



Making A Will

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The law in B.C. has certain requirements for a will to be valid. They are:

1. Your will must be in writing.
2. The will must be dated.
3. 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. (So at some point when you are writing the will, you should be alone with the lawyer or other person who is helping you. You need to be able to speak freely without being afraid of hurting anyone's feelings).
4. You must sign your will at the end of it.
5. When you sign your will you must sign it in front of two witnesses at the same time. Those two witnesses have to sign the will as well.

Preparing A Will

To get ready to make your will, answer the following questions:

1. Who do you want to be your Executor? (See the section on Executors, below)
2. If the person you choose as Executor dies before you do, who would you like to be the Executor instead?
3. Make a list of all of your assets, noting where they are and their approximate value. For example:
 - personal possessions (it is not necessary to list them separately)
 - savings
 - investments
 - RRSP's
 - life insurance
 - vehicle
 - condo or home
 - vacation property
 - art or jewelry
4. Make a list of all your debts, noting where they are and their approximate value. For example:
 - credit cards
 - mortgage (is it life insured?)
 - bank loans
 - personal debts
5. Make a list of who you would like to give things to, including their full names and addresses.
6. Decide what you would like to give each person. There are three main ways of giving things to people. You can give a beneficiary something specific. For example, you can say, "I give any home I am living in when I die to my partner Alex". Or you can give people things in percentages. For example, you can say "I give 50% of my property to my sister Nadine Wong, 30% to my brother John Wong, 10% to my friend Sophie Beaumont, and 10% to the organization known as Friends for Life". The third way to give away things is a combination of the first two: give some people specific things and divide the rest of your estate into percentages.
7. If you have children under 19, decide who you want to be the guardian of your children if you die.
8. If any of your beneficiaries are under 19, decide who you want to look after the money for them til they are 19. The person who looks after the money is called a 'Trustee'. Think about whether you would want the Trustee to keep the money untouched till the children turn 19.
9. Think about what you would like to have done with your body, and what kind of service or celebration you would like to have.

Does My Will Cover Everything I Own?

No. There are four main exceptions to the rule that your will governs what happens to your property after you die.

1. If you own real estate with someone else, and you own it with them in *joint tenancy*, the person you own the real estate with gets your share automatically if you die. It does not make any difference what your will says. The same is true in reverse. If your co-owner dies first, you get his or her share automatically. On the other hand, if you own real estate with someone else, and you own it as *tenants in common* you can give your share of the real estate to a beneficiary under your will, and then that person becomes the tenant in common with your co-owner when you die. Make sure the title to your property is the way you want it to be.
2. If you have a joint bank account with someone, they get the money in the bank account automatically if you die.
3. Life insurance with a named beneficiary is not governed by the will. The insurance company will pay it directly to the person named on the policy when that person shows a death certificate.
4. RRSP's with a named beneficiary generally go directly to the person named on the RRSP, and does not form part of your estate when you die.

To be sure if an asset is or is not part of your estate, review your assets with your lawyer.

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 your (married, heterosexual) spouse or your children can automatically 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. So 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, and that you had a reason leaving them out of your will. This does not guarantee that they will not receive something if they dispute the will in court. If you want to provide in your will for someone who has a disability, you need to talk to a lawyer.

A Word About Children

For the purposes of your will a child is only your child if you were a biological parent of that child, or if you have adopted the child. Other children you may have raised are not considered 'your children' in this context. So lesbian co-mothers for example need to take extra care if they want to make sure that their children will be raised by their partner rather than the child's biological father.

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 About My Mementoes?

If you have confidence in your Executor, it is not necessary to itemize every memento that you have and specify which friend you want it to go to. Instead you can leave your personal effects to your Executor, and then say in your will that you may leave a list of things you want your friends to have. The advantage is that you can change the list if you get a new friend, or if you break the vase you were planning to leave Aunt Hilda. And probate (see below) is much simpler because the Executor does not have to account for each and every item to the Court. Here's the hitch: because you have given your personal effects to your Executor, if he or she does not want to respect that list of wishes, they don't have to. So this is only a good alternative if you trust your Executor implicitly.

What If My Assets Change After I Have Made My Will?

A will is usually worded generally so that it applies to everything you own even if you own different things when you die than you did when you made the will.

But I'm young—I don't need a will!

In Western culture, no one likes to think about dying. But unless you make a will, if you are injured or killed in an accident, your loved ones may be left to struggle with what you would have wanted to happen without any direction from you. Be kind to your loved ones—make it easy for them by making a will. Because mental capability can be affected by illness or drugs, it is a good idea to make a will while you are in good health. Making a will is the responsible thing to do.

I Want To Leave Everything To My Partner

Consider putting assets in joint tenancy so your partner will have quick access to them after your death. If you own all of your assets jointly with your partner, and he or she is designated as the beneficiary of life insurance, etc., you may not need a will to pass your estate to your partner. But if you and your partner were to die together a will is necessary to ensure that your assets are distributed fairly.

What Is An Executor?

Your executor is the person you name to carry out the instructions in your will. If your estate is worth more than \$10,000 your executor will need to get a document from the Supreme Court called a "Grant of Letters Probate". Probate means that the court confirms that all necessary information has been filed, and that financial institutions and the land title office can rely on the will. An executor is responsible for settling your affairs. This usually involves clearing out your home, or arranging for someone else to do so; 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. An executor is entitled to charge a fee up to 5% of the value of the estate. The executor must let the beneficiaries know what he or she plans to take and get their approval before taking the fee. However, if your executor is getting another gift from you in the will you must make it clear whether he or she may claim executor's fees in addition or whether the gift is instead of executor's fees. 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 private trust company or the Public trustee as executor. If an executor finds that the job of being an executor is complicated, he or she is entitled to retain the services of professionals such as accountants and lawyers.

You need to ask the person if he or she is willing to take on the job. It's a good idea to sit down with your executor and show him or her the will and discuss it, and to go over your list of assets and where they are.

You can appoint more than one executor. If you are going to appoint more than one executor, you want them to be able to work together. For example, it might be difficult for two executors to work together if one lives in B.C. and the other lives in Nova Scotia. If you have two executors, both executors will have to sign all documents.

It is a good idea to name a 'backup' executor in case your first choice is unavailable.

I've Made All the Choices – Now What?

You have to write your will down, or have someone do it for you. Your instructions must be clear.

Then you must sign the will in the presence of two witnesses

Can Anyone Be a Witness to My Will?

Watch out! If you are making a gift to someone in your will, **do not** ask them or their partner to be your witness. If you do, any gift you make to that person in the will is *invalid!* Your two witnesses must be at least 19 years old and must be mentally capable.

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

Can I Change My Will After I've Made It?

You can make a new will any time. A new will automatically revokes any earlier wills.

A will is revoked *automatically* if you marry (a heterosexual partner), unless you have named the person in your will as your intended spouse.

Do I need a Lawyer to Make My Will?

No, but it is always wise to get some legal help to make sure that the will meets all legal requirements, and to make sure it is clear what you want to happen. If tax planning is important, it is also wise to talk to an accountant.

Where Should I Keep My Will?

You need to keep your will in a safe place that is fireproof, waterproof, and tamper-proof. Good choices include your safety deposit box, the freezer of your refrigerator in a Ziplock bag, or your lawyer's fireproof safe. Your executor should know where it is. If it is in a safety deposit box, your executor should also know where the key is!

What is a Wills Notice?

The Government of British Columbia maintains a Wills Registry. For a fee (currently \$17) they will keep a record of where your will is. This service is optional.

Representation Agreements

In 2000 new laws came into force, giving people the right to appoint someone to manage their business affairs and their personal and medical affairs if they later were unable to make decisions for themselves.

Before the new *Representation Agreements Act* came into force, there was legislation allowing you to appoint someone to manage your finances – called a Power of Attorney. But there was no law which allowed you to appoint someone to manage your medical affairs or to manage your personal affairs for you. We created Health Care Directives for people, which were statements to a person's doctor about who they wanted to make decisions about medical procedures if they were unable to make them for themselves.

Now a representation agreement combines the Power of Attorney and the Health Care Directive. Old Health Care Directives are not valid any longer, though your doctor may continue to respect the choices you made if you already have a Health Care Directive.

A representation agreement basically allows you to appoint someone to make decisions for you if you are no longer able to do so. So the important questions are who you would want to make those decisions, and what powers you want them to have.

One difference between a representation agreement and a power of attorney is that a person can make a representation agreement even if their comprehension is somewhat impaired. If that is the case, they may make a more limited representation agreement than if they have all of their mental capacities intact.

The law requires that a lawyer advise you about a representation agreement, so it is necessary for you to have legal assistance in preparing one.

Why would you want to have a representation agreement? Because it gives you a say now in what happens to you later. If you don't have a representation agreement, the law lists the people who should be consulted, in what order, about medical decisions. The first person on the list is your spouse – whether married or common law, opposite sex or same sex.

You can specify in your representation agreement what kinds of treatment you want if you are very ill. For example if you want no "heroic measures" you can say so.

Does a Doctor Have to Respect my Representation Agreement?

Yes, and so does everyone else. They are binding.

Power of Attorney

If I have a representation agreement, do I need a separate Power of Attorney?

Not technically, since the power to manage your financial affairs is included in a representation agreement. However institutions such as banks are much more familiar with one page power of attorney forms than they are with many-paged representation agreements which deal with health care and personal management as well as financial authority. So there is an advantage to having a standard Power of Attorney as well as a representation agreement. Such Powers of Attorney are valid forever if they are made before September 2001, after which time you will have to have a representation agreement.

Can I Change the Representation Agreement and Power of Attorney?

Yes, any time.

This pamphlet contains legal information. It is *not* legal advice. Laws change quickly, and individual situations vary. To find out how the law affects your situation, contact me. First interviews are always free of charge.

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