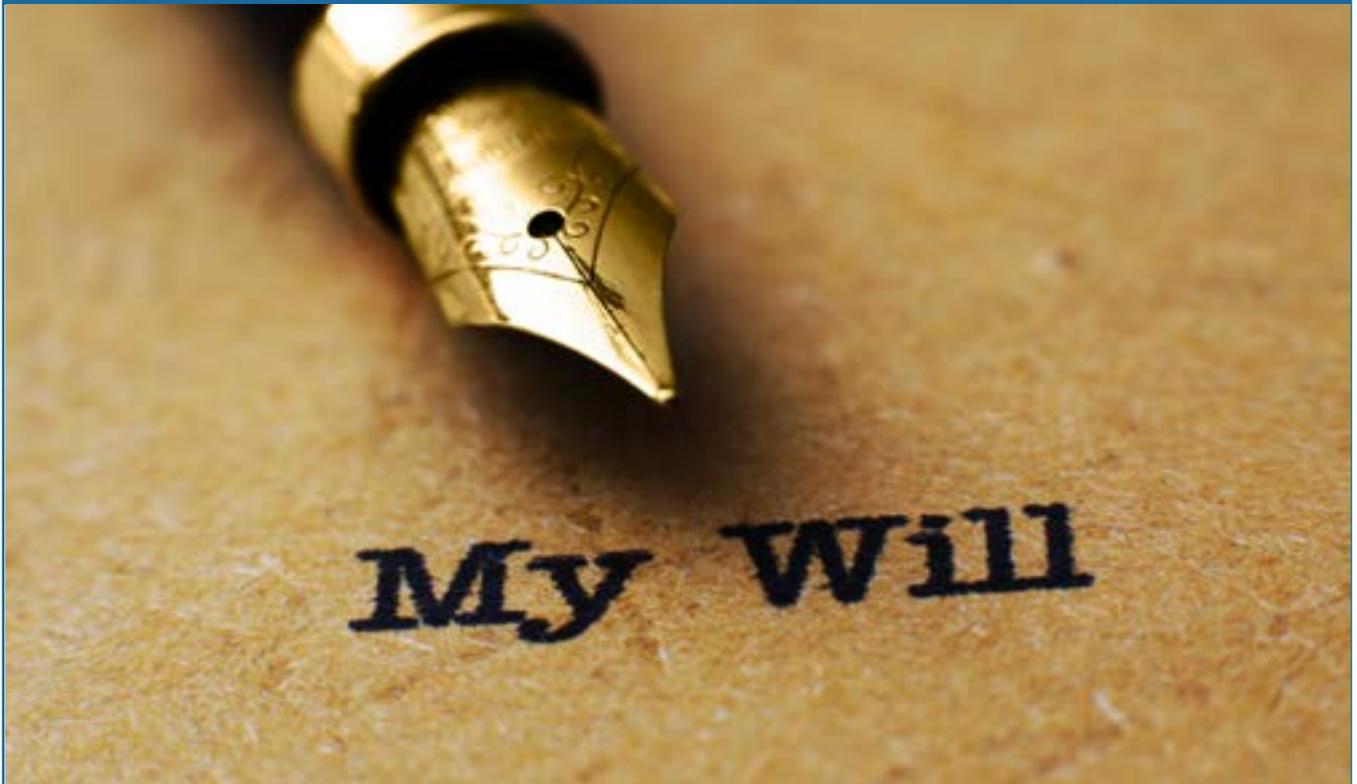


2014

Writing your Will



This booklet is for people who want to know more about wills. This edition reflects changes to the Wills, Estates and Succession Act (2014).



**PEOPLE'S
LAW SCHOOL**

THIS BOOKLET PROVIDES PUBLIC LEGAL INFORMATION ONLY.
IF YOU NEED LEGAL ADVICE YOU SHOULD TALK TO A LEGAL PROFESSIONAL.

FREE

What's Inside?

What is a will?	3
What are the requirements for making a will?	4
What does a will look like?	4
Overview of a will	5
What is an executor?	7
Where to get help	10

© 2014, People's Law School, BC

Publisher:

The People's Law School
150 - 900 Howe Street
Vancouver, BC V6Z 2M4
www.publiclegaled.bc.ca
e: info@publiclegaled.bc.ca
t: 604.331.5400 | f: 604.331.5401



Acknowledgements:

Content Review: Joan Letendre (3rd Edition)
Content Update: Hassan el Masri (4th Edition)
Plain Language Writer: Gayla Reid

The People's Law School operates within an annual budget to maintain the accuracy and availability of print material. Booklets are available in print and online formats. Please check our website or www.clicklaw.bc.ca for current information or to download resources.

The responsibility for using and interpreting this information is with the user.

Permission is given to reproduce this information for non-commercial use and with credit to the People's Law School. Authorization to reproduce content does not give a user the right to reproduce graphic images without permission of shutterstock.com.

Glossary of Terms

Assets	What you own. Assets can include things such as money, land, investments, and personal possessions such as jewelry and furniture.
Beneficiary	Person or organization you leave something to in your Will.
Codicil	A document made after the Will that changes some things in your Will.
Estate	All of the property and belongings you own at your death. The estate does not include property you own with someone else in joint tenancy, or joint bank accounts. The estate does not include insurance policies, RRSPs or RRIFs, or other things you own which specifically name someone as your beneficiary.
Executor	The person you appoint to carry out the instructions in your Will.
Joint Tenancy	When two or more persons are equally owners of some property.
Power of Attorney	A legal document outlining the specific duties for which the power of attorney is granted.
Probate	A legal procedure that confirms the Will can be acted on and authorizes the executor to act.

Terms used in this glossary are underlined on their first instance of use.

What is a Will?

A Will is a legal document that leaves instructions about what you want done with everything you own at your death. everything you own at your death is called the estate.

A Will gives you some control over what will happen to what you own when you die. By having a Will, you can make sure that the things you own go to the people you want to have them. A Will can be useful for people who outlive you. They can then feel sure that they are carrying out your wishes.



When should I make a Will?

You can make a Will at any time. You should make a Will if you marry or if you start a family. Even if you don't marry or have children, or don't have many assets, it's still a good idea to make a Will so that you can leave your belongings to the special people in your life.

Also, you should make a Will when you are in good health. To make a Will, you need to be mentally capable. Your mental capability can be affected by illness, accidents or drug treatment.

Do I have to make a Will?

The law does not say that you have to make a Will. However, by making one you can make sure that your wishes about inheritance are respected.

If you die without a Will, there is no legal way of knowing what your wishes are. The Supreme Court then has to appoint someone to deal with your estate.

Example: Bill's mother died and now he's having problems. He can't remember everything she told him about what she wanted done with the things she owned. He wishes she'd written a Will.

What happens if I die without a Will?

If you die without a Will, someone, usually a spouse or child, needs to file documents in the Supreme Court Registry that ask the court to appoint him or her to administer the estate.

If there is no Will, the law sets out who will inherit. The estate goes to the government only if no relatives can be found.

If there is no one who can administer the estate, then the Public Guardian and Trustee takes responsibility.

How is a Will different from power of attorney, or representation agreement?

A Will takes effect only after you die. A power of attorney and a representation agreement are two types of authority you can give someone to act on your behalf for financial matters or health care decisions when you are still alive and cease to have effect when you die.

How is a Will different from a living Will?

Currently, a living Will has no legal effect except in cases of emergency medical treatment that goes against a person's religious beliefs. A living Will is only an expression of your wishes if you become seriously ill or injured, and are unable to make healthcare decisions.

You must make a representation agreement to allow someone to make healthcare decisions for you.

What are the requirements for making a Will?

- As of March 31, 2014, you only need to be 16 or over to make a legal Will.
- You need to be mentally capable of managing your own affairs.
- 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.

You can make a Will on your own or have someone such as a lawyer or a notary help you. Your instructions in the Will should be clear and specific.



What does a Will look like?

The law sets out some rules that must be followed:

- The Will must be in writing, typed or handwritten.
- You must sign the Will at the end, in front of two witnesses, and you must tell the witnesses that the Will is yours. If you are unable to sign the Will because of illness or disability, you can ask someone to sign it for

you in front of you, and in front of the two witnesses.

- The two witnesses must sign the Will in front of you and in front of each other.
- You and the witnesses should initial each page of the Will in front of each other.
- The Will must have the date included on it.

How detailed do I have to get in my Will?

You need to be clear about exactly who the beneficiaries are. You should not say, for example, that you want to leave everything to "hungry children in Africa."

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.

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 doesn't go into the Will?

Burial service requests are not usually in a Will. You would want to provide your executor, family or friends with this information.

If you own assets in **joint tenancy** or joint bank accounts, they do not form part of the estate. These assets go directly to the spouse on your death.

Usually **RRSPs** and **RRIFs** don't form part of the estate, because in the RRSP or RRIF you name a **beneficiary**. When you die, the bank or trust company transfers the RRSP or RRIF, or pays it out to the beneficiary you named when you signed the documents creating the RRSP.

If you have life insurance that names a beneficiary in the policy, the same thing happens.

As of March 31, 2014, you can change the beneficiaries to your RRSP, RRIF or insurance policy in your Will and the bank or insurance company must follow that beneficiary designation if they are provided with a copy of the Will before they are asked to make a payment in accordance with their documentation.

Who can be a witness to my Will?

Your two witnesses must be at least 19 years old and must be mentally capable.

Before March 14, 2014 a gift to a beneficiary, would be void if the beneficiary, or their spouse, witnessed the Will. Although that gift would be void the Will would still be valid.

After March 14, 2014, A witness, or spouse, may witness a Will and receive a gift under that Will, as long as it is made clear in writing in the Will that the Will maker intended to make the gift to this individual who was also a witness or the spouse of witness.

The witnesses do not need to read the Will. All they have to do is watch you sign your name to the Will, and sign the Will themselves in front of you.



Overview of a Will

Typically, a Will has several sections:

- The Will appoints the **executor**. This is the person who is responsible for carrying out the instructions in the Will. You appoint someone you think may outlive you. It's wise to also appoint at least one person to be back- up executor, just in case the executor dies before you.
- The Will says who gets your property and under what conditions. The people to whom you give your possessions and property are called beneficiaries.
- The Will says who gets any property that remains after all the beneficiaries have been given their share.
- The Will can include other details as you wish. For example, people should name a guardian for their children who are 19 and under.

You can also cancel a Will. You can cancel a Will by destroying the original or, you can cancel a Will by drawing up a signed written document, with two witnesses. A new Will normally cancels any previous Will.

After March 31, 2014, a marriage that occurs after the making of a Will no longer cancel that Will.

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 a spouse, including common-law spouse or your children can 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.

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. This does not guarantee that they will not receive something if they dispute the Will in court. You should seek legal advice from a lawyer.

Example: Paulo has no children of his own. He wants to leave his belongings to his niece and nephew in case he dies. To make sure, he writes this in his Will.

Separated spouses generally have no legal claim to dispute the arrangements made in your Will.

Other relatives who are left out also generally have no claim.

Example: Maria is writing her Will. Both of her sisters want her to leave her opal ring to them. The ring originally belonged to their mother, and is a family heirloom. Maria knows that unless she is very clear in her Will about who should have the ring, there will be trouble later.

Do I have to get legal help to make a simple Will?

A simple Will does not cost very much and you may find that a lawyer or Notary Public is the safest way to avoid mistakes.

Ask a lawyer or notary how much it will cost before you decide to give the job to him or her. To find a lawyer or Notary, please see page 10.

How do I register my Will?

You can register your Will with the provincial government Wills Registry service. The law does not require this, but it's a good idea because it shows where you have put your current Will. To register your Will, you or the lawyer or notary need to file a Wills Notice with the Wills Registry,

Division of Vital Statistics. Contact them to find the nearest office. Do not send a copy of the Will, just send the Wills Notice.

Division of Vital Statistics
Victoria - 1.250.952.2681
Lower Mainland - 604.660.2937
Outside the Lower Mainland - 1.800.663.8328
www.vs.gov.bc.ca

Where should I keep my Will?

You need to keep it in a safe place that is fireproof, waterproof, and tamper-proof. The executor needs to know where it is, so that he or she can easily find it after your death.

Can I change my Will after I've made it?

You can make a new Will at any time. Or you can change the Will you've made by signing a separate document, called a **codicil**. To be legal, the codicil has to meet the same requirements as the Will. For example, it must be in writing, and be signed by you and two witnesses. You don't have to use the same two witnesses you used for your Will. The codicil must refer to the Will it is amending.



What is an executor?

Your executor is the person you name to carry out the instructions in your Will. Your executor may need to get a document from the Supreme Court called a Grant of Probate.

Probate means that the court confirms that everything necessary has been filed, and that financial institutions and the land title office can rely on the Will. Some estates that involve only a small amount of money (under \$25,000) may not need to go through probate. It is up to the third parties who hold the deceased's assets whether they will give you those assets without probate.

An executor is responsible for settling your affairs. This usually involves 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.

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.

An executor needs to be someone you trust and who has the ability to carry out the instructions in your Will. It's best if he or she is also familiar with your situation and your wishes.

You can also appoint a lawyer, a Notary Public, a private trust company or the Public guardian and Trustee as executor. An executor can be one of your beneficiaries.

Your executor can be someone who does not live in the province, but all procedures to settle the estate will be done in BC.

Sometimes an executor finds that the job is too much. He or she then has the option of employing a lawyer.

There is also the possibility of help from the Office of the Public Guardian and Trustee:

700 - 808 West Hastings Street
Vancouver, BC V6C 3L3 Phone: 604 660-4444
www.trustee.bc.ca



Make the job easier for your executor

Ask the person if he or she is willing to be your executor.

- Discuss your wishes with the executor, including burial and cremation.
- Register your Will, and tell your executor where the original Will is kept. It would be a good idea to keep it somewhere where others can access it.
- Keep an up-to-date, detailed record of all that you own and all that you owe. For example, bank accounts, RRSPs or RRIFs, insurance, real estate, and pension benefits. Note any items which are owned in joint tenancy or which name a specific beneficiary. These are dealt with outside the estate, so the executor does not have to manage them.
- Talk to family members, the beneficiaries, or anyone who may be entitled to a share of the estate. Explain what your plans are. This will prevent problems later.

Where to Get Help

Community Groups	In many communities there are people who have detailed information about legal issues that affect older people. Ask your local seniors' centre, community information centre, public library, or Royal Canadian Legion.	
Dial-a-Law	Dial-a-Law is a library of pre-recorded tapes with information about the law in BC. For example, they have a tape on making a will.	Lower Mainland – 604.687.4680 Outside Lower Mainland – 1.800.565.5297 www.dialalaw.org
Law Students Legal Advice Clinics	These legal advice clinics will provide information and assistance about preparing a will. In the Lower Mainland, law students at the University of British Columbia hold free legal clinics in different locations. In Victoria, the Law Centre provides free legal clinics to people who are financially eligible.	University of British Columbia Faculty of Law 1822 East Mall, Vancouver, BC V6T 1Z1 604.822.5791 www.lslap.bc.ca/main Law Centre 1221 Broad Street, Victoria, BC, Canada, V8W 2A4 250.385.1221 reception@thelawcentre.ca www.thelawcentre.ca
Lawyer Referral Service	The BC Branch of the Canadian Bar Association operates the Lawyer Referral Service, funded by the Law Foundation of BC. The Service enables members of the public to consult with a lawyer for up to 30 minutes for a fee of \$25, plus taxes. The lawyer will not be able to prepare a will for you in this time, but can answer questions you may have.	Lower Mainland – 604.687.3221 Outside Lower Mainland – 1.800.663.1919. www.cba.org/bc/initiatives/main/lawyer_referral.aspx
A Notary Public Near You	You can go to a Notary for help with making a will and executing affidavits. To get the name and telephone number of a Notary Public near you, phone the Society of Notaries Public of BC. Ask the Notary Public how much it will cost for a first meeting.	Lower Mainland – 604.681.4516 Outside Lower Mainland – 1.800.663.0343 www.notaries.bc.ca
Public Guardian and Trustee Office	The Office of the Public Guardian and Trustee looks after the estates of people who die without a will and who have no heirs in BC who are willing and able to apply to court to be appointed to settle the estate.	700 - 808 West Hastings Street Vancouver, BC V6C 3L3 Phone: 604 660-4444 www.trustee.bc.ca
Self Counsel Press	Self Counsel Press publishes do-it-yourself guides on legal topics for BC.	www.self-counsel.com



Booklet Evaluation Form

Your opinion matters to us. Please take a few moments to tell us what you think of the publication.

1. Which publication did you read?

.....

2. How much did your understanding of the topic improve after reading the booklet?

A lot A little Not much

3. How do you intend to use this booklet in the future?

Reference Pass it on Self-representation

Other

4. What other public legal education topics are of interest to you?

Consumer Law Employment Law Family Law

Tenancy Law Wills and Estates Immigration Law

Other

5. Do you have suggestions for improving this booklet?

.....
.....
.....
.....

Return completed evaluation form to:

People's Law School

Mail: Suite 150 - 900 Howe Street, Vancouver, BC V6Z 2M4 | **Email:** info@publiclegaled.bc.ca

Evaluation forms can be filled out online at <http://www.publiclegaled.bc.ca/bookletevaluation>

Evaluations received by December 31 will be entered into our annual draw to win a gift.

Gift changes from year to year.

Thanks for your time and interest in public legal education - 2014.

People's Law School is a registered charitable organization (No. 88722 5795 RR).
Consider making a donation to fund our services and programs - publiclegaled.bc.ca/donate.



PEOPLE'S LAW SCHOOL

The People's Law School is a non-profit charitable society. Our purpose is to provide British Columbians with reliable public legal information.

**THIS BOOKLET PROVIDES PUBLIC LEGAL INFORMATION ONLY.
IF YOU NEED LEGAL ADVICE YOU SHOULD TALK TO A LEGAL PROFESSIONAL.**

NON-COMMERCIAL REPRODUCTION GRANTED WITH REFERENCE TO PUBLISHER - THE PEOPLE'S LAW SCHOOL ©2014.

Other related Public Legal Information booklets include:



These booklets are available online at:

www.publiclegaled.bc.ca



www.clicklaw.bc.ca

Follow us on:



@PLSBC



People's Law School - BC



PLSBC

People's Law School acknowledges



Canada



for their financial support.

THE PEOPLE'S LAW SCHOOL

Suite 150 - 900 Howe Street, Vancouver, BC V6Z 2M4
604.331.5400 | info@publiclegaled.bc.ca

Consider making a donation to this public service.

Your donation helps us provide public legal education and information to the people of BC.
Donations over \$20.00 will be provided with a tax receipt.
Please include your e-mail or physical address so a tax receipt can be sent to you.