

# Wills

Writing a will is a good idea. A will gives you peace of mind and makes it easier for family or friends to handle your affairs when you die.





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**

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## What is a will?

A will is a legal document that lets you say what you want done with your estate after you die. Your estate is your house, land, and personal things like jewellery and artwork. A will also lets you name an executor, who is the person you name in your will to carry out your final wishes. A will has no legal effect until you die.

A person who makes a will is called a testator. The people you name in your will to get money or gifts after you die are called beneficiaries. Charities can also be beneficiaries.

## What is an estate?

After you die, your assets together are called your **estate**.

Your **assets** are anything worth money. For example:

- your house or condo
- any other land you own
- bank accounts
- investment accounts and GICs
- valuable jewelry
- valuable artwork
- other household and personal items
- your vehicles.

Pets are also assets, as the law thinks of animals as personal property.

### Assets that are not part of your estate

Your estate typically excludes:

- assets with a named beneficiary. Here are some examples:
  - registered savings accounts that let you name someone to get the money directly, like RRSPs, RRIFs, and tax free savings accounts (TFSA)
  - pension plans
  - life insurance policies.

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- property that you own jointly with someone else, with right of survivorship. For example, if you and your spouse own your home as *'joint tenants and not as tenants in common'*, the home goes directly to your spouse on your death.

When you die, these types of assets are said to “pass outside the will”. For example, the bank or trust company transfers the RRSP or RRIF, or pays it out, to the beneficiary you named. This payment does not take into account tax consequences, which must be paid out of the assets that pass through your will. The same is true if you have life insurance that names a beneficiary, although typically there are no tax consequences for life insurance proceeds. If you name your estate as beneficiary instead of a person or charity, the money goes to your estate and will be distributed as you direct in your will.

Assets you share with a spouse or minor children go to the surviving owners when you die. Shared assets with anyone else, including adult children, are not automatically assumed to go the survivor owner, so you should clearly set out in writing what you want to happen with those assets on your death and who should benefit from them. For jointly owned accounts, on your death the account may legally pass to the joint owner according to the financial institution paperwork. But be aware that the joint owner may then have a legal responsibility to share that account with other beneficiaries of your estate. If you want to leave assets to family members other than your spouse or minor children by joint ownership, [see a lawyer](#).

You should check to make sure you know how assets with a named beneficiary and shared assets are set up, and who will benefit when you die:

- Contact your bank to find out about your jointly owned bank accounts.
- Look at the deed to any property you have (house, land, condo) to see if you own the property with another person (called *'joint tenancy with right of survivorship'*, which is different from *tenancy-in-common*), and make sure you understand what that means.
- Check with your bank or trust company to see who benefits from your RRSPs, RRIFs, and TFSAs, other investments, or life insurance when you die.



Also ask if you can name a back-up beneficiary (also called an “alternate beneficiary”) for those assets that permit it. If you don’t do this and the beneficiary you named dies before you or at the same time as you, these assets go into your estate and are given out based on what you say in your will, or based on the law that applies if you die without a will (Intestate Succession Act).

If you are not sure about who will benefit from these assets when you die, [see a lawyer](#).

## Debts

If you owe debts when you die, like unpaid credit card bills and income tax, your executor must first pay your debts out of what is in your estate. Only what is left after all debts are paid may then be given out based on what you say in your will.

Secured debts (for example, a mortgage) and a surviving married spouse’s or registered domestic partner’s interest in the matrimonial home have priority.

If the estate does not have enough assets to pay all the estate debts, the estate is called insolvent. Debts for an insolvent estate must be paid in the following order of priority:

- taxes owed to the Canada Revenue Agency
- funeral expenses including a reasonable headstone
- probate taxes and court fees
- executor’s commission and legal fees (treated equally)
- reasonable medical expenses in the last 30 days of the will-maker’s life
- all other debts.

## Why make a will?

It is a good idea to have a will, even though Nova Scotia law does not say that you must make one. Making a will should give you peace of mind. A will makes it easier for family or friends to handle your affairs when you die.

There are many good reasons to make a will. A will lets you:

- deal with your important things the way you want to,
- give some or all of your estate to your common law partner. Without a will only married spouses and registered domestic partners inherit,

- give something to a friend, a charity, stepchild, a relative through marriage, or to someone else you care about. Without a will only married spouses, registered domestic partners, blood relatives or legally adopted persons inherit,
- name someone who will carry out your wishes,
- name someone to care for children or others who depend on you,
- make sure your pets or other animals will be cared for,
- save money and time by stating your wishes,
- save taxes
- arrange how a business you own will be handled
- help your family and friends handle your affairs after you die,
- lessen stress for your family and friends,
- lessen confusion about your wishes, and
- prevent possible disputes over your possessions.

## What happens if I die without a will?

Nova Scotia has a law called the [Intestate Succession Act](#). This law directs what happens if a person dies without a will. Intestate means a person who dies without a will.

If you die without a will, or you have a will but it is not legally valid, your property is distributed to the people considered to be your nearest relatives as listed in the Intestate Succession Act. The rules are not flexible. The distribution may be different from what you would want.

The basic rules are:

- If you are survived by your legally married spouse and had no children, all your property goes to your spouse.
- If you are survived by your legally married spouse and you had one child, the first \$50,000 goes to your spouse. The rest is equally divided between your spouse and child.
- If you are survived by your legally married spouse and more than one child, the first \$50,000 goes to your spouse. One-third of the rest would go to your spouse, and two-thirds of the rest to your children.



- If you are survived by your children, but no legally married spouse, your whole estate would go to your children, with each getting an equal share.
- If you had no legally married spouse or children, your whole estate would go to your nearest relatives by blood or adoption, by order of priority as listed in the *Intestate Succession Act*. Relatives by marriage are not included.
- Your estate would only be paid to the government if you have no surviving relatives in your family tree.

A surviving legally married spouse will always get up to \$50,000 from the estate before anyone else. If your surviving legally married spouse is not a joint owner of the family home, they may choose to take the home and household contents instead, or as part of, the \$50,000.

The *Intestate Succession Act* gives no protection for common law partners, stepchildren, or grandchildren. So, it is especially important to make a will if you want your common law partner, stepchildren, or grandchildren to inherit something from your estate when you die.

Here's why:

- If you die without a will, only your surviving married spouse or registered domestic partner can inherit. Common law partners are not included as a 'spouse' under the *Intestate Succession Act*. Your common law partner will not automatically inherit your property or money that is only in your name. Your common law partner may have to go to court to make a claim on your estate and may not be successful.
- If you die without a will, only your biological and legally adopted children can inherit. Stepchildren are not included. They would have to go to court to make a claim on your estate, and they may not be successful.
- If you die without a will, your grandchildren will only inherit from your estate if their parent (your child) died before you.

If you die without a will, there will be extra steps in the process of settling your estate, which will mean additional costs and delays. This may add to your family's pain and distress. It will also mean that there will be less left to distribute.

Someone will have offer to look after your estate. The person must apply and be appointed by a court as an administrator. That person may not be someone you would have chosen. That person will have to be bonded for 1.5 times the value of your estate, which is often costly and can be challenging to put in place.

The intestate law also applies if you do not deal with all your property in your will, either intentionally or unintentionally. In this case you are said to die partially intestate. The part of your estate not covered in your will is distributed according to the *Intestate Succession Act*.



**Note: If you are a person registered under the *Indian Act* (status Indian) who usually lives on a reserve or Crown lands and you die without a will, the federal *Indian Act* determines who will settle your estate and who will receive your assets. The distribution is a bit different from Nova Scotia's *Intestate Succession Act*. In general, an estate worth \$75,000 or less goes to the surviving spouse, including a common law spouse, and if it is over \$75,000 it is divided among the surviving spouse and children in portions that vary depending on how many children there are. If there is no spouse or children, other family members can inherit.**

## Wills for persons registered under the Indian Act who usually live on reserve

The federal Indian Act has rules for making wills that apply to persons registered under the Indian Act who usually live on reserve. The Indian Act does not apply if you have status under the Indian Act and live off-reserve, or if you do not have status under the Indian Act and live on-reserve. Provincial laws apply instead.

If you have status under the Indian Act and ordinarily live on a reserve, you can get information about making a will from:

- Indigenous Services Canada online [www.canada.ca/en/indigenousservices-canada.html](http://www.canada.ca/en/indigenousservices-canada.html), then 'Treaty annuities, estates and trusts', and 'Estate services for First Nations'
- the Confederacy of Mainland Mi'kmaq (CMM), Mi'kmaw Wills and Estates series which includes:
  1. Book One: How to Write a Will
  2. Book Two: How to Settle an Estate
  3. Book Three: How to Write a Power of Attorney and Personal Directive
  4. Mi'kmaq Wills and Estates & Matrimonial Real Property.  
Go to [cmmns.com/program/wills-estates/](http://cmmns.com/program/wills-estates/) for more information.
- a lawyer who does wills and estates law, and who knows about Aboriginal law and the rules that apply to wills for persons registered under the *Indian Act* who usually live on reserve.

## Do I need a will if my partner or spouse has one?

Yes, especially if you own anything on your own and if you want someone specific to inherit it. This includes items of sentimental or personal value, such as keepsakes, or plans, such as arranging for the care of pets and other animals in your care. You might die before your partner or spouse, or you could die at the same time in an accident. A will is the best way to let your wishes be known. You can each have a will that mirrors the other's will. Mirror wills are separate wills with identical terms.

## Do I have to hire a lawyer to write my will?

A will is a powerful legal document. In Nova Scotia you can write a will with the help of a lawyer or without a lawyer; the law does not say that a lawyer must write your will.

However, it is always best to have a lawyer write or at least review your will. A lawyer will help you make sure what you want is set out clearly and in proper order. A lawyer can save a lot of trouble and expense for the people who should benefit from your will and for the person you name as your executor.

You should have a lawyer read any document that may affect your will. Examples are a separation agreement, shareholder agreement, court order, or beneficiary designations you make on investments and life insurance.

You should talk with a lawyer no matter what you put in your will. But some situations are more difficult than others. Having a clear will makes all the difference in the world to the people who depend on you.

Your will must be worded carefully. A lawyer can:

- make sure your will clearly describes your wishes
- make sure your will follows the law
- help you deal with things that you might not have thought about
- tell you what you can do now to make it easier for your executor to deal with your estate after you die
- answer any questions about the process of dealing with your estate
- give proof in the future that you made your will by your own free choice, without pressure from anyone else, and
- give proof in the future that you had testamentary capacity (were “of sound mind”) to make your will.

A lawyer can also help with:

- Family pressure. You might feel that a family member or other person is pressuring you to leave money or property to them in your will. You can talk to a lawyer about this.
- Worries about family members. You might worry that someone who depends on you will not be able to manage their financial affairs if you die before them. In these cases, you can talk with the lawyer about how to best provide for that person.



## What does it cost for a lawyer to do a will?

Lawyers usually charge a fee based on how much legal service you need and how complex the will is. The cost to do a will can begin at less than \$400 and go up. Lawyers often charge a flat fee for doing a will. Some lawyers offer estate planning package deals.

In a package deal, the lawyer might write your will, a power of attorney, and a personal directive and charge a lower cost than for doing the three individual documents at separate times. You should talk about fees before you decide to hire a lawyer. You should talk over the cost if you prepare the will yourself or if you want the lawyer to prepare it.

Please [contact us](#) to see if we can put you in touch with a lawyer who does wills & estates work, or [go here for other ways to find a lawyer](#).

# Common parts of a will

The will contains your instructions about what you want done with your property after you die. The language should be clear and simple, so no one is confused about what you meant.

A will should have several sections, called clauses:

## Revocation

The will should say that you revoke, or cancel, all previous wills and codicils. A codicil is a document that changes a will.

## Appointment of an Executor

In your will, you should name someone as your executor and name a back-up executor. Your executor carries out your wishes as set out in your will when you die. Your executor must make sure they know what all your assets and debts are, pay your debts out of your assets, and then distribute what is left in your estate based on your instructions in your will. *More information about the executor's role is below, at 'Who looks after my will when I die?'*

## Disposal of Property (Specific Gifts)

This section of the will says who will get specific property (for example, a cottage, an antique car, valuable artwork, valuable jewelry, a specific amount of money) or property generally, and under what conditions.

A will comes into force only after your death. Until you die, you can deal with your property as you wish. For example, if you leave your cottage to your niece in your will, you could still sell it before you die and use the money as you wish. The will can only dispose of property that you still own at the time of your death.

As well, if you are leaving property to someone, you may want to say what should happen if they die before you or at the same time. For example, if you leave the cottage to your cousin, do you want your cousin's children to inherit it if your cousin dies before you or do you want the property to go to someone else?

## Residuary Clause

Your will should include a residuary clause. This clause says what you want done with all your assets that are left after taxes, debts and expenses are paid and specific gifts have been given out.

If your will does not have a residuary clause, the remaining property (called the residue) will be treated as if you had died without a will. This means it will be distributed according to a provincial law called the *Intestate Succession Act*.

## Other Clauses

A will may contain other clauses to suit your needs. For example, you may want to recommend a guardian for your children (although it is better to do that in separate child guardianship document), name a caregiver for your pets and leave that person a gift of money to thank them or to help with the expenses of taking care of your pet, create a trust fund, or set out the powers of the executor.

## Legal requirements of a will

The Nova Scotia [Wills Act](#) has certain legal requirements to make a will valid. Your will must meet all the legal requirements to be valid. The legal requirements are listed below.

**Age:** In Nova Scotia, you must be 19 years old or older to make a will. There are a few exceptions. For example, a person under 19 can make a will if they are or were married.

**Capacity:** You must be mentally competent to make a will. It is also called having **testamentary capacity**. This basically means that at the time you sign your will you must:

- know that you are making a will and understand what a will is,
- know what property you own and have a general idea what it is worth
- know how much money you owe; and
- be able to name the people in your family you should gift your estate to (even if you do not intend to), and other people you wish to leave something.

If you lose capacity after you have made your will, the will is still valid. You should make your will while you are in good health so that your capacity to make one is not questioned. Whether you are capable of making a will can be questioned:

- if your ability to think clearly is affected by illness (including dementia or Alzheimer's) or pain
- if you are taking drugs
- if you feel pressured to write a will because someone is insisting that you do one. A will must be made without pressure or influence by anyone, including people you might rely on to help you financially, for housing, or for personal needs and health care.

This is not a complete list. But it gives you a sense of the challenges that are often made to the validity of a will. And more than one of those criteria may apply to any situation.

Even if you have some trouble understanding information or lack some decision-making ability, you might still be able to meet the legal standards to make a will. A health problem that affects your thinking matters, but it is not the only thing that matters. For example, someone in the early stages of Alzheimer's who has a bit of trouble with thinking and reasoning might still be capable of making a will.

Whether you are capable of making a will is a legal question, not a medical one. However, if that is your situation you should [get help from a lawyer](#) who does estate planning and who has experience working with people who have some decision-making, reasoning, or memory problems. You might still be able to do a will under the right circumstances and with the information explained in a way that you are able to understand.

If you don't have testamentary capacity, or you are pressured or influenced by anyone else to do one, you should not make a will. If you do make one, someone could challenge your will in court, and your will would probably not be valid. In that case, you would be considered to have died without a will.

**Knowledge:** You must know and approve of the contents of your will. The will may be invalid if you were misled by fraud or simply by accident. It may also be invalid if someone put pressure on you to do your will or put certain clauses in it. This is called undue influence.

**Written:** A will must be in writing, but it does not have to be typed: it can be handwritten or printed. However, video, audio or digital recording, or any other way of communicating your wishes, are not considered to be valid wills.

**Signature:** You must sign your will at the end. You must sign it in front of two adult witnesses who must be present with you at the same time, unless it is [a holograph will](#). If you cannot sign the will, you can ask someone to sign it for you in front of you and you must tell the two witnesses that the will is yours.

When you are signing your will, you should put your initials on each page and number the pages so that pages cannot be replaced or removed from the will.

You should put the date on your will.

**Witnessed and signed by two other people:** Your two witnesses must also sign the will in front of you and in front of each other. Your witnesses should also initial each page. The witnesses must be at least 19 years old. They must not be beneficiaries or be married to someone who is a beneficiary. The witnesses do not need to know what your will says.

You should also arrange for at least one of the witnesses to swear an Affidavit of Execution.

## What is an Affidavit of Execution?

An **affidavit of execution** is a sworn statement that the witness saw you sign your will on a particular date and that you signed in front of both witnesses.

An affidavit of execution can be made any time after you sign your will. It is best to do it right after the will is signed because witnesses might move away or die before you after the will is signed. After your death, your executor can use the affidavit in court to show that the will was properly signed

**J** and witnessed. If there is no affidavit, the executor will have to find one of the witnesses and have the witness swear an affidavit when the executor applies to Probate Court for authority to act on the instructions in your will.

The witness must sign the affidavit of execution in front of [a lawyer](#) or a [notary public](#).

You can see an affidavit of execution on the [Nova Scotia Courts website](#), under [Probate Court forms](#), at [www.courts.ns.ca](http://www.courts.ns.ca). Look for “Affidavit of Execution of Will or Codicil.”

## Can I choose who gets my property?

In most cases, you are free to deal with your property as you wish. However, Nova Scotia laws place some limits on how you may distribute your property in your will. The laws expect you to give your dependents a fair share of your estate. Those laws are the [Testators’ Family Maintenance Act](#) and the [Matrimonial Property Act](#).

### *Testators’ Family Maintenance Act*

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This law tries to make sure that you leave your dependents with money and support whenever possible. Under this law, dependents are your children of any age, including legally adopted children, and surviving married spouse or registered domestic partner.

Common law spouses, divorced spouses, and step-children who have not been legally adopted are not dependents under this law.

If you leave a dependent out of your will, or leave them less than expected, they can go to court to make a claim for support from your estate. The judge thinks about all the circumstances of a case in deciding whether to give support to your dependents. They include:

- whether a dependent deserves help (what is their character and conduct),
- whether there is any other help available to the dependent,
- the dependent’s financial situation,
- any services the dependent provided to you, and
- your reasons for not providing for your dependent in the will. It helps if you put the reasons in writing and sign the document or include the reasons for leaving someone out in your will.

This is not a complete list. The judge may take other factors into account. The application for support must be made within six months after probate or administration of the estate has been granted. A person who wants to apply for support or make a claim to property under this law should talk with a lawyer.



## Matrimonial Property Act

This law recognizes that both spouses contribute to a marriage. The law says that when one spouse dies, the surviving spouse can apply to court for a division of the matrimonial assets, in addition to any other rights of the spouse under the will or on intestacy. The surviving spouse must apply to the Supreme Court. The surviving spouse must apply for division within six months after the court has [granted probate or administration](#) of the estate. Anyone who wants to make an application should first talk with a lawyer.

A judge decides what share of the matrimonial property the surviving spouse should get.

Common-law spouses are not covered by this law unless you have a [registered domestic partnership](#). Then they are included from the date you registered the partnership.

## Family member

The *Testators' Family Maintenance Act* and *Matrimonial Property Act* say you are responsible to provide for your family and dependents, but otherwise you are generally free to deal with your property as you wish. You may decide to leave your estate to someone other than your closest relatives. You may decide to leave it to some family members but not to others. If you want to do these things, you should get advice from a lawyer and record your reasons in writing.

# Who looks after my will when I die?

Your executor looks after your will when you die. An executor is the person or corporation you name to carry out the terms of your will. Your executor must make sure they know what all of your assets and debts are, pay your debts out of your assets, and then distribute what is left in your estate based on your instructions in your will. Your executor must follow the instructions in your will as closely as possible. However, they will not be able to follow instructions that are illegal, impossible, or would harm someone. Some types of court orders and contracts may also affect whether your instructions can be followed.

The executor's job includes:

- paying off your debts with money from your estate,
- giving your assets to your beneficiaries according to your wishes as set out in your will.

Your executor may also have to do paperwork for the Nova Scotia court that deals with estates, called [Probate Court](#).

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**J** An executor is also sometimes called a trustee. This is because they have legal title to your assets after you die, while they are managing your estate, until they distribute everything to the beneficiaries you name in your will. The executor must also [file your final tax returns](#), and the *Income Tax Act* calls your executor a trustee. And, if you leave property to anyone who can't manage their own finances (like minor children), the executor may manage the property for that beneficiary as trustee for them too.

If you do not name someone to be an executor in your will or if you die without a will, your next of kin will usually ask the Probate Court to appoint someone to fill the executor's role. This person is called an administrator, and Nova Scotia's Probate Act says who can apply to do that job.

The court uses the term personal representative for people who are appointed as an executor or an administrator.

It is best to name an executor in your will. It is also wise to name at least one back-up executor. That way, you can be sure that someone you know and trust will handle your estate. Also, you can give your executor broader power to make decisions and to act for you than the Probate Court will give to an administrator.



## Who should I choose as an executor?

Your executor:

- must be 19 years of age or older
- must be mentally competent
- should live in Canada to avoid tax issues, and ideally in Nova Scotia.

Most people ask a family member or a close friend to act as their executor. You need to be sure that the person you choose has the time and the ability to carry out the many duties of an executor. The executor should be someone who will get things done. Looking after an estate can be difficult and it takes time. Sometimes it includes responsibilities that last for years.

Being an executor can be a big job, so choose someone who is organized and who knows when they need to seek professional advice.

Here are some things to keep in mind:

- The best executor is a trustworthy, reliable, and competent adult.
- Think about choosing someone who is likely to outlive you.
- Choose someone who lives in your province to cut down on expenses.
- Your executor should live in Canada to avoid tax issues.
- Your spouse, a friend, family member, or heir may be able to do a good job as executor. Many people choose their spouse or main heir as executor.
- Your executor can also be a beneficiary.
- Think about choosing someone who knows about banking and business affairs.
- You should name a back-up executor in case your first choice dies, moves away, or for some reason cannot do the job.

If you do not have someone suitable to be your executor, you may be able to name a trust company, a professional advisor (lawyer, accountant, sometimes an investment advisor), or the [Nova Scotia Public Trustee](#). You should talk with them first; they do not have to accept this role and some professional advisors cannot or simply won't. You must check first with the [Office of the Public Trustee](#) if you want them to act as your executor.

Any executor you name may charge your estate to do the work.

### Can I choose a trust company to act as my executor?

Your estate may be complicated. You might not have a relative or friend who is able to act as executor. What else can you do? You may want to name a trust company as your executor. You should check that the company is willing to act as executor or co-executor. If you do not check, the company may not act as executor when you die. The pros of using a trust company as executor are:

- They may be able to help you plan to save taxes and avoid problems.
- They are strictly regulated, so you can be sure they will handle your estate properly and legally.
- They would be a neutral executor if you think your heirs will disagree about your will.
- The company may give you free advice on drafting your will and may store it for you.

The cons of using a trust company are:

- They may charge up to 5 per cent in fees (although any executor may charge your estate to do the work.)
- They can be conservative investors.

- They may not know your assets as well as a family member or friend.
- They may not know your dependents as well as a family member or friend.
- They may not be as flexible with your dependents as a private person could be.
- The taxes for their fees are paid from the estate.

Before you choose an executor, think about the time involved in administering your estate.

For example, if you want to set up a trust for the care, education, and benefit of your children or grandchildren, this would be a long-term commitment for an executor. In a case like this, you may want to consider a trust company rather than someone who might not be able to make such a commitment or who might die before the funds in the trust have all been distributed.

## Can the person I choose as executor refuse the position?

Yes. A person named in your will as executor can refuse to act as executor. This is called renouncing.

Talk with the person you want to be your executor before you name them in your will. Ask if they are willing to do this for you. Just because an executor is named in your will does not mean that they are required to act on your behalf.

As well as asking someone to be your executor, you should ask another person to be a back-up executor in case your executor cannot or will not act, due to death, moving away, or for some other reason.

If the executor you named in your will refuses or is unable to act, and you have not named a back-up executor, your next of kin will have to apply to the court to appoint someone else. This causes delays and could cost money.

## Can I appoint joint executors?

Yes. You can appoint more than one executor (called co-executors) to share the responsibility. Co-executors must make decisions together. Each co-executor has the authority to sign documents for your estate unless your will says something different. One possible problem is that they may disagree about what to do. Since either can sign documents, this could cause problems for your estate.

Before naming co-executors to act together, consider whether your executors will work well together, and whether they will both be in the same geographic area when they must deal with your estate. Co-executors must make decisions together. They must agree on all decisions.

It is a good idea to [talk with a lawyer](#) if you want to appoint two or more executors to act together.

## What does the executor do after I die?

The executor's job is to gather all your assets, pay your debts and taxes, and distribute your money and property according to your instructions in your will. The executor may have to apply to the [Probate Court](#) for authority to deal with your estate. This authority is called a grant of probate. It gives the executor power to handle your estate according to the terms of your will.

## What is a holograph will?

A holograph will is a wholly handwritten will signed by the testator (the person who made the will), but not witnessed.

Before August 19, 2008 holograph wills were not valid in Nova Scotia. Then the law was changed, and a holograph will made after August 19, 2008 is now legal. The courts have ruled that a holograph will made before August 19, 2008 is not valid.

If you have a holograph will, you should check with a lawyer to make sure it is valid.

## What happens if my intentions are unclear in my will?

If your will is unclear when you die, your family may have to go to court to sort out your estate. Your executor will have to talk to a lawyer.

## Should I put my burial wishes in my will?

Burial instructions are not legally binding. They are considered an expression of your wishes.

Your executor might not read your will until after your funeral and burial, so they might not see your instructions before the funeral and burial happen.

If you are going to put your burial wishes in writing, it is better to do that in a separate document and tell the people who need to know where to find it.

Speak with your executor and family members to make sure they know what you want. Your executor is legally responsible to make your funeral arrangements, so this discussion is especially important if your executor is not a family member or there are different expectations among family members about how best to honour you. *Read the chapter on Planning Your Funeral for more information.*

# Things to do after you make your will

**J** Keep your will and the affidavit of execution where they will not be damaged by things like pets, mold, a fire, or flooding. A safe place to store your will is a fire-proof metal box like a filing cabinet or cash box. If you hired a lawyer to write your will, you can ask them to keep a copy as well.

Tell your executor exactly where your will is. Only an original will is valid in Nova Scotia and in most other places, so it is very important for your executor to have the original will when you die.

Keep an up-to-date, detailed record of your assets (including accounts, insurance policies, investments) and debts with your will or where your executor can find it easily.

Keep an up-to-date, detailed list with the contact information for all the beneficiaries you have named in your will, especially if the primary or back-up executor you name does not know everyone personally.

Look at your will every few years or any time you have a major event in your life, like a marriage, new common law relationship, separation, divorce, the birth of a child, a move outside Nova Scotia, or the death of a beneficiary.

You should also regularly review any property you own jointly with someone else, and assets with a named beneficiary, such as pension plans, life insurance, RRSPs, RRIFs, TFSA, to make sure they still do what you want them to.

If you decide that you want to change your will, you can cancel (revoke) it by destroying it or by making a new will. If you make a new will, destroy the old one so there is no confusion about which version should be used. See 'Cancelling your will' below for more information.

Wherever you decide to keep your will, you should tell the people in your life who need to know about it where to get it when it is needed.



## Can I change my will?

You can change your will at any time up until you die as long as you are mentally competent and are not being influenced or pressured by anyone else to make those changes. You should look at your will from time to time to make sure it is still what you want. For example, you may no longer own property mentioned in your will. You may want to make changes because of births, adoptions, deaths, marriages, new common law relationships, separations or divorces in the family.

There are two usual ways to change your will:

- **The best way is to make a new will.** The first clause of a new will usually say that it revokes (cancels) any previous wills. The most recent will, as long as it is properly signed and witnessed, is the one that will be used following your death.
- You can write a separate document called a **codicil** to change part of your will. A codicil must name the will being changed, including a reference to the date the will was signed. It must clearly say which clauses of the will are being removed or changed and clearly set out the new terms of the will. The codicil should also say that apart from the changes it makes, you confirm the terms of the original will. You must sign the codicil and have your signature witnessed in the same way as your will. **But codicils should be avoided.** A codicil is generally used only to make very minor changes to a will. Make a new will if you wish to make major changes to your will or if you already have one codicil. Codicils are frequently lost and frequently written improperly. They are a hold-over from a time before computers, when wills were handwritten or typed, and it was faster to write a codicil.

Never change your will by marking or crossing out words in the will. Instead, make a new will.

You must be mentally competent at the time you make changes to your will. You must also not be influenced or pressured by anyone else to make the changes. If it is found that you were not competent or were influenced to make the changes, your new will or codicil may be successfully challenged in court.

# cancelling your will

There are five ways to cancel your will, or parts of your will. This is called revoking a will.

- If you get married, your will is cancelled unless it says it is made as you prepare to marry that person and that you want it to stay valid after the marriage. This is called being made “in contemplation” of marriage.
- If you get divorced, parts of your will are no longer valid. In Nova Scotia, divorce revokes the parts of a will that give a gift to a former spouse, provide a benefit to a former spouse, or appoint the former spouse as executor. There are exceptions: the will, a separation agreement, or marriage contract may say that these parts of your will are not affected by a divorce.
- You make a written document saying that you want to cancel the will. You must sign it and have it witnessed in the same way as a will. For example, in one case a bank manager had a person’s will. The person became ill and signed a letter to the bank manager that said: “*Please destroy the will I have already made out.*” The person had signed the letter in front of witnesses, and the letter cancelled the will.
- You make a new will. A codicil cancels clauses in a will.
- You destroy the will or ask another person to destroy it in your presence. If your will is accidentally destroyed (for example, by a fire in which you die) a copy of the will can be used if there was no intention to cancel your will. However, a judge would need to give consent for the copy to be used, as the legal starting point (presumption) is that only an original will may be used in Nova Scotia for probate and estate administration.

## Is a will made outside Nova Scotia valid in Nova Scotia?

Your will may be valid if it was made outside Nova Scotia. You should have it checked by a lawyer to see that it meets the requirements of Nova Scotia law.



# Where can I get information on probate?

The [Probate Courts in Nova Scotia](#) make information available to the public. You may get copies of [the forms](#) by contacting your local Probate Court office or by going to the Courts of Nova Scotia website, [www.courts.ns.ca](http://www.courts.ns.ca).

The information available from the Probate Court includes:

- [The Probate Act - Questions and answers](#)
- [Dealing with an estate](#)
- [Grant of probate checklist](#)
- [Grant of administration with will annexed - checklist](#)
- [Grant of administration - checklist](#)
- [Passing the accounts of an estate in Probate Court - checklist](#)
  - [How to prepare the final account of the personal representative](#)

Where can I get more information?

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](http://www.legalinfo.org)

## Finding a lawyer who does wills

It is a good idea to speak with a lawyer who focuses on estate planning, including wills, and if possible, a lawyer who has a Trust and Estate Practitioner or “TEP” designation. The Legal Information Society of Nova Scotia’s Lawyer Referral Service may be able to refer you to a lawyer who does wills. Or, go to the Legal Information Society’s website at [www.legalinfo.org](http://www.legalinfo.org) for information about ways to find a lawyer in private practice who does wills and estates work.