Preparing Your Will

A People's Law School Publication

Contents

Introduction

Preparing Your Will is for people who are preparing a will in British Columbia. It explains what to do, how to choose an executor, and what steps to take next. The information reflects the *Wills, Estates and Succession Act* [1], which became law in 2014.

At People's Law School, we believe accurate, plain English information can help people take action to work out their legal problems. This publication explains in a general way the law that applies in British Columbia. **It is not intended as legal advice.** For help with a specific legal problem, contact a legal professional. Some sources of legal help are highlighted in the "Where to Get Help" section.

Image via www.flickr.com

We have tried to use clear language throughout. See the "Glossary" section for definitions of key legal terms, which are also bolded in the text.

People's Law School

People's Law School is a non-profit society in British Columbia, dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.

References

[1] http://canlii.ca/t/8mhj

Why You Should Consider a Will

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Stephen Hsia in January 2019.

A **will** is a legal document that explains what you want done with your property after you die. **It makes your wishes clear**. It helps ensure the things you own go to the people you want to have them. It gives you some control over what happens to your **estate** after you're gone. Preparing a will lets you choose an **executor**. This is a person who carries out the instructions in the will. If you're a parent, you can also appoint a guardian to care for any children under age 19 after your death.

	"I've decided I need to prepare a will. My sisters both want me to leave my opal ring to them. It belonged to our mother and is a family heirloom. Unless I put in writing who the ring should go to, I just know there'll be a fight about it later." - Maria, Nanaimo

A will is a map for those you leave behind. Having a clear statement of your wishes helps your loved ones feel confident they're carrying those wishes out. Knowing your intentions will save them time, stress, and money at a difficult time.

What happens when you die without a will

Without a will, your successors will effectively be left guessing about what you would have wanted. With no proof of your wishes, the law kicks in. Your property is divvied up according to rules set out in the *Wills, Estates and Succession Act*.

The law may not reflect your wishes about who you want to inherit your property. For example:

- If you have a **spouse** but no children, your estate will pass to your spouse.
- If you have a spouse *and* children — all of whom are also your spouse's children — your spouse will get the first $300,000 of your estate and half of what's left over. The other half will be divided equally among your children.
- If you have no spouse or children, your estate will be distributed to descendents, parents, or other relatives. If no relatives can be found, the estate will go to the government.

If you die without a will, someone may need to apply to court to become administrator of the estate. Once approved, the administrator has the authority to distribute your **assets**. The administrator is often your spouse or adult child. If no one steps forward, the **Public Guardian and Trustee** may apply to become administrator.

You don't have to prepare a will

Under the law, you don't have to prepare a will. But it's a good idea. Preparing a will helps ensure fairness, accuracy, and peace of mind all around. It makes sure your wishes are respected and your loved ones are taken care of.

	"My sister Susan died without a will. A year before, she told me what she wanted done with the things she owned. Her car was supposed to go to me. But without a will, there's no way to prove it. So everything is going to her daughter, Amy." - Janet, Vernon

Choosing an Executor

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Stephen Hsia in January 2019.

The **executor** is the person you name to carry out the instructions in your will. They locate all of your property, pay any debts and funeral costs, prepare the final tax return, and distribute the rest of the estate as the will specifies.

Your executor may need to **probate** the will. This is a legal process that confirms the will is legally valid. To apply for probate, the executor needs to submit the will and certain forms to court. If everything's in order, the court issues a grant to the executor. Now the executor can legally deal with the estate assets.

Estates that involve a small amount of money (under $25,000) may not need to go through probate. It's up to the outside parties who hold your assets (such as a bank) whether they'll give the executor those assets without a grant.

What to consider when choosing your executor

Most people ask a family member or close friend to be their executor. You can also ask a lawyer, a **notary public**, a private trust company, or the Public Guardian and Trustee.

Important qualities to look for when choosing an executor include:

- **Willingness**: The person you're thinking of appointing should confirm that they're willing to take on the job.
- **Trust and familiarity**: An executor should be someone you trust to carry out your wishes. It's best if they're familiar with your situation.
- **Time and ability**: Being an executor takes time, energy, and attention to detail. The job will be more demanding if your affairs are complicated — for example, if you have a lot of investments or debts, or if the will includes a **trust**. It helps if the person you choose is organized and a good communicator.

Other factors to consider in choosing an executor

Also keep in mind that:

- Your executor should be someone who's likely to outlive you. It's not recommended to appoint someone under age 19. If they aren't yet 19 when you die, probate may be delayed.
- Your executor *can* be someone who lives outside the province, but this isn't ideal either. All procedures to settle the estate will be done in British Columbia. So it's more convenient if the executor lives close by.
- It's simplest to appoint someone who lives in Canada. There are significant tax consequences, for example, if the executor is living outside the country.

Image via www.istockphoto.com

Tip	It's very important to name at least one alternate (that is, a backup) executor in your will. If the first choice isn't able or willing to act, the alternate can step up.

You can name more than one person to act as executor

Two or more people can be appointed to act jointly as your executors. Generally, they'll have to make decisions and act together. They'll have to agree on many things, such as the selling price of your home or who gets the family photo albums. If one of them dies, the other may be able to act alone, if your will allows it. If you choose three executors, your will should be clear on what happens if they disagree. You can include in the will a "majority rule clause." In that case, if there's a disagreement, the executors can vote and the majority decides. Or you may insist all decisions be made unanimously.

Tip	If you're thinking of appointing more than one executor, consider if they'd be a good team. You should discuss your wishes with all of them, preferably together.

How you can make the job easier for your executor

You can help your executor by taking these steps:

- **Register your will**, and tell your executor where the original will is kept. It should be easy for them to access.
- **Keep an up-to-date, detailed record** of everything you own and owe. For example, record your bank accounts, retirement benefit plans, insurance policies, real estate, and pension benefits. Note any items owned in **joint tenancy** or that name a specific **beneficiary**. The executor won't have to manage these assets.
- **Explain your plans** to family members, the beneficiaries, or anyone who may be legally entitled to a share of the estate. Talking with them now may prevent problems later.
- **Review your will** and your choice of executor every few years, and consider updating it when your circumstances change.

Can more than one person act as executor?

Yes, you can appoint two or more people to act as your executors. It is important to be aware that if more than one executor is named, the co-executors must act jointly. Neither of them is the "lead" executor or "main" executor. They'll have to agree on many things, from the selling price of the house to who is going to get the family photo albums.

If one executor dies, the other one can act alone.

Sometimes people choose three executors so that 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; otherwise all decisions must be unanimous. 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 documents. This is called a **majority rule clause**.

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.

How can you make the job easier for your executor?

First, ask the person you have in mind if he or she is willing to be your executor. Once they have agreed, you can make the job easier for them if you:

- **Discuss your wishes** with the executor, including burial and cremation.
- **Register your will**, and tell your executor where the original will is kept. It is a good idea to keep it somewhere where your executor can access it.
- **Keep an up-to-date, detailed record** of all that you own and all that you owe. For example, record your bank accounts, RRSPs or RRIFs, insurance policies, 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.
- **Explain your plans** to family members, the beneficiaries, or anyone who may be entitled to a share of the estate. Talking with them now 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.

It is always a good idea to make a new will if you move between provinces. If someone dies in British Columbia but had a valid will in another province, the executor may be able act on the will. But the process may be more complicated.

Preparing a Will

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Stephen Hsia in January 2019.

You can prepare a will on your own, or have a lawyer or a notary public help you. Even if your will is simple, there are rules that must be followed for it to be valid.

Legal requirements for a will

If a will isn't valid, a court may not grant probate and your wishes may not be honoured.

For a will to be valid, it must be **in writing —** either typed or handwritten. It must have the date on it. It must also be signed by the will-maker and **two witnesses**. They must both be present and sign the will in front of you.

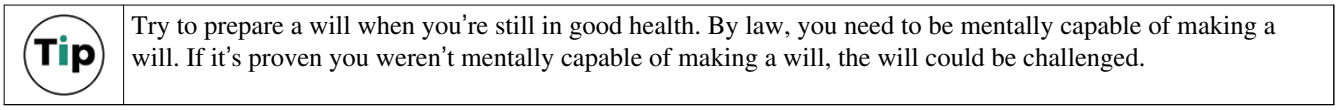
Who can prepare a will

The person preparing a will is referred to as the **will-maker**. The will-maker must:

- Be age 16 or over.
- Be mentally capable of making a will.
- Freely agree with what the will says when they sign it. If it's proven in court that someone pressured the will-maker to sign a will, the will won't be valid.

When you should prepare a will

You can prepare a will at any time. But it's especially sensible to do so **when you marry** or **start a family**. If you want to leave your belongings to the special people in your life, it's a good idea to have a will.



You need to be **mentally capable of making a will** for it to be legal. You must understand:

- The nature and effect of the will.
- In a general way, the extent of the property you own that can be distributed through the will.
- How property will be distributed.
- The implications for the people who are to receive property, as well as the legal and moral claims of other people you haven't named who may nonetheless have an interest. For example, if you leave your child out of the will, do you appreciate the effect of that decision?

Your capability can be affected by illness, an accident, or drugs.

Elements of a will

Typically, a will has several sections:

- **Appointing an executor**: The first section of the will appoints the executor. This person is responsible for carrying out the instructions in the will. The will should specify what the executor can do.
- **Distribution of the estate**: The will says who receives your assets and personal belongings, and under what conditions. The people to whom you give assets are called beneficiaries. You can give people specific gifts of property or cash. The amount left over after debts and taxes are paid and specific gifts are distributed is called the residue of the estate. In the will, you say who gets the residue, and how much.
- **Minors**: In your will, you should name a guardian for any minor children you have and provide some money for the guardian to cover the costs of raising children. You should also create a trust for gifts you leave to your minor children. Otherwise, their share of the estate may need to be paid to the Public Guardian and Trustee, who will hold their share in trust until they turn 19.
- **Other details**: The will can include other details, as you wish, and depending on your circumstances.
- **Signatures**: The last section of the will includes the signatures of the will-maker and witnesses.

Your will should be specific in its details

Your instructions in the will should be crystal clear. Say exactly who the beneficiaries are, by name. Avoid vague statements like: "I wish to leave everything to my 'best friend' or 'my cousins.'"

	"I have no spouse or children of my own. I want to leave my belongings to my niece after my death. In my will, I wrote her full name and relationship to me: '...to give the residue of my estate to my niece, Ada Chen....'" – Lin, Vancouver

You don't need to write down every item you own. You only need to be specific if you want to give a particular asset (such as your home or an item of sentimental value) to a particular person.

	"I want my son Michael to get my grandfather's gold watch which was handed down to me. In my will, I included that gift: '...to transfer my Omega gold watch to my child, Michael Cortez…' I left out any mention of my other watches or jewelry, as they weren't special in any way." – Paulo, North Vancouver

What your will does *not* include

Most wills don't cover details relating to the funeral service, burial, or cremation. Some do. You should discuss these wishes with your executor or family. Know, though, that neither the executor nor family are legally bound to honour these wishes, even if they're expressed in your will.

A will doesn't deal with everything you own. For example, it doesn't cover property you own in **joint tenancy** with someone else, such as a home or joint bank account. When you die, any property you own as a joint tenant usually becomes the property of the surviving joint tenant(s). In most cases, this property isn't included in your estate. It's said to "pass outside the will." On the other hand, your share of property you own with someone in tenancy-**in-common** *will* be included in your estate.

If you've designated a specific **beneficiary** to receive proceeds from certain assets, this asset won't be included in your estate, either. Common examples are life insurance policies or retirement benefit plans. When you die, the bank or trust

company transfers the asset, or pays it out, to the beneficiary you named.

	The proceeds of life insurance policies and benefit plans do not form part of your estate. Even so, you can choose to name (or designate) a beneficiary of these kinds of assets either in your will, or in the policy itself. What happens if you change your mind and want a different person to receive the proceeds? Any new designation you make will replace any designations you made earlier.

Who you can leave your estate to

You're generally free to leave your estate to whomever you want. However, your **spouse** or child can dispute your will in court if they feel you haven't adequately provided proper maintenance and support.

The court can modify a will in the interest of fairness. The court considers factors such as the financial circumstances of the person challenging the will (and of the other beneficiaries), the size of the estate, and the relationship between the will-maker and their spouse or child.

Separated spouses cannot dispute your will. Other relatives who are left out also generally have no claim.

	If you want to leave a spouse or child out of your will, explain this in a separate document or letter you keep with your will. You need to show that you've at least considered them and your obligation to provide for them. This doesn't guarantee they won't receive something if they dispute the will in court. If you're considering this option, you should seek legal advice.

Preparing Your Will: Step-by-Step

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Stephen Hsia in January 2019.

Step 1. Choose your executor

Your will names a person, the executor, to carry out your instructions in the will.

Image via www.flickr.com

Tip	**Discuss your wishes** with the executor, including your wishes for organ donation, burial and cremation, and your funeral service.

Step 2. Write the will

With good do-it-yourself materials, you can write a simple will. The will can take care of basic concerns, such as leaving a home, investments, and personal items to loved ones. The Where To Get Help section below lists a number of do-it-yourself resources.

Having your will prepared by an experienced estates lawyer or notary public is the safest way to avoid mistakes. Knowing your will is properly drafted can give you peace of mind. You can be confident your affairs will be handled according to your wishes.

Getting advice from a lawyer or notary is particularly important when there are features such as a blended family, a charitable gift, property outside of British Columbia, a family business, a desire to hold property in trust for someone, or a wish to leave certain people out of your will.

Tip	Getting professional help to prepare a basic will isn't as expensive as some people think. Ask an estates lawyer or notary how much it will cost. You should be able to get some free quotes. Feel free to shop around.

Step 3. Sign the will

For a will to be valid, it must be **signed on the last page by the will-maker**.

The signature must be witnessed

You must sign the will or acknowledge the signature as yours in front of **two witnesses**. The two witnesses **must then sign the will in front of you**. You and the witnesses should initial each page of the will in front of each other.

The witnesses don't need to read the will. All they need to do is watch you sign your name to it, and sign it themselves in front of you.

If you can't sign the will because of illness or disability, you can ask someone to sign it for you. That person must sign the will in front of you, and in front of the two witnesses.

Who can be a witness to a will?

The two witnesses must be age 19 or over.

It's good practice for the witnesses not to be people — or the spouses of people — who are executors or beneficiaries under the will.

That said, a witness *may* be able to receive a gift under a will. The witness must apply to court and show you intended to make the gift to them. If the court isn't satisfied, the witness can't receive the gift. Either way, the remainder of the will isn't affected.

Step 4. Keep your will in a safe place

The original copy of your will is one of your most important documents. You should store it in a safe place that's fireproof, waterproof, and tamper-proof. Under the law, a lost will is considered to have been destroyed and cancelled.

Tell your executor where you keep your original will. They need to be able to access it easily after your death.

Step 5. Register your will

You can choose to register your will with the provincial government's Wills Registry. While the law doesn't require this step, it's a good idea. It lets others know where the original copy of your will is kept.

To register your will, you need to file a Wills Notice with the Wills Registry. This is a form that says you've prepared a will and where it's kept. You don't provide a copy of the will to the Wills Registry, just the Wills Notice.

Changing or Cancelling a Will

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Stephen Hsia in January 2016.

You can change your will after you've prepared it

You should consider updating your will whenever your circumstances or wishes change. You can prepare a new will at any time. Or you can change the existing one by signing a separate document, called a **codicil**.

To be legal, the codicil has to meet the same requirements as a will. For example, it must be in writing, dated, and signed by you and two witnesses. You don't have to use the same two witnesses you used for your will. The codicil must refer to the will (and previous codicils) it's amending.

You can cancel your will

You can revoke, that is cancel, your will. You could simply destroy the original will, with the intention of cancelling it. However, it is better to make a written declaration revoking your will. This document must be signed the same way you signed your will — by you with two witnesses looking on, and signing it themselves.

A new will normally cancels any previous will. Even so, it's common practice to include a **revocation clause** at the beginning of a will:

> *"I hereby revoke all my prior wills and codicils."*

Getting married or divorced

Neither marriage nor divorce of the will-maker cancels a will. The exception is if you married before March 31, 2014 (after which, there was a change in the law), and made a will before you got married. The law says your will would have been cancelled when you got married, unless the will said it was made in contemplation of your marriage.

If you had a spouse at the time you made your will, and later separated from your spouse, your will is treated as if your spouse died before you. That is, any gift you left them will not be effective. As well, if you named your ex-spouse as your executor, the appointment would no longer be effective.

Common Questions

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Stephen Hsia in January 2016.

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

A will can only be used after you die. A power of attorney and a representation agreement are documents that can be used to handle your affairs while you're alive.

With a **power of attorney**, you can authorize someone to take care of financial and legal matters for you. With a **representation agreement**, you can name someone to assist you with health care and personal care matters. A representation agreement can also cover routine financial and legal matters.

What is a "living will"?

A "living will" is not a legal document in British Columbia. The term has been used to describe a person's wishes for their end-of-life medical care. In British Columbia, you can sign a representation agreement or an **advance directive**. Both documents can help with health care decisions you may face down the road, if you're not able decide independently.

Do I need to prepare a new will if I move between provinces?

It's always a good idea to prepare a new will if you move out of province. If someone dies in British Columbia but had a valid will in another province, the executor may be able act on the will. But the process may be more complicated.

Resources

Where to Get Help

Where to Get Help with Preparing Your Will

Glossary

Glossary for Preparing Your Will

About

About this Publication

About Preparing Your Will