

CREATING A WILL

Disclaimer: *This self-help kit is not a substitute for professional legal advice. It does not address all possible situations nor does it cover all areas of applicable legislation. You use this guide entirely at your own risk. The legal process can be complicated and **it is recommended that you consult with a lawyer** before executing a will.*

Wills are often complex and require clear and precise wording. There are also different legal requirements that need to be met in order for a will to be considered valid. There is a possibility that your wishes can be misinterpreted or determined to be invalid. Lawyers can help ensure that all of your bases are covered so that nothing is missed.

Introduction

Is this guide for me?

This guide is designed to help a person or persons create a simple will by outlining some of the requirements for a valid will. This kit is not designed for complex wills that involve estate planning, tax planning, and/or complicated divisions of property.

You may wish to review the applicable laws in Saskatchewan, including:

- [The Wills Act](#)
- [The Intestate Succession Act, 2019](#)
- [The Survivorship Act](#)
- [The Dependants' Relief Act](#)
- [The Administration of Estates Act](#)
- [The Land Titles Act](#)
- [The Family Property Act](#)

You may also wish to review the information about making a will at:
www.plea.org.

Why do I need a will?

A will allows for important matters and your personal wishes to be realized after your death. This includes things such as the distribution of your property, as well as how your dependents will be cared for. Without a will or a properly drafted will, these matters may be determined by

the court instead. This can lead to costly and lengthy court proceedings, and other issues such as family disputes over the distribution of your property.

What property can my will cover?

In your will, you can deal with property you own solely. You do not need a will to deal with property that you own jointly with another person. For example, if you own a family home or a bank account jointly with someone else, that property goes to the other person when you die. Anything you say in your will would not affect property you hold jointly with someone else.

Your will also will not cover any property that has a designated beneficiary. For example, if you have life insurance, and the proceeds go to someone you named in the life insurance policy, your will does not affect how the life insurance proceeds will be paid.

When should I make a will?

All adults should consider making a will. If you have a will, you should review it regularly to make sure it reflects your wishes. If you have a major life event, such as getting married, getting divorced, having a child, or the death of a family member, you should update your will.

Do I need a lawyer in order for my will to be valid?

It is recommended that you seek legal assistance for writing and signing your will. Although you may save money by drafting your will, the people listed in your will may end up having to pay for legal fees if you haven't clearly stated who you want to receive your property.

Requirements to Have a Will

- **You must be 18 years old** unless you are under this age and make a will while in a spousal relationship. A spousal relationship is where you are either married to someone, or have lived with someone in a relationship for at least two continuous years.

- **You must have the ability to understand what a will is, understand what type(s) of property you have, who you intend to receive each type of property, and you must want to have your will carried out.** You must have both the ability to give instructions about what to include in your will, and the ability to understand the effects of signing your will.

Will Type #1 – Holograph Will – This kit does not include a template for a holograph will, but the requirements for this type of will are as follows:

- ❑ **The will must be completely in your handwriting** – It cannot be typed out, even partially. You must clearly indicate who you are leaving property to.
- ❑ **You must sign and date the will**
- ❑ **It must be clear that you wanted to make a will** – The court will look to see if you wanted to make a will when signing it. Your will cannot be made for purposes relating to fraud, or if you were forced or threatened by others into making a will.
- ❑ **No witnesses are required or permitted**

Will Type #2 – Formal Will - The attached template is a formal will. Make sure that all of these requirements are met when you write your will and get it signed:

- ❑ **The will is typewritten or printed.**
- ❑ **You must sign the will, or someone can sign on your behalf** – Either your signature is required or you can request another person to sign on your behalf while they are in your presence, if you are physically unable to sign.
- ❑ **Your signature must be made in the presence of two or more witnesses** –Your witnesses must actually watch you sign your will.
- ❑ **These two witnesses must sign the will** – Your witnesses must be physically present and mentally capable of understanding that you signed your will. Anyone receiving gifts in your will, or spouses of anyone receiving gifts in your will can not be a witness.
 - It is not recommended that the executor(s) of the will, or a creditor or spouse of a creditor to a debt listed in your will are witnesses.
- ❑ **It must be clear that you wanted to make a will** – The court will look to see if you wanted to make a will when signing it. Your will cannot be made for purposes relating to fraud, or if you were forced or threatened by others into making a will.

Instructions and Tips for Using the Will Template

- **Any time you see words that look like (this), you are required to fill this spot with your own information.** You can simply select the text to erase or backspace to fill in these blanks, and then type in your information.
- **Any time you see *[sentences that look like this]*, it's optional for you to include this section.** For example, paragraph #4 on the template would apply only if you wanted to give all of your property to your spouse. If you don't wish to do this, then you can simply remove this paragraph. (However, you should review the PLEA website and/or *The Dependants' Relief Act* if you are attempting to leave no property to your spouse.)
- **Remember to double check all of the information on your will before it's signed.** Make sure that full names are provided and that the information is accurate and correct.
- **If you find that you are erasing and changing a lot of this template, this might be a sign that you should seek help from a lawyer in drafting your will.** Although there are parts of this template that are meant to be changed, if you are changing most of the template, there is a risk that your will might not be valid.
- **Determine a safe and secure place where you will store the original will.** You may want to store it somewhere like in a fireproof filing cabinet in your home. Make sure your executor knows where to find it.

What the Sections on the Template Mean

As you can see on the template, there are 9 numbered paragraphs that you can include in your will. This section will explain what each of these sections means.

1. **Revocation of previous wills** – If a will is revoked, that means that it is no longer in force. The reason why this section is included in a will is to avoid confusion in case you have made previous wills in the past.
2. **Funeral wishes** – You can outline your wishes about how you want your funeral and burial or cremation to take place. Provide as much information and detail as you can.
3. **Payment of your debts** – This section provides for all of your owing debts to be paid after your death. Even if you do not include this clause, your creditors may still be able to claim payment of the debt from your estate. You should also note that if you have

secured debt such as a mortgage, you will need to specifically mention that you want the mortgage paid out from your estate. If you don't include this statement, the person who inherits your land/house will inherit the mortgage against the property as well.

4. **Appointment of your executor** – An executor is someone who carries out the instructions of your will, such as filing documents with the court, and ensuring that your assets are transferred to your beneficiaries. An alternate executor is someone who becomes your executor if your main executor isn't able to. Your executor(s) should not be a witness who signs your will. It is good practice to check with someone to find out if he/she/they would be willing to act as your executor, before you name him/her/them in your will.

5. **Important documents** – There may be some documents that are important for your executor to have after your death. Examples of these documents include:
 - Birth certificates
 - Marriage certificates
 - Contracts
 - Real estate deeds
 - Insurance policies
 - Safety deposit box(es) and key
 - Existing wills
 - Powers of attorney
 - Pre-nuptial agreements
 - Shareholders' agreement
 - Certificates for stocks/bonds/investments
 - Contract for a pre-arranged funeral

6. **Gifting all of your property to your spouse** – A “spouse” is someone you are legally married to, or someone you have been living with for at least 2 years in a spousal relationship. If you choose to go with this section, all of your property would go to your spouse. This would include, but is not limited to, things that you own such as items, land, cars, houses and bank accounts. This section also contains a back-up plan in case your spouse dies 30 days after you; you can choose who your property would go to instead. NOTE that if you have a spouse and don't give any property to your spouse in your will, your spouse may apply to court for some of your property based on *The Dependants' Relief Act*. If your spouse does not survive you by at least 30 days, you may want to state in your will where you would like the property to go instead.

7. **Gifting all of your property so that it's split equally among different people** – This section can be used if you wish for all of your property to be split among different people. This would apply if for example, you wanted your spouse and two children to equally split all of your property. If a beneficiary does not survive you by at least 30 days, you may want to state in your will where you would like the property to go instead.
8. **Gifting your property to different people** – This section can be used if you want different people to receive different gifts. This would apply if for example, you wanted your spouse to have your car and the family home, and one of your children to receive the cottage. Remember to be detailed and specific about the gift that you're giving. For example, if you are gifting your car, write down the make and model of the car. If a beneficiary does not survive you by at least 30 days, you may want to state in your will where you would like the property to go instead.
9. **How your dependents will be cared for** – This section can be used if you have child(ren) or if you are the court-appointed guardian of your adult dependent child, and you want to choose who their legal guardian(s) will be if they would be left without a legal guardian upon your death. (Remember that if your child's other parent is alive after your death, the other parent will be your child's sole guardian automatically.)
10. **Making donations to charity** – The registration number of the charity you wish to donate to can be found at <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html>.

More Information About Wills

Remember that this wills kit is only for creating a simple will. For more information, please refer to the resources below:

- PLEA – Planning for the Future: <https://www.plea.org/plans-for-the-future>
- Contact PLEA at 306.653.1868 to request a hard copy of the pamphlet, Wills and Estates.