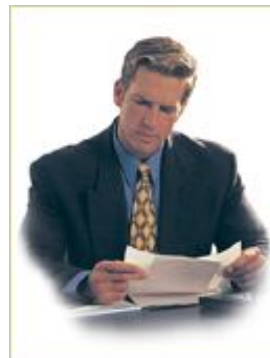




Wills

- » A will is a legal document in which you specify who will inherit your property after your death, and what the share of each person will be.



Depending on your own preferences or situation, or for any other reason, you can choose to make your will in one of three forms: a holograph will, a will made in the presence of witnesses, or a notarial will.

You should re-read your will from time to time to make sure that it still reflects your true intentions, and that it matches your current situation.

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» Who can make a will?

Any person over the age of eighteen, who is of sound mind and not subject to any pressure, constraint or threat, can make a will.

A person under the age of eighteen may make a will to dispose of property of little value, such as CDs, cassettes, a bicycle, photos, toys, etc.

The fact that a person may require assistance from an advisor or tutor does not alter that person's legal ability to make a will.

Important

- Before you draw up your will, you should make a written inventory of your property (house, cottage, savings bonds, etc.) and of your debts (mortgage, loans, etc.). A complete, up-to-date and dated inventory will be extremely helpful for the people responsible for settling the succession.
- If you have property of a certain value, or whose transfer may have fiscal consequences (such as an RRSP), you should consult a specialist before drawing up your will.
- If you think that the settlement of your succession will involve particular difficulties, for example because of the value of the property involved, the fact that you want to provide protection for a young child or a person with a permanent illness, or any other reason, you should consult a notary or lawyer before drawing up your will.
- You may want to specify in your will how your body should be disposed of after your death, the funeral arrangements, etc. In this case, you should record your wishes in another document, rather than in your will, since in most cases, the contents of the will are only officially disclosed after the burial or cremation. This is why you should indicate what you want in a document that can be read immediately after your death.

» Can I change my will?

Your will can be revoked at any time. In other words, you can change it as often as you want.

You can add or change clauses by means of another testamentary document. In order to be legally valid, the modification (also called a codicil) must satisfy the same requirements and conditions as the will. However, it may be in another form, provided it meets the necessary conditions for that form.

Your marriage or civil union contract may contain a testamentary clause commonly called the "surviving spouse" clause, making your spouse the sole inheritor of all your property. Legally, this clause has the same value as a notarized will.

If the contract states that this testamentary clause is "irrevocable", you must obtain your spouse's consent before changing it. If the contract states that it is "revocable", or does not state that it is irrevocable, you have the right to make a new will.

» Types of will

Holograph will

The holograph will is the simplest form of all. This will costs nothing and may consist of only a few lines. For example:

I, Mildred Jones, leave all my property to my daughter Jennifer.

Signed: Mildred Jones

Montréal, May 15, 2005.

The holograph will must, however, be entirely written and signed by the testator (the person making the will). It cannot be drawn up using a typewriter, computer, or form. No witness is required to validate this type of will. It is preferable to date the will, although this is not an essential condition to ensure its validity. If you write several wills, the date will make it easier to identify the most recent will that indicates your final wishes.

If you choose this type of will, you will be the only person who knows it exists. To make sure it is found when the time comes, you should tell someone you trust where it is kept. You can also leave it in the care of a notary or a lawyer, who will register your will in the *Registre des dispositions testamentaires et des mandats du Québec* (Québec register of wills and mandates) (see the section [For more information](#)).

After your death, your heirs must have your will probated. Please refer to the section [Probate of a holograph will or will made in the presence of witnesses](#).

Will made in the presence of witnesses

Like a holograph will, a will made in the presence of witnesses is a document you draw up yourself. You can write it by hand, or use a typewriter or computer. You can also have it prepared by someone else. In all cases, you must declare that the document is your will in the presence of two witnesses above the age of eighteen, and then sign it. You can also ask someone else to sign it for you, in your presence and in keeping with your instructions. After you sign your will, the witnesses must sign it immediately in your presence.

In the case of a will written by hand by a third party or using technical means (typewriter or computer), you and your witnesses must sign or initial each page.

You do not have to disclose the contents of your will to your witnesses. However, like a holograph will, you should make sure that someone you trust knows where your will is kept. You can also leave it in the care of a notary or a lawyer who will register your will in the *Registre des dispositions testamentaires et des mandats du Québec* (Québec register of wills and mandates) (see the section [For more information](#)).

After your death, your heirs must have your will probated. Please refer to the section [Probate of a holograph will or will made in the presence of witnesses](#).

Notarial will

A notarial will is a will drawn up by a notary. It involves more formalities than the other two types of will. It must be made before a notary in the presence of a witness or, in certain cases, two witnesses, for example when the testator is blind. The will must indicate the date and place where it was made. After drawing up the will, the notary reads it out to the testator (the person making the will) alone or, if the testator so wishes, in the presence of a witness. Once the will has been read, it is signed by the testator, the notary and the witness, in each other's presence.

The notarial will has several advantages. Since the notary keeps the original, there is no risk that you will lose it, and your legatees will be sure of finding it when you die. In addition, you will benefit from the notary's experience and advice, avoiding errors that could create difficulties for your legatees. There will be less chance of someone opposing your last wishes, since this form of will, as an [authentic act](#),¹ is more difficult to challenge in court. Last, when you die, your heirs will not need to have your will probated.

Important

The formalities for each of the three types of will must be respected, or the will may be declared void. However, if a will you make in one form does not meet the requirements for that form, it may be valid as a will in another form if it meets the requirements for that other form. For example, if you make a will in the presence of witnesses but fail to have it signed by two witnesses, it may be considered as a holograph will if you wrote it entirely by hand and signed it.



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» Heirs

[Your successors](#)² have six months to accept or refuse your succession, from the date on which they became entitled to inherit, generally the day of your death.

They can accept the succession in an express manner, for example by stating, orally or in writing, that they wish to receive their share of the succession. By taking or failing to take certain actions, they are also considered to have accepted the succession, even without stating their formal agreement. Specifically, this occurs when successors use property from the succession as if it were their own, miss the deadline for rejecting the succession, or dispense the liquidator from making an inventory of the property.

A succession can only be refused by way of a notarial act - a [private writing](#)³ is not sufficient. If no notarial document can be produced to show that a successor has refused the succession, the successor is deemed to have accepted it. More rarely, a succession can be refused by way of a judicial declaration during a court case.

The heirs who decide to accept the succession must pay any outstanding debts. Except in exceptional cases, they are not required to pay the debts that exceed the amount of the succession. For example, they may be responsible for debts that exceed the assets of the succession if they fail to make an inventory of the property of the succession, if they have mingled their own property with the property of the succession, or if they decide to liquidate the succession without following the rules set out by the Civil Code. For more information, see the document [Successions](#).

Please note

Your death ends any commitments you have made to stand as surety for the debts of another person. Your heirs will only be responsible for paying the debts of that person that were due at the time of your death. They are not required to pay those that fall due after your death.

Sole heir

Even if you want to leave all your property to one person, it is best to name one or more other individuals who may inherit if the first heir dies before or at the same time as you.

Minor child

The parents of a minor child can, in their will, name a tutor for their child in case both parents die before the child reaches the age of eighteen. If only one parent dies, the other parent becomes the child's tutor. If both parents die at the same time, and each parent has named a different person as tutor, the court chooses which one will act as tutor.

"Groups" of heirs

If you use generic expressions such as "my children", "my nieces and nephews" or other similar expressions to designate legatees in your will, there may be grounds for a court challenge. For example, if you use the wording, "I leave all my property to my children in equal shares", and one of your children dies before you do, leaving his or her own children (your grandchildren), they will inherit your child's share. If this is not what you want, you should mention it clearly in your will.

Spouse

If you are married or joined in a civil union on the basis of separation as to property, community of property or partnership of acquests, the first task of the liquidator is to share the family patrimony in accordance with the provisions of the matrimonial regime, before liquidating the succession. This means that you cannot, in your will, dispose of the part of the family patrimony that belongs to your surviving spouse, or that is owed to your spouse following a division of the family patrimony. In addition, you cannot limit the rights of the surviving spouse in the event that he or she remarries or enters into a new civil union.

In accordance with the rules for sharing the family patrimony, the surviving spouse receives half the net value of the following property: the principal residence and the secondary residences used by the family, the furniture used by the family in those residences, any motor vehicles used by the family, pension rights accumulated during the marriage or civil union in a retirement plan, and the amounts accrued, during the marriage or civil union, in the name of each spouse or partner under the Act respecting the Québec pension plan or an equivalent program.

For more information, see the document [Family patrimony](#).

Former spouse

By law, any legacy made to a former spouse from whom you are divorced becomes null. Divorce cancels any gifts to be made, in the event of your death, to your former spouse in consideration of your marriage (in other words, that are mentioned in the marriage contract), unless the contract stipulates that the legacy is to be maintained even following a divorce.

However, divorce does not cancel the other gifts to be made in the event of your death, or the gifts made while you were living to your former spouse in consideration of your marriage, unless the court that orders the divorce declares them cancelled or reduces them, or orders the payment of the gift to be deferred for a specified period of time.

The same rules apply to gifts made to a spouse in consideration of a civil union (gifts mentioned in the civil union contract), after the civil union is dissolved.

Please note

You cannot require your heirs, as a condition for their inheritance, to perform acts that are unreasonable, illegal or contrary to good morals or public order.

People who may not inherit

By law, any legacy made to the owner, administrator or employee of a hospital or residential centre is null and void if it was made while you were receiving care or services there, unless the person concerned is your spouse or a close relative.

People who act as witnesses when you sign your will, as well as the notary and the notary's spouse or relative in the first degree (such as the notary's children), cannot inherit from you.

Similarly, some people may be unworthy of inheriting their share of your succession. This applies specifically to any person who has made an attempt on your life, or who has concealed, altered or destroyed your will in bad faith.

» Liquidators

The liquidator, formerly called the "testamentary executor", is the person responsible for liquidating your succession.

You are not required to name a liquidator in your will, but it is a good idea to do so. You can even name a substitute in the event that the first person named dies before you or is unable, or unwilling, to act as liquidator.

If you do not designate a liquidator in your will, all of your heirs will become responsible for liquidating the succession. They can share the duties among themselves, or agree on and designate a liquidator. If the heirs cannot agree, the court may designate a liquidator on an application from one of the heirs.

The liquidation of a succession primarily involves identifying the people who can inherit, making an inventory of your property (see the document [Successions](#)), collecting the amounts that are owed to you, paying the debts of the succession, distributing the property to the heirs and registering an inventory closure notice in the [register of personal and movable real rights](#)  as well as in a newspaper in the area where you lived.

The liquidator retains his or her powers until all the duties have been completed. There is no specific deadline for completing the liquidation, but the liquidator has an incentive to finish as quickly as possible since, if it takes longer than a year to liquidate the succession, the liquidator has to report on his or her administration to the heirs, particular legatees and creditors who have not been paid.

A liquidator who is not an heir is entitled to be paid, and it is a good idea to specify an amount in your will for this purpose. If the liquidator is an heir, he or she can still be paid as long as this is specified in the will, or if all the heirs agree. In all cases, the liquidator is entitled to be reimbursed for the expenses incurred while liquidating the succession.

With respect to the liquidator, it is important to note that:

- no-one, except a sole heir, can be required to act as liquidator;
- a person who agrees to act as liquidator can later withdraw, for a valid reason;
- a liquidator who withdraws must notify the heirs in writing;
- the liquidator is responsible for any damages sustained by the heirs if there is

no valid reason for the withdrawal or if it occurs in an untimely manner, or if it is equivalent to a failure on the liquidator's part to fulfill his or her duties.

Your succession may be liquidated without following the rules provided in the Civil Code if your succession is obviously solvent and your heirs all agree to proceed in such a manner. However, in this case, if the debts of your succession are greater than the value of the property, your heirs will have to pay all of the debts.



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» Probate of a holograph will or a will made in the presence of witnesses

If you have made a holograph will or a will in the presence of witnesses, it must go through probate after your death if a person concerned, or the liquidator, so requests. The request may be made through the Superior Court or a notary.

A will drawn up or prepared by an attorney (who is not a notary) is considered to be a will made in the presence of witnesses, and must also go through probate. The same applies to amendments made to the initial will, if they are holographic or made in the presence of witnesses.

Probate does not prevent any later challenge to your will. The main objectives of probate are to:

- establish that the will was drafted by you or by a third party at your request;
- establish that you have died;
- establish, initially, that the form of the will is valid;
- provide public access to your will, since it will be filed at the office of the court or notary conducting the probate;
- make it possible to obtain certified copies of the original.

If the request for probate is made to the court, the applicant must submit the request to the [court](#) for the [district](#) in which you are domiciled or, if you have no domicile in Québec, the court for the district where you die or where you leave property.

The request for probate must be submitted with certain documents, including:

- the original will;
- the death certificate issued by the Registrar of Civil Status;
- a sworn declaration, called an affidavit, acknowledging the signature and, if necessary, the handwriting of the deceased;
- proof that notice has been sent to the heirs and successors.

The heirs and legatees must be notified when a request for probate is made. However, the court clerk may relieve the person applying for probate from the need to notify all the successors if this would be impractical or too expensive.

If you wrote your will in a language other than French or English, your heirs will have to have it translated by a translator recognized by the [Ordre des traducteurs, terminologues et interprètes agréés du Québec](#)  and submit both the translation and the original when the will is probated..

Please note

Because a notarial will and amendments (also known as codicils) made before a notary are authentic acts, probate is not required to ensure their validity.

» Life insurance of the deceased

The proceeds of a life insurance policy for which you specifically name a beneficiary are not part of the succession.

However, if your life insurance policy indicates that the insurance is payable to the “succession”, the “heirs” the “liquidators”, the “legal representatives” or any person referred to by a similar expression, the proceeds of the life insurance form part of the succession.

Divorce or the annulment of a marriage, or the dissolution or annulment of a civil union, make any designation of your former spouse as the beneficiary of a life insurance policy null.

» Survival of support obligations

In your will, you cannot terminate support payments or eliminate your financial obligations towards people to whom you [owe support](#),⁴ such as your former spouse in a marriage or civil union, your children or your parents. Your heirs will have to assume these financial responsibilities for a period of time.

A person to whom you owe support may, within six months of your death, make a claim to your succession for a financial contribution towards support. By law, the person is entitled to do this even if he or she did not exercise the right before you died. For example, if your surviving spouse or child does not receive anything under your will, or considers that the amount received is insufficient, he or she may apply to the liquidator of the succession for support, provided he or she is in need. The amount of support will be established on the basis of various factors, such as the needs and resources of the person to whom support is owed, the assets of the succession, and the amount the person has already received from the succession.

The amount that may be paid to your spouse or child will, however, be limited to the difference between half of what he or she would have received if the succession had been liquidated in the absence of a will (see the section entitled [Dying without making a will](#)) and the amount he or she actually received, if any, under your will. The amount is determined by agreement with the liquidator, who must obtain the consent of the heirs or, if no agreement is possible, by the court.

The amount that may be paid to a former spouse is equivalent to twelve months of support. The amount paid to another person to whom support is owed, such as a parent, is equal to six months of support. In either case, the amount cannot, even if the person was already receiving support when the succession opened, exceed half of twelve or six months of support, or 10% of the value of the succession.

The amount may be paid to the person to whom support is owed in a lump sum or in several installments.

Please note

There is no longer any obligation of support between grandparents and grandchildren.

» Dying without leaving a will

If you do not make a will, your property will be distributed among your legal heirs, in other words your spouse (the person with whom you were married or joined in a civil union, or from whom you were separated but not divorced, or with whom your civil union was not dissolved) and your children or, if you have no children, your parents.

In this case, before any other distribution is made, your surviving spouse will receive half of the net value of the family patrimony, plus anything to which he or she is entitled under your matrimonial regime. The remainder of the succession will be distributed in keeping with the rules set out in the Civil Code. To find out more about these rules, see the following documents: [Family Patrimony](#), [Separation, Divorce and Dissolving a Civil Union](#) and [Successions](#).

1. An authentic act is a document drawn up by a public officer with the formalities prescribed by law.
2. In legal terms, a “successor” is a person who has a legal right to inherit, but has not yet made a decision about whether or not to accept the inheritance. An “heir” is a person who has decided to accept his or her share of a succession. A “legatee” is a person named in a will as the receiver of property.
3. A “private writing” is a document that is not signed before a notary.
4. An obligation of support is a reciprocal obligation established by law between specific people (ascendants, descendants, spouses through marriage or civil union), under which one person can, if in need, claim support from the other person, in other words the money needed to feed, house, clothe, and care for himself or herself.

» For more information

What constitutes family patrimony and the rules for partition of the family patrimony:

- [Family Patrimony](#)

Matrimonial regimes and the survival of the support obligation:

- [Separation, Divorce and Dissolving a Civil Union](#)

The rules for the settlement of a legal succession (when no will exists):

- [Successions](#)

How to write a will:

- [My Will](#) 

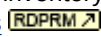
How to submit an application for the probate of a will:

- [Application for the Probate of a Will](#) 

Québec's register of testamentary dispositions and mandates:

- [Register of Testamentary Dispositions and Mandates](#)  (In French)

The publication of the notice of closure of inventory:

- [Register of Personal and Real Rights](#)  

The addresses and telephone numbers of Québec courthouses:

- [Courthouses](#)

The judicial district a municipality is located in:

- [Search for a judicial district](#)

Should you wish to

Have a document translated into French or English from a language other than French or English:

- [Ordre des traducteurs, terminologues et interprètes agréés du Québec](#) 

The content of this document is strictly informative and has no legal value.

If you find some of the information difficult to understand, do not hesitate to [contact us](#).

Please note, however, that we cannot interpret the information to apply it to a specific situation.

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General Information

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Please note: The personnel at the Service de renseignements of the Ministère de la Justice can help you understand the general rules for applying Québec legislation. They cannot, however, interpret these rules to respond to a specific case or situation.

When contacting us by mail or e-mail, please indicate your address and telephone number so that we can contact you when necessary.

Latest update: February 20, 2007

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