



Indian and Northern  
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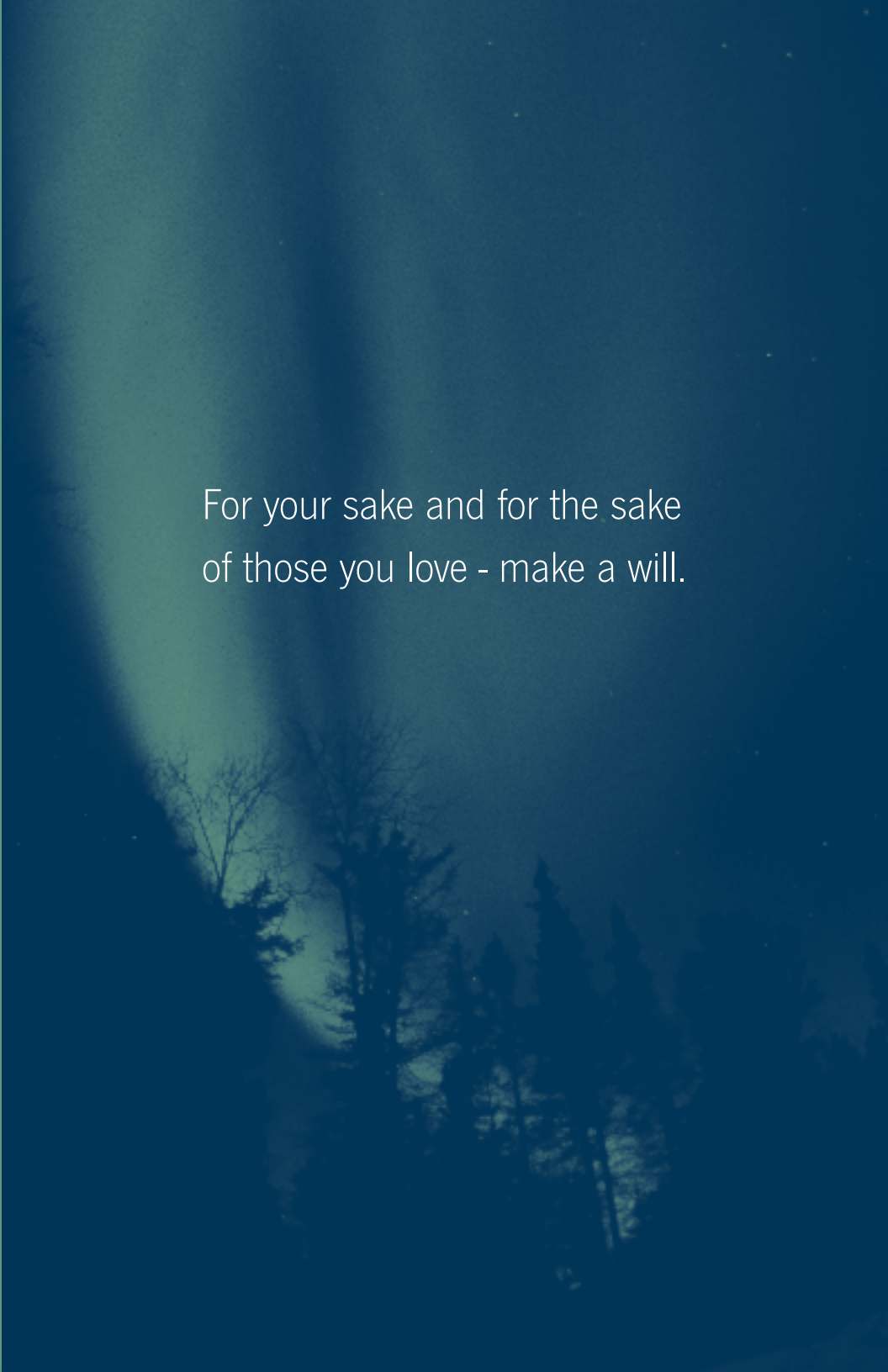
Affaires indiennes  
et du Nord Canada

# Will

you be  
ready?



Canada 



For your sake and for the sake  
of those you love - make a will.

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Creating a will is very important to ensure that your wishes are carried out once you pass on from this world. This guide is intended to encourage you to think about your estate and to write a will. Planning your estate or writing a will is something that should be done when you are healthy and of sound mind. So, don't hesitate, start planning your estate today.

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# What is your estate?

Your estate is all of the material possessions or assets that you own when you die. This includes all of the property that you own or hold title to at the time of your death. Property includes things such as land, bank accounts or vehicles. You also may have obligations that relate to your assets (such as a car loan). These obligations will need to be taken care of when you pass on.

Estates are private matters that only involve the Department of Indian Affairs and Northern Development (DIAND) when no family member or friend has been designated to act and no will has been written. In the NWT, a Public Trustee with the Government of the Northwest Territories has been contracted by DIAND to administer the estates of deceased or mentally incompetent First Nations members.

## Custody and maintenance of children

If you have children, you should include a provision in your will for their custody and maintenance. Children under the age of 18 are not considered part of an estate, but nevertheless must be provided for in a will. In addition to naming someone to administer your will, you must designate someone to have custody of your children. You may also want to designate a portion of your estate for the maintenance of your children.

## What is estate planning?

Estate planning means making arrangements while you are alive to ensure that when you die, your debts are paid and your remaining property is passed on in an orderly manner according to your wishes. A will is the most effective form of estate planning and is the best way to make your wishes known to your family and friends.

## What happens to my estate when I die?

When you have passed on, your financial and other obligations must be fulfilled. In your absence, a “personal representative” carries on your estate and handles your affairs. In a will, this personal representative is known as the executor (male) or executrix (female), and is a person you select. If you don’t have a will, a representative called an administrator will be appointed for you.

If you are a registered Indian not living on reserve as is the case with most First Nations in the NWT, your personal representative will administer your estate according to territorial law. In the event that you do not have a will or have not named an executor/executrix, the Public Trustee with the GNWT may become your administrator.

If you are a registered Indian and live on a reserve, the Minister of Indian Affairs and Northern Development will approve your will and confirm your executor/executrix, or will name an administrator.

Your executor/executrix or administrator will see to your estate's obligations (such as outstanding loans) using your estate's assets (such as bank accounts, property). Once your obligations have been fulfilled, your personal representative will give the remaining assets of your estate to those that have a legal right to them.

## Why should I plan my estate?

- 1 To make your wishes known and ensure they are respected; and
- 2 To protect any customs or traditions that you would wish to be passed on.

Whatever you do, don't avoid planning your estate because you think you have nothing to pass on. Most people have assets. It could be your final pension cheque or your favourite walking stick that you want to give to someone who you know will appreciate and cherish it.

## How do I plan my estate?

- 1 Make a will; or
- 2 Choose another method of estate planning. To learn more about other methods, please contact a lawyer in your area, or the Law Society of the Northwest Territories.

## What happens if I do not plan my estate?

If you do not plan your estate and do not write a will, there are laws to determine who gets your property.

Territorial laws apply to everyone except registered Indians who reside on reserve. If you are a registered Indian living on a reserve, your property will be distributed to your relatives according to the *Indian Act*.

These laws and the *Indian Act* are not flexible. They do not take into account specific plans you may have or gifts you may wish to give. These laws give your assets to your immediate relatives such as your spouse, children, grandchildren and parents. Close relatives that you may not wish to benefit will receive a share while more distant relatives whom you may want to give a greater share, receive nothing.

Because these laws only determine the size of the share of the assets a person receives, problems arise when a large asset, like a house, has to be divided among several people. Decisions about selling the asset and dividing the profits or striking an arrangement among the heirs to share the asset aren't easy to make. Unplanned estates with no will can create disagreement and delays and may also result in your assets being distributed in a manner you would not have agreed with.

# What is a will?

A will is a written document that sets out what you want to do with your assets when you die. This document speaks for you and replaces the laws for distributing property in instances where there is no will. A will describes:

- 1 who you want to carry out your plans for your estate when you die (your executor/executrix);
- 2 who you want to benefit from the will (your heirs and beneficiaries);
- 3 how you want your debts to be paid (for example, funeral costs, loans, credit card debt); and
- 4 how you want your estate to be distributed among your heirs or beneficiaries once your debts are paid.



## Who should make a will?

If you are of sound mind and over the age of majority (19 years of age), then you should make a will. Persons under the age of 19 can make a will under the very limited exceptions contained in the *Wills Act*.

## What makes a will valid?

Certain legal requirements must be satisfied in order to validate a will. These requirements include:

- 1 your will must be a written statement;
- 2 it must be dated and signed by you; and
- 3 it must state your wishes with respect to disposing of your property after your death.

## Should there be witnesses?

Yes, at least two people should witness your will. They should be adults who are not mentioned in the will. You and the witnesses must sign at the end of the will in each others' presence. You and your witnesses should also initial the bottom of each page of the will and anywhere a change has been made.

## Who should be the executor/ executrix?

The executor/executrix is the person you name in your will to carry out your wishes. You can choose anyone to be your executor/executrix, but you should be sure their views

or wishes will not conflict with their duties and responsibilities to your heirs and beneficiaries. Your executor should:

- ① be someone you trust;
- ② be of sound mind;
- ③ be in good health;
- ④ be respectful of your heirs; and
- ⑤ be willing and available to do the job.

## Can I make changes to my will?

Yes, you can change your will as often as you would like. In fact, it is a good idea to read it over from time to time to make sure it is up to date. As your life changes, so too should your will. For example, you may have acquired new assets, sold assets, or changed your wishes in terms of beneficiaries.

Making minor changes to your will is fairly simple. However, when you want to make major changes to your will, you should consider making a new one. This ensures that everything is consistent and that contradictions are avoided.

Every will should have a revocation clause. This clause states that the current document expresses your final wishes and that all your earlier wills are of no effect. It is important that you always put the date that you signed your will. The date will ensure that your executor/executrix knows that it is the most recent version.

If you decide to make changes to an existing will, you must show that it was you that made the changes. You and your witnesses must initial all the changes and new pages. Any new pages should specifically state that they are to be included in the existing will.

## Do I need a lawyer to make a will?

No, you do not need a lawyer to make your will, however, there are good reasons for having a lawyer prepare your will. A word may have a legal meaning that is different from what you intend. A lawyer is trained to choose words and phrases to clearly express your wishes as well as set up complicated distribution schemes.

You should make sure that any lawyer you choose is familiar with the *Indian Act* because of the restrictions about who can receive certain types of property, such as land on a reserve.

A lawyer will charge you a fee to write your will. Ask the lawyer at the start how much the charge will be. Consider that cost against the long delays or costly court action that can result from having a poorly prepared will or no will at all.

The *Wills Act* of the NWT allows for “holograph wills”. In other words, wills which are drafted entirely by hand without the usual formalities that may be used by a lawyer.

You can use will forms available at most card shops or bookstores. There are also comprehensive legal will kits that are available for order by phone and on the internet for a modest fee. You should understand that not all will forms and kits are tailored to the laws of a specific jurisdiction, and can result in mistakes.

Whatever method you choose, make sure the language you use is clear and that if necessary, the requirements of the *Indian Act* are met. It is a good idea to read Sections 42 to 50 of the *Indian Act* and the Indian Estate Regulations before writing your will.

You may have someone write your wishes for you but you must ensure that what is written is a true statement of your wishes. Again, you must sign and date your will and it must be witnessed by at least two people. (See Page 7: “Should there be witnesses?”)

Another course of action is to contact the Law Society of the Northwest Territories. It has basic information regarding wills and estates. As well, it operates a lawyer referral service which can provide the names of lawyers in the NWT who practise in the area of wills and estates.

## Where should I keep my will?

You should keep your will somewhere safe, where it is protected from theft, fire and flood. A safety deposit box in a bank may seem like a good idea, but you should first check the bank’s requirements for the release of wills. Sometimes a court order is needed. This could cause delay and expense. Other places you could store your will are:

- 1 a fireproof box or a safe at home;
- 2 a safe at the band council office; or
- 3 a safe at your lawyer’s office.

**Whatever you do, regardless of where you keep your will, tell your executor/executrix where it is.**

## Benefits of estate planning

Your wishes will be carried out by someone you choose.

You choose who will receive gifts.

You can match gifts to suitable beneficiaries.

You can arrange for your business to be continued after your death by someone you've chosen.

You can lessen family and community conflict and grief through a clear expression of your intentions.

Your affairs will be settled quickly and inexpensively.

You can lessen the involvement of government officials in your private affairs.

You can express your wishes about personal matters. For example, who you want to look after your children or how you wish for your remains to be disposed.

## Further information

Additional information may be obtained from:

**Office of the Public Trustee  
Government of the Northwest Territories**

PO Box 1320

Yellowknife, NT X1A 2L9

Phone: (867) 873-7464

Fax: (867) 873-0184

**Indian and Inuit Services Directorate  
Department of Indian Affairs and  
Northern Development**

PO Box 1500

Yellowknife, NT X1A 2R3

Phone: (867) 669-2622

Fax: (867) 669-2711

**Law Society of the Northwest Territories**

PO Box 1298

Yellowknife, NT X1A 2N9

Phone: (867) 873-3828

Fax: (867) 873-6344

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