

**WILLS, POWERS OF ATTORNEY, AND
HEALTH CARE DIRECTIVES**

Glossary

Administrator	A person appointed by the courts to distribute the property of a person who leaves no will.
Alternate	one who takes the place of another
Bequest	To give personal property in a will.
Capable	The ability to understand information and know about the consequences of giving or withholding consent
Codicil	A document changing or adding to your will.
Consent	Freely given agreement
Devise	To give real property in a will.
Estate	All the property, real and personal, owned by a person at the time of death.
Executor	A person named in the will to distribute the property of the person who made the will.
Health Care Directive	A document in which a person names a proxy and sets out decisions, wishes or instructions about their future health care treatment
Health Practitioner	A person who is registered or licensed to provide medical treatment
Intestate	The condition in which a person dies without leaving a valid will.
Invalidate	An action or addition which makes a valid will invalid. The will is no longer a legally binding document.

Legacy	Personal property left to someone in a will.
Probate	To prove, in court, that a document is truly the last will and testament of a person.
Property	Things you own. Under the law property is divided into two types. Real property is land or anything attached to or part of the land, such as a house. All other property, such as cash, bonds, a car, or boat is called personal property.
Proxy	A person who is authorized to act as a substitute for another.
Residue	What is left over from an estate after paying off debts and legacies.
Revocation	The cancellation of a valid will.
Testament	Another name for a will.
Testator	The person making the will.
Trustee	The person who holds money, land and other assets in trust for the benefit of another person, usually a child.

Many Canadians do not have wills. However, if you have a family and you own any property, making a will is a very good idea. It is one way in which you can make things easier for your family and friends after your death. It does not matter if your beneficiaries live outside Canada. Wherever they live they can inherit under the terms of your will. However, they may have to pay an estate tax or inheritance tax in the country in which they live.

Why Should I Have A Will?

To divide your property as you wish:

If you have no will, your property will be divided according to laws of the province. These laws are inflexible and may not take into account any special circumstances or any special needs your family may have.

- If you are single and have no children, P.E.I. law says that any property you own when you die goes to your parents, if they are alive.
- If your parents have died before you, the property goes to your siblings (brothers or sisters). If you have no siblings, it goes to uncles and aunts, then cousins etc.
- If you are married, your property goes to your spouse (husband or wife). If you have children, the property is divided between your spouse and the children.

Things can get very complicated and difficult for survivors because the law does not take individual circumstances into consideration.

To allow flexibility in carrying out your wishes:

You may have some items or personal treasures that you would like a particular

person to receive. Only a will can make sure that is possible. A will also allows you to name the person you would like to look after your affairs when you die. This person is called an executor (male) or executrix (female). In a will you may set up "trusts" to help in the financial affairs of your children or other people who are dependent on you.

To save money:

In most cases, there will be more delays and expense in settling an estate where there is no will. Obviously, this adds to the suffering of family members. When there is no will, a family member or close friend will have to apply to the court to be named your administrator, and this person will have to purchase a bond equal to the value of the estate. Your family will also lose some of the tax advantages that are available only if you have a will.

To make arrangements for your children:

In your will you may recommend a guardian to care for your children until they are 18 years old. Your children are not "property" so you cannot "will" them to someone. You can name a guardian for your children. If you have money to leave to the children you may also create a trust. You will also name a trustee to administer (or look after) the trust until your children reach a certain age.

How Do I Make A Will?

Get in touch with a lawyer and make an appointment to have a will drawn up. You will need to prepare for the appointment by having the following information ready:

- The full names, birth-dates, and addresses of your closest relatives.
- A detailed list of all your property and other assets (things of value which you own). Include insurance policies and annuities, any debts which are

owed to you, and the places where you keep your bank accounts and other assets.

- A general outline of how you want your property divided. Do not overlook items of sentimental value, such as books and jewelry.
- The names and addresses of those people you want to name as executor(s), guardian(s) and trustee(s) for your children. It is a good idea to name more than one person in case someone is unable to act.

Having all of this information ready when you see your lawyer will save you time and money.

Signing Your Will

After your lawyer hears and understands what you want, your will is prepared and you will be asked to return to the lawyer's office on another day to sign it. Before the signing your lawyer will go over the will to make sure that it is correct.

There are legal requirements about how your will must be signed in order to be valid. Your lawyer will supervise the signing to make sure that everything is correct. You must sign in the presence of two witnesses. The witnesses must see you sign and see each other sign. Choosing witnesses is important - if a person who witnesses a will is to receive an inheritance from it, the inheritance will be null and void (they won't be able to receive it). Usually lawyers ask staff members from their office to act as witnesses because they are not connected to you in any way.

Keeping Your Will Safe

There is only one original copy of your will - the one you signed. It is important to keep it safe since it is the only valid will. Usually your lawyer will keep your will in

the firm's safe, and give you photocopies. If you wish you may put the original will in your safety deposit box in the bank. Make sure that the person who is to act as your executor knows where the original is. It is a good idea to write a note and keep it with your personal papers telling where the original will is located together with your safety deposit box key. At your death the bank will allow a person with your key to open the box under their supervision to find the will. Your executor may take the will, but nothing else, out of the box.

If I Change My Mind, Can I Change My Will?

You can make changes to your will at any time, either by making a new will or by making a codicil. A codicil is a new paragraph changing or adding to information in the original will. Since making a new will invalidates the old one, changes to a will must be made carefully. If you want to make changes go to see your lawyer.

Together, you can decide whether you need a new will or can just add codicils to the old one.

Your Will May Become Invalid!

If you get married after making a will, your will becomes invalid unless it says in it that you are making the will in contemplation of marriage. Your will also becomes invalid if you get divorced. It is also a good idea to review your will every few years; after a death in the family; when the children get older; if you become separated; or move; or if there is a change your financial status.

How Do I Choose An Executor?

Your executor is the person who carries out your wishes as written in your will.

You should choose an executor based on that person's ability to look after business

and financial matters. Your executor is responsible for gathering your assets, paying your debts, and distributing your estate according to your will.

The executor must report to the Probate Court and to your beneficiaries (those people who are named in your will). Your executor also pays funeral expenses from your estate. When you choose an executor, talk things over with the person and make sure that he or she is comfortable with the responsibility.

Who Can I Name As Guardian Of My Children?

Choosing a guardian for your children is probably one of the most difficult decisions you will have to make. This person becomes responsible for your children if both parents die, and will look after them until they are at least 18 years old. You will need to talk over this responsibility with the person you wish to name, and you may wish to discuss it with family members as well. Responsibility for children after their parents' death sometimes causes problems for families when people who have not been named as guardians believe that they should have been. The best way to deal with this is to make your wishes known when you make your will.

Do I Have To Leave Everything To My Family?

You do not have complete freedom when you make your will. You may name other persons in your will, but you have to take care of your dependents. Your spouse, your children, and any other dependents are eligible to apply for help from the Court if your will does not provide for them. For example, if you are a millionaire and you have five young children, you cannot leave all your money to charity and leave your children dependent on financial assistance. If you do not want to include your family in your will, you should discuss this with your lawyer.

Finally, your will “speaks at the moment of death”. What this means is that only

the things that you own when you die will be included in your estate. If you think your estate may not be large enough to go around, you can set an order of priority on your bequests. In the same way, if there is more money than you thought, you can plan for this as well.

POWERS OF ATTORNEY¹

What is a Power of Attorney?

It is a legal document that allows you to give another person authority to act on your behalf.

When Would I Use A Power Of Attorney?

You would use one when illness, lengthy travel abroad, physical disability or some other reason might make you unable to deal with your business or financial affairs.

Who Can Be Named As My Attorney?

Anyone who is 18 years or older and who is mentally competent can be named as your attorney. Choose someone you can trust to carry out your wishes. If you do not wish to name family or friends you can name a lawyer, bank or trust company. In some circumstances the Official Trustee may agree to act as your attorney.

The Public Trustee is a person appointed by the provincial government to manage the affairs of persons who, for one reason or another, are unable to manage their own affairs.

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Adapted from Powers of Attorney

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What Are The Legal Requirements For Power Of Attorney?

Both you and the person you give power to must be over 18. You must both be able to understand what it means to give or have a power of attorney. The power of attorney must be in writing, it must be signed by you and must have a seal. If it is to be an enduring power of attorney, it must also be witnessed.

An enduring power of attorney means that should you become mentally incompetent in the future, the power of attorney will continue. People who know that they have an illness that may affect their thinking often sign an enduring power of attorney. Some people who plan to have a serious medical operation may also sign an enduring power of attorney in case something happens which affects their brain.

What Powers Will My Attorney Have?

There are two types of powers of attorney:

- general -- gives the attorney power to act in all cases; and
- specific -- gives the attorney power to carry out specific acts only, such as selling land or dealing with a bank account. Some banks have forms they will give you that allow you to name an attorney for your business dealings with that bank. Be sure that you understand exactly what the form says before you name an attorney and sign the form

Can My Attorney Agree to Medical Treatment For Me?

No. If you have no health care directive in which you name a proxy, your next-of-kin (closest family member) can sometimes give medical consent for you if you are incompetent, or someone must apply to the court to be named as your "committee" under the *Mental Health Act*.

Are There Any Risks In Giving A Power Of Attorney?

Yes. There is always a risk that your attorney will abuse the power. You should know what your power of attorney is being used for. Choose your attorney carefully, someone you can trust. You may want to think about appointing two people to act together.

How Can I End A Power Of Attorney?

You may cancel a Power of Attorney at any time, in writing, while you are still competent to do so. You will also have to inform organizations and companies that your attorney has dealt with that this person is no longer able to act on your behalf.

Do I Need Legal Help?

Yes. It is a good idea to see a lawyer before signing a Power of Attorney. Use the lawyer referral service at 892-0853 in Charlottetown or 1-800-240-9798 long distance if you do not already know a lawyer.

HEALTH CARE DIRECTIVES

What is a health care directive?

A health care directive is like having a power of attorney for your medical care. In some provinces it is even called a “Power of Attorney for Personal Care.” It is a document in which you explain in writing your wishes about your health care and/or treatment in case you are unable to make decisions or communicate them. You can also make known your wishes about end-of-life medical treatment. Your health care directive comes into effect when you are no longer capable of making decisions or of communicating your decisions to others.

What do I put in a health care directive?

In any health care directive, you may include the following:

1. what treatments, procedures, or medications that you want, do not want, or would like to have stopped
2. when you would like to receive only the care necessary to promote comfort and reduce pain and suffering
3. appointment of another person as a proxy to make health care decisions for you when you cannot make them yourself
4. a statement that specifies under what circumstances your health care directive takes effect, and
5. any other instructions you have concerning your health care or treatment, such as instructions about how and where you would prefer to spend your final days.

You do not have to include all of these areas, but you may if you wish.

Do I need a lawyer to make a health care directive?

While it is a good idea to discuss this with your lawyer, a directive is something that you can make on your own. The provincial government has developed a health care directive form. It contains notes to help you fill it out. Other forms can be used or you can write your directive without a form if you wish.

You can get a copy of the blank directive by telephoning Community Legal Information Association (892-0853 or 1-800-240-9798) or Island Information Service at 1st floor Jones Building, 11 Kent St., Charlottetown (368-4000 or 1-800-236-5196).

What are the rules about making a health care directive?

Your health care directive must be written, dated, and signed by you. If you cannot sign for yourself, someone else must sign for you. If another person signs, the signing must be witnessed. You, your signer, and the witness must all be present when your directive is signed. The person who signs for you and the witness cannot be your proxy or the spouse of your proxy.

Who can be my proxy?

Any person you trust with this responsibility may be your proxy. You can name more than one proxy if you wish. If you name more than one proxy, you need to state in your directive whether decisions made by them are to be joint decisions or whether one of them can make decisions alone. You should name at least one alternate in case your proxy is unable to act for you.

If you named your spouse as proxy and later you divorce, the proxy appointment is automatically canceled. If you want him or her to remain as proxy, you must state in your directive that, even though you are divorced, that person is still your proxy.

The person named as your proxy must agree in writing to be your proxy BEFORE you become incapable of making or of communicating your own decisions.

Decisions made by your proxy are as legally binding as if they were made by you. Your proxy must be given complete information on your condition in order to give or refuse consent to treatment. The requirements are the same as if the consent or refusal were being obtained from you. Your proxy must follow the instructions in your directive when making decisions. Your proxy is expected to act in your best

interests and according to your values and beliefs.

What if I change my mind?

If you change your mind about anything that is in your directive, you can make a new one in which you say the earlier one is revoked. It is a good idea to have all copies of the earlier one returned to you so that you can destroy them.

What do I do with my directive after I have made it?

It is recommended that you distribute copies of your directive to your proxy, if you have named one, your family physician, and the hospital where you expect to receive treatment. It helps to let others -- like your family, friends, clergy, or lawyer -- know that you have prepared a directive. You may want to discuss your decisions with them and provide them with a copy.

Must my directive be followed?

When you cannot make or communicate decisions, health practitioners must try to find out if you have made a health care directive. The legislation states that health practitioners must follow your directive. However, health practitioners do not have to follow a request in a directive if it is illegal or unethical.

What happens if my family disagrees with my directive?

The legislation states that your wishes are to be followed. Involve your family in the process of making your directive so disagreements or misunderstandings can be resolved at that time. Your family needs to know what your wishes are so that they can be sure to do what you want them to do when and if the time comes..