

Wills



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Important Notice!

The legal information in this guide is up to date to January 18, 2018. It applies only in Quebec and is not meant as legal advice. If you need advice on a specific situation, consult a legal professional.

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What is a will?

A will is a legal document that lets you leave instructions for what will happen after you die. Here are examples:

- say who will inherit your money and property
- name someone to care for children under 18 if the other parent is no longer around
- name someone to settle your affairs
- prevent conflicts among people who will inherit

Who can make a will?

To make a will, you must have the mental capacity to make one. This means you understand the nature of the document and what it says. Also, you must not feel under pressure to make or sign a will.

You must usually be 18 years or older. People under 18 can only make a will for property that has little value, such as clothing and personal photos.

You must make your own individual will. You can't make a will as a couple or with someone else. The only exception is a marriage contract where couples can leave property to each other and their children.

Why make a will?

A will lets you plan for what will happen after you die. Here are examples:

Your family situation

You have a common-law partner? A child from another relationship? You want to leave your property to a friend or a charity?



Your financial situation

You have investments? A house? Debts? A business?

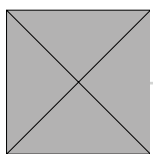


Your wishes

Who do you want to inherit your money and property?
Do you want to decide how much each one gets?



If you die without a will, the law decides who inherits and how much. It might not be what you want.



Did you know...

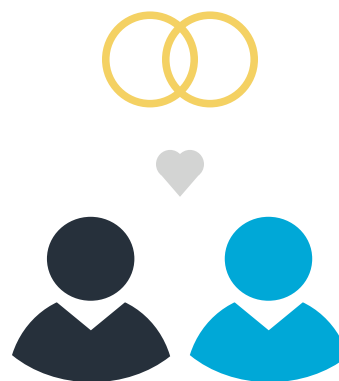
If you don't have a will, your common-law (unmarried) partner cannot inherit from you, even if you have been together for many years. You must make a will and say you want your partner to inherit from you.

I have a marriage contract.

If you're married, you might have a marriage contract.

Your marriage contract might say that you leave your property to your spouse when you die. This may be all you need.

But a will is more complete. It lets you decide things that aren't included in a marriage contract. For example, a will lets you leave property to someone other than your spouse or your children. It also lets you name a guardian to your children who are under 18. The legal term for guardian is tutor.



I made a will outside Quebec.

Quebec law might recognize wills made outside Quebec (in another province or country). But there might be extra steps and costs involved when you die.

You can avoid problems by making a new will in Quebec. Your new will should say that you cancel any will made outside Quebec.

A Quebec will can cover all the property you own, whether in Quebec, another province or another country. But there may be extra steps and costs to transfer property located outside Quebec.

How to make a will

Quebec law recognizes three kinds of wills:

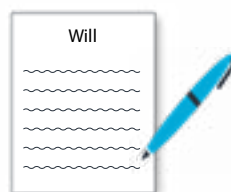
1. notarized will (prepared by a notary)



2. will made in front of two witnesses



3. holograph will (handwritten by you)



You can't make a will in an audio or visual recording.

Notarized will

A notarized will is prepared by a legal professional called a notary. You might meet with the notary a few times to discuss your wishes.

A notarized will must be in English or French.



Advantages

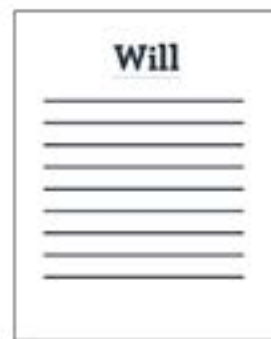
- Notaries can give you advice.
- Notaries record the wills they prepare in the registry (list) of wills of the Chambre des notaires (notaries' professional body), so they are easy to find and get copies of.
- Notarized wills are more difficult to challenge. Notaries have special official status and follow strict rules when preparing wills.
- There are no costs or delays to confirm the will in court (probate).

Disadvantage

- A simple notarized will costs about \$250 to \$500.

Will made in front of two witnesses

A will made in front of two witnesses can be made by you, a lawyer or another person. You can write it by hand, use a typewriter or computer or use a form. If you use a form, make sure it follows Quebec rules for a valid will.



A will made in front of two witnesses can be in any language. But in Quebec, an official translation in English or French will be needed when you die. Also, the witnesses must understand the language of your will.

The witnesses must be 18 or older. They can be friends, loved ones, professionals, etc.

Important! Witnesses can't inherit under the will. Also, courts have sometimes found that the person who prepared the will can't inherit.

Before signing the will, you must present it as your will to two witnesses. Then sign the will and initial each page in front of the witnesses. Both witnesses then sign it and initial each page. The witnesses don't have to read the will and you don't have to tell them what's in it.

If you're not able to sign or can't read or write, the law provides for some alternatives.

Advantages

- A will made in front of two witnesses is simple and quick, and there is little or no cost.
- It can be written by someone else.
- If prepared by a lawyer, you can get professional advice. The lawyer will ensure it follows the legal rules and record it in the registry of wills of the Barreau du Québec (lawyers' professional body).

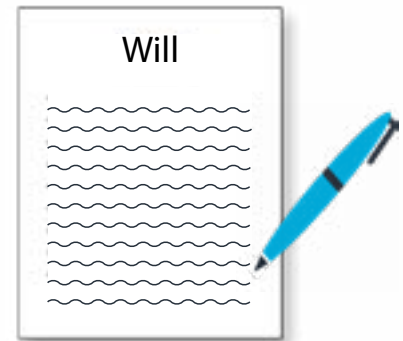
Disadvantages

- A will made in front of two witnesses must be probated when you die. Probate is a process that confirms the will is your last will and follows Quebec law. It is done by a special court clerk or a notary. It takes time and can cost over \$1,000.
- If prepared by a lawyer, you must pay the lawyer's fee.
- The will might not be valid if it doesn't follow the legal rules.

Holograph will

A holograph will must be written entirely in your own handwriting and signed by you. It can't be typed or on a pre-made form.

A holograph will can be in any language. But in Quebec, an official translation in English or French will be needed when you die.



Advantages

- A holograph will is simple, quick and costs nothing.
- No witnesses are needed.

Disadvantages

- A holograph will must be probated when you die. Probate is a process that confirms the will is really your last will and follows Quebec law. It is done by a special court clerk or a notary. It takes time and can cost over \$1,000.
- It is not kept in any special register (list), so it might be hard to find.
- It might not be valid if the legal rules aren't followed.
- It is not well suited for complicated situations.

What to put in a will

Heirs (the people who inherit from you)

You decide who inherits what. Here are examples of how you can divide your property:

- You leave your car to your son.
- You leave all your jewelry to your two cousins.
- You leave everything to your children in equal or unequal shares.

You can also give a gift to a charity. You must name the charity and say how much money or what property you are giving.

People often wonder whether they can attach to their will a list of specific items they want to leave to specific people. There is usually no problem for items of little value, such as photos and souvenirs. But for other property, be careful that the list doesn't contradict what your will says.

You can name people to replace those you named to inherit in case they die before you.



Important! The law says you cannot leave money or property to these people:

- the notary who prepared your will
- a person who witnessed your will
- the owner or an employee of a health and social services institution who cared for you when you made your will
- a pet. Only people and organizations can inherit. But you can leave money to someone to be used to take care of a pet.



Liquidator

The official name in Quebec law for the person who settles someone's affairs after death is liquidator. Some people call this person the executor.

You can name one or more liquidators, define their powers and say whether they will be paid. The liquidators must make a list of your property and pay income taxes and debts.

Since the liquidator can usually refuse this responsibility or might not be available, you can name a replacement liquidator.

You can choose a close relative or friend as your liquidator. You can also name a notary, lawyer or financial institution. It's also a good idea to ask the person if they want to accept this responsibility.

If you don't name a liquidator, the responsibility for settling your affairs falls to your heirs.

Tutor (Guardian)

You can name a guardian for your children under 18 and a replacement in case the first guardian refuses to take on the role or dies before you. In law, the guardian is called a tutor.

A tutor acts as a parent to the children. The tutor will take care of your children and the property you leave them according to special rules. Or, you can name one person to take care of the children and a different person to manage the property.

Funeral wishes

You can indicate your wishes about your funeral. Because your will might only be seen some time after your death, it's a good idea to let people know your wishes before you die.

Ways to reduce taxes

You can include ways to reduce the amount of taxes your heirs must pay when you die. It's a good idea to consult a tax professional, especially if you have a business.



If you can, **it's a good idea to get the advice of a lawyer or notary when making your will.** This advice can help avoid problems, extra costs and delays when you die. It can help ensure your will is easy to understand, is complete and follows the legal rules.

Changing a will

Once you've made a will, you can change it. It's a good idea to change your will in these situations:

- You changed your mind.
- Your family situation has changed.
- Your financial situation has changed, for example, you acquired a business after you made your will.
- The law has changed.

You don't usually have to change your will just because you no longer own property mentioned in your will. The rest of your will stands and is treated as though the gift of that property was never made.

How to change your will

There are two ways to change your will:

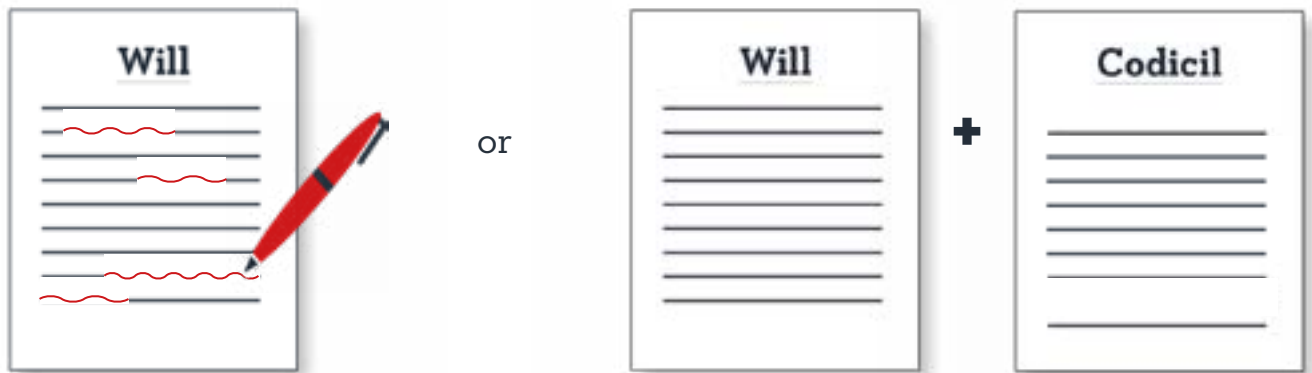
1. Codicil

A codicil is an addition to a will that changes or completes it, for example, adding a replacement liquidator. The codicil will be read together with your will. So make sure there's no confusion when the two are read together.

A codicil should be used only for small changes. For more important changes, it's best to make a new will.

The codicil must follow the same rules as a will. It can be notarized, made in front of two witnesses or handwritten (holograph). If it is not notarized, it must be probated by a notary or special court clerk when you die.

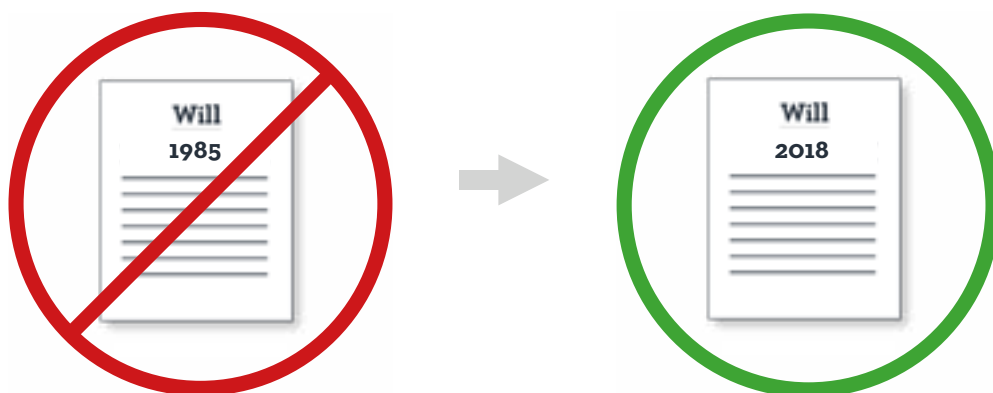
You can make a codicil in a separate document or by making the change directly on your will.



But it's not always a good idea to make changes directly on a will. For example, if you make a handwritten change on a notarized will, the change will have to be probated when you die, and you lose the benefit of a notarized will.

2. New will

You can make a new will to replace the old one. The new will must say that you are cancelling the old one. The legal term for cancelling a will is revocation.



Who can see a will?

During your lifetime, your will is confidential unless you choose to give people copies or tell them what is in it.

After your death, the person or people you named to settle your affairs (the liquidator or executor) and the people named to inherit can have a copy. People who are only entitled to a specific gift (not a share of your property) can usually only see the part of the will that mentions their gift.

A will does not have to be read to your relatives after your death unless you say so in the will.

Can a will be challenged?

If your will meets the legal rules for wills in Quebec, it can only be challenged for these reasons:

- You didn't have the mental capacity to make the will. This means you didn't understand the nature of the document or what it says.
- You were pressured into making or signing the will.
- You were mistaken about what your will says.

Dying without a will

If someone dies without a will, the law decides who inherits. The law also decides how much each person gets.

Only relatives of the person who died without a will can inherit under the law. They must be related by blood, marriage or a civil union. Adopted children are treated in the same way as children born to their parents.

Important! Common-law (unmarried) partners can't inherit if their partner dies without a will.

Married

You have children:

- Spouse: 1/3
- Children: 2/3

You have no children:

- Spouse: 2/3
- Parents: 1/3

You have no children or parents:

- Spouse: 2/3
- Brothers and sisters*: 1/3

You have no children, parents, brothers or sisters:

- Spouse: everything

*If a brother or sister dies before you, then his or her share goes to the children of the dead brother or sister (your nieces and nephews).

Not married

You never married, have a common-law partner or are divorced or widowed. Common-law means making a life together without being married or in a civil union.

You have children:

- Common-law partner: nothing
- Children: everything

You have no children:

- Common-law partner: nothing
- Parents: 1/2
- Brothers and sisters: 1/2

You have no children or parents:

- Common-law partner: nothing
- Brothers and sisters*: everything

You have no close relatives:

- Common-law partner: nothing
- The closest relatives from among grandparents, great grandparents, aunts, uncles, grandnieces, grandnephews and cousins will inherit. The law decides each person's share.

You have no family members who can inherit:

- Common-law partner: nothing
- Government: everything

*If a brother or sister dies before you, then his or her share goes to the children of the dead brother or sister (your nieces and nephews).

Children from several relationships

If a person who dies without a will had children with more than one person, all the children (biological and adopted) can inherit.

Step-children do not inherit, unless the new parent officially adopts them.



No heirs: the role of the government

The government gets all the money, property and debts of a person who dies without a will and has no relatives who can inherit. The same rule applies if all the people named in a will refuse their inheritance. This can happen, for example, if there are too many debts.

The government will settle an estate if no heirs are found or come forward within six months after the death. Revenu Québec takes on this responsibility.

A person can still come forward within 10 years to claim and prove a right to inherit. If the claim is legitimate, the government must pay it.



Information on wills and the law

Éducaloi

www.educaloi.qc.ca
www.educaloi.qc.ca/seniors

Quebec justice department

www.justice.gouv.ca
Switch to English, then go to Your Money and Your Possessions, then Wills.

Services Québec - Citoyens

www4.gouv.qc.ca
Switch to English, then go to Your Life Event, then Death.

Service Canada

www.canada.ca
Enter Estate Planning in the search box.

Chambre des notaires (professional order for notaries)

www.cnq.org
Switch to English, then go to Successions and Wills.

Free notary information line

1-800-668-2473

Find a notary

Chambre des notaires (professional order for notaries)

www.cnq.org

Switch to English, then go to Find a Notary.

Search by region, language and accessibility for people with reduced mobility.

Find a lawyer

Barreau du Québec

www.barreau.qc.ca

Switch to English, then go to For the Public, then Finding a lawyer.

For a free or low-cost consultation

- Montreal: 514-866-2490
30 minutes for \$30
- Longueuil: 450-468-2609
30 minutes for \$50
- Quebec City, Beauce and Montmagny: 418-529-0301 ext. 21
30 minutes for free
- Other regions : 1-866-954-3528
1 hour for \$100

JurisRéférence

www.jurisreference.ca

Switch to English.

Select Find a Lawyer and click on “find the lawyer” in red. Search by region or area of law. Or Select Telephone Legal Assistance and follow the instructions.

Free or low-cost legal services

Barreau du Québec's list of legal clinics, etc.

www.barreau.qc.ca

Switch to English, then go to For the Public, then Access to Justice.

La boussole juridique

List of legal services in Quebec

www.votreboussolejuridique.ca

Search by region and area of law.

Centre de justice de proximité du Québec

(Community Justice Centres)

Free legal information in several regions of Quebec

www.justicedeproximite.qc.ca

Model will

Quebec Justice Department

www.justice.gouv.qc.ca

Switch to English, enter “testament” in the search box, then go to the right-hand menu and choose My will.

Éducaloi explains the law to Quebecers in everyday language.



Read about these and other topics at www.educaloi.qc.ca:

- Death and settling an estate
- Protection mandates
- Advance medical directives
- Living wills
- Donating organs or your body

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