Probate

Your will must go through probate after your death, unless it is a notarial will. Probate is conducted by the Superior Court or by a notary.

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

- establish that the will is the deceased's last will and testament, and that it is legally valid in terms of its form;
- allow the will to be used: for example, the liquidator can begin to liquidate the succession;
- make it possible to obtain certified copies of the original.

Dying without leaving a will

If you do not make a will, your property will be distributed among your legal heirs, such as

- your spouse (the person with whom you were married or joined in a civil union);
- your children; or
- if you have no children, your parents.

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.

WILL

For more information

The information summarized in this document was valid at the time of printing. For more information, go to the website of the Ministère de la Justice at www.justice.gouv.qc.ca, or contact

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ENSEMBLE on agit pour une société juste et équitable

Québec

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. If you have a child or children under the age of eighteen, you can also use your will to appoint a tutor.

A will must be made in one of three forms: a holograph will, a will made in the presence of witnesses, or a notarial will.

Who can make a will?

Any person who is over the age of eighteen and of sound mind can make a will. You generally write only our own will, since a will is an individual document that cannot be made jointly for two or more people. In addition, you must agree to write your will; a will made under pressure, constraint or threat may be invalided by the court.

If you are under the age of eighteen, you can still make a will to dispose of items of low value, such as a bicycle.

Can a will be changed?

Your will can be revoked at any time. In other words, you can replace it or make changes as often as you like.

However, your marriage or civil union contract may contain a testamentary clause specifying a "gift mortis causa". If the contract states that this clause is "irrevocable", you may have to obtain consent from the beneficiary, in most cases your spouse, before leaving your property to any other person.

Types of will

Holograph will

You must write your holograph will entirely by hand and then sign it, without using a typewriter, computer, or form. No witness is required to validate this type of will, but it should preferably be dated.

To make sure your holograph will can be located when it is needed, 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 it in the register provided for by law.

Will made in the presence of witnesses

The will made in the presence of witnesses is also a document that you must write entirely yourself, by hand. Alternatively, and provided you and your witnesses sign or initial each page, you can use a typewriter, computer or other device, or have it written by hand by another person.

In all cases, you must declare that the document is your will—without having to disclose its contents—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.

You must 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 it in the register provided for by law.

Notarial will

A notarial will is a will drawn up by a notary. It involves more formalities than the other two types of will, but it offers several advantages:

- because the notary will keep the original and register it in the register provided for by law, there is no risk that you will lose it, and your legatees will be sure of finding it after your death;
- you will benefit from the experience and advice of a legal professional;
- it will be harder to challenge in court;
- after your death, your heirs will not need to have your will probated by a notary or by the court.

Note: The law provides for specific formalities in certain cases, in particular concerning the will of a person who is deaf, mute or blind.

People who may not inherit

If you make a will while you are receiving care or services from a health services or social services establishment, you cannot leave any property or money to an owner, director or employee of the establishment, unless the person concerned is your spouse or a close relative.

In addition, if you make a will while living in a foster family, you cannot leave anything to a member of the foster family.

You cannot leave anything to a person who witnesses the signing of your will, or the notary, the notary's spouse or the notary's relative in the first degree (such as the notary's children).

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

Liquidator

The liquidator, formerly called the "testamentary executor", is the person responsible for sharing the property making up 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.

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.