemble tax records and file required returns for the estate.
- Collect all debts owed to the estate.
- Advise all interested parties of the facts of the Will and the estate, as available.

Your Personal History

Name _____
Address _____
City _____ Prov. _____ Post Code _____
Phone _____ Tax File No. _____
Place of Birth _____ Birth Date _____
Location of Birth, Marriage or Divorce, Insurance, and Other Legal Documents _____

Spousal Information

Name _____ Current _____ Former _____
Address _____
City _____ Prov. _____ Post Code _____
Phone _____ Tax File No. _____
Place of Birth _____ Birth Date _____

Family Members and Friends to Be Notified

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Relationship _____ Phone (____) _____

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Relationship _____ Phone (____) _____

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Relationship _____ Phone (____) _____

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Relationship _____ Phone (____) _____

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Relationship _____ Phone (____) _____

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Relationship _____ Phone (____) _____

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Relationship _____ Phone (____) _____

Estate Trustee

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Phone _____

Estate Trustee Successor

Name _____ Address _____
City _____ Prov. _____ Post Code _____
Phone _____

Other Important Contacts

Doctor _____ Address _____
City _____ Prov. _____ Post Code _____ Phone _____

Solicitor _____ Address _____
City _____ Prov. _____ Post Code _____ Phone _____

Accountant _____ Address _____
City _____ Post Code _____ Phone _____

Religious Affiliation _____ Contact _____
Address _____ City _____
Prov. _____ Post Code _____ Phone _____

Funeral Instructions

Assets & Liabilities

Assets

Cash _____ Location _____

Banks _____

Shares and Debentures _____

Real Estate _____

Insurance and Beneficiary(ies) _____

Notes Receivable _____

Motor Vehicle(s) _____

Retiree Benefits _____

Other _____

Liabilities

Real Estate Loans _____

Other Loans _____

Leases _____

Sales Contracts _____

Charge Cards _____

Taxes _____

Notes Payable _____

Child Support and Maintenance Payments _____

Note: This list may not fully cover all areas of your personal assets and liabilities. We suggest you prepare the fullest possible list of all such items and write or type these on a separate paper for inclusion with your Will.