

What is a trust?

A testamentary trust is a direction in a will for a third party, called a trustee, to oversee money or property for a beneficiary. In a will, a trust is common where there are young children and money is held “in trust” by a named trustee until the children reach a certain age. The trustee may be allowed to use the money for things like education.

Can I name a guardian for my children in my will?

Yes. You should speak to the person(s) you plan to name as guardians to make sure they are willing to act as guardians and that they are aware that they will have to apply to court to be appointed guardians.

Do I have to leave anything to my spouse in my will?

If you don't, your spouse has the option of applying to court for a half share of the estate. Your spouse has six months from the grant of probate to do this. The surviving spouse can live in the family home until he or she dies. If your spouse was dependent on you, he or she may apply to court for support if the provisions in the will are not enough.

Do I have to leave anything to my common-law partner in my will?

If you don't your common law partner can apply to court for an equal division of the estate. Your common law partner has six months from the grant of probate to apply for an equal division of assets. Your common law partner can live in the family home until he or she dies. Your common law partner may be entitled to support if you lived together for at least a year and had a child together, or three years with no children or if your common law partner was entitled to support payments.

Do I have to leave anything to my children in my will?

Yes, if your children are under 18 or are dependent on you for support.

Who is a dependent?

A dependent may be a spouse, common-law partner, child, grandchild, parent, grandparent, sibling, former common law partner or child to whom you stand in the place of a parent.

Under what circumstances can a will be challenged after the testator's death?

If it can be shown that the testator did not have mental capacity when the will was made. Testators must know they are making a will and that the will sets out how their property is to be distributed after death. Testators must know how much and what kind of property they have. Testators must understand the normal expectations when a will is being made and must give rational thought about their will. A will can also be challenged if it can be shown that someone used undue influence on the testator when the will was drawn, in other words, pressured the testator into leaving them something in the will. A will can be challenged if there was fraud, if the testator was deceived into making a gift in the will.

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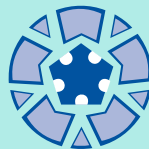
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Wills

What is a will?

A will is a written document that sets out how the person making the will would like their property distributed when they die.

Can I make my own will?

A will is an important legal document. Writing a will is not an easy job. You can make a will on your own, but it may not have the effect you want or not be enforced if it is not done correctly. For this reason, most people hire a lawyer to write their will. The cost of hiring a lawyer to write a simple will can be very reasonable.

What about using a Will Form?

You can use a will form in Manitoba, but it would be preferable to have a lawyer write your will. The will must be properly signed and witnessed. If that is not done, the will may not be enforced.

What is another name for the person making the will?

Testator.

Is an audio or video will valid?

A will must be in writing.

Is a will from another province valid in Manitoba?

The laws in the province in which land is located governs the validity of the will regarding land. With a few exceptions, the laws of the province where you live when you pass away govern the validity of the will regarding the rest of your property.

Who would the Testator appoint to carry out the instructions in the will?

The testator would appoint one or more executors to carry out the instructions in the will. You should choose someone that you trust to comply with the wishes in your will. The executor should be someone younger, should live in the province, should be capable of looking after the estate and should be willing to look after the estate. You should speak with the executor(s) before naming them to make sure they are willing to be executors. A corporation, for example, a trust company, can be appointed as executor.

Can my executor be someone who does not live in the province?

Yes, but the executor would have to provide security (property or an insurance bond) if not resident in Canada.

What if I appoint more than one executor and the executors have a dispute about how to look after the estate?

The will should say how disputes are to be resolved. If your estate is complicated, you may want to consider appointing a trust company.

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

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

How old do I have to be to make a will?

The testator must be at least 18, unless he or she is or has been married, or is an active or regular member of the Canadian Forces.

How many witnesses must there be to a will?

Two.

How old do the witnesses have to be?

The witnesses also must be at least 18.

Can the witnesses also be beneficiaries?

Witnesses should not be beneficiaries or the gift to them is void, unless a court reinstates the gift.

Can an executor be a witness to the will?

Yes, but if the executor is left compensation in the will, that gift will be void, unless the court reinstates the gift.

What is a holograph will?

A will that is totally in the testator's handwriting and signed at the end by the testator.

Does a holograph will need to be witnessed?

No.

What will the court require, in order to probate a holograph will?

When it comes time to probate a holograph will, the court will need an affidavit from someone who is not a family member, who is familiar with the testator's handwriting.

What kinds of clauses should my will contain?

Most wills deal with the following:

- *how property is to be distributed (specific gifts as well as the residue of the estate – whatever is left over after the specific gifts are distributed),
- *how debts are to be handled,
- *what happens if your spouse, common law partner, child or other loved one dies at the same time (common disaster clause),
- *a revocation clause – revoking all previous wills.

What about funeral instructions?

A will is not the best place to deal with funeral instructions. Often the family may not look at the will until after the funeral. Funeral instructions in a will are not legally binding. Legally, the executor is the one who decides on funeral instructions.

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

Make a list of:

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

Where should a will be kept?

In a safe place such as a safety deposit box. It would be a good idea to tell your executor(s) where the will is and perhaps give the executor(s) a copy.

Does a marriage revoke my will?

A marriage revokes a will unless the will states that it is made in specific contemplation of the marriage.

Does a divorce revoke my will?

A divorce does not revoke a will, but the former spouse will be treated as if he or she had died before the testator.

What if my will is destroyed?

If the testator destroys the will with the intention of revoking it, the will is no longer valid, even if it is not completely destroyed. If a will is lost or accidentally destroyed, the court may decide that a copy of the will is a valid will.

What if I make alterations (changes) on my will?

Any changes to a will have to be signed by the testator and two witnesses. If that is not done, the alterations are not effective and the original clause is still valid. If the original clause is no longer readable, the clause is no longer valid.

How do I change my will?

Either by making a new will or by making a codicil. A codicil is a document that changes part of your will.

How often should I review my will?

Every few years. Review your will when you move, change your marital or common law status, gain or lose substantial amounts of property, want to add or remove a beneficiary.