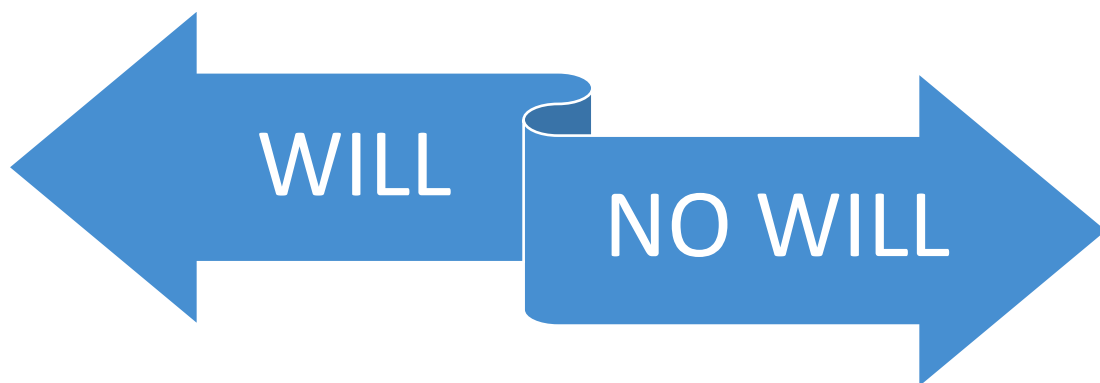


WHAT HAPPENS IF I DON'T HAVE A WILL?



What is a Will?

A Will is a legal document that leaves instructions for your estate after you die. It does two important things:

Names your Executor

- This is the person who is allowed to deal with your estate. They sign documents, make decisions, and sell or give away your property. If your Estate is larger, they may have to file for probate (next page).

Names your Beneficiaries

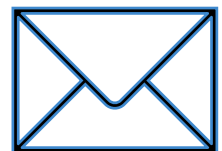
- This is the person or people who get your property. They may receive a specific gift (ex. a ring), or money.

Your Executor and your Beneficiary can be the same person (ex. my spouse handles my estate and gets everything), or different people (my oldest child is the Executor, but all my children are beneficiaries).

I don't have any property. Do I still need a Will?

Everyone has property! Do you have a bank account, income, clothing, furniture, a pet? This is all property. You don't need to own a house or a car to make a Will. In fact, one of the main benefits of making a Will is to help your family access your bank account or speak with government agencies after you die.

Making a Will is like sending a letter. You put something inside an envelope and then address it to the person you are sending it to. But some of your property may already have a person/beneficiary named on it. This includes:



- Life Insurance
- Registered accounts, like an RRSP, TFSA, or RRIF (if you named a beneficiary)
- Joint property, such as land or vehicles owned by two or more people.
- Joint bank accounts between spouses

This property is already stamped and addressed to the next owner. Your Will covers everything else and leaves clear instructions for who you want the rest of your property to go to.

Okay, so what happens if I don't make a Will?

Remember how we said that your Will does two main things? Well, if you don't have a Will, those two things still need to happen:

A Family Member Applies for Probate

- A family member must apply to court for *probate*. This means they are asking for permission from the court to handle your estate. This is important, because the bank and other organizations need to know who is appointed. They don't want to get in trouble for giving your money to a stranger.

The Law Decides your Beneficiaries

- A lot of people believe your estate goes to the government if you do not make a Will. This is not true. In Ontario, the law provides a list of family members who receive your estate. This list is on the next page.

ONE: Apply for Probate

Without a Will, your family is not automatically allowed to divide your property, access your bank account, cancel your bills, or file your taxes. A family member will need to apply to the court to be appointed your *Estate Trustee*. To be appointed, a family member must:

1. Complete Application Forms

These are available online or at your local court office. You must include the Death Certificate, information about the deceased's property, and a list of the beneficiaries.

2. Send the Forms to the Beneficiaries

The person applying to be Estate Trustee must send these forms to the beneficiaries.

3. File the Forms at the Superior Court of Justice

After a waiting period, the applicant can file the forms at the court office. They may need to pay tax if the Estate is worth more than \$50,000.

The process is slightly different depending on whether the estate is worth more or less than \$150,000. Once appointed, your Estate Trustee can:

- Access your bank account
- File your Income Taxes
- Pay Debts
- Sell property
- Divide your estate between your Beneficiaries.

TWO: Divide the Estate between Beneficiaries

The *Succession Law Reform Act* states which family members get your property. Your estate goes to the first person or group of people on the list below.

Who are my Beneficiaries if I don't have a Will?

Married Spouse

Your spouse gets everything, if you do not have children. If you have children, then your spouse gets the first \$350,000 of your estate. Anything over \$350,000 is divided between your spouse and your children.

- Your spouse does **not** inherit if you two are separated due to a breakdown in your relationship, even if you are not formally divorced.
- Your common-law partner does **not** inherit your estate, no matter how long you have been together.

Children

If you do not have a spouse, then your biological and adopted children inherit equal shares of your estate. This includes children born inside or outside of marriage.

- Stepchildren do **not** inherit your estate, unless adopted.
- If any of your children have passed away before you, then their share goes to their children.

Parents

If you do not have a spouse, children, or grandchildren, then your parents inherit everything.

- This means biological or adopted parents, **not** stepparents.

Brothers & Sisters

If you do not have a spouse, children, grandchildren, or parents, your brothers and sisters inherit equal shares of your estate.

- If any of your siblings have passed away, then their share goes to their children (i.e. your nieces and nephews).

Next-of-Kin

If you do not have a spouse, children, grand-children, parents, brothers, sisters, nieces, or nephews, then your estate goes to the person or people most closely related to you.

Common Questions

I made a Power of Attorney. Does that work?

No. Your Powers of Attorney are only useful when you are alive. Your family cannot use your POAs to access your bank account or distribute your Estate.

Do I need a lawyer to sign my Will?

No. Your Will does not need to be signed by a lawyer or notarized. But you must sign your Will in front of two witnesses. Your witness **cannot be** your spouse/partner, your children, their spouses, or any of your beneficiaries named in the Will. It is still a good idea to get legal advice before you make a Will, as the law is always changing.

I am Indigenous and live on a First Nation. Is the process the same?

If you are Indigenous and ordinarily reside on a First Nation, then Indigenous Services Canada (ISC) handles Wills and estates. ISC approves Wills and appoints administrators to handle estates if you didn't make a Will. For more information, see our other publication *Building a Basic Will while Living on a First Nation*.

Advocacy North for Elders & Seniors

provides free and confidential legal advice to Elders and seniors (60+) across northern Ontario.



reception@sclc.clcj.ca



1-800-697-8719



Sudbury Community Legal Clinic, 40 Elm Street, Suite 272, Sudbury, Ontario

How can I Make a Will?

Community Legal Education Ontario (CLEO) has developed a free, online

Will program to help people make simple Wills and Powers of Attorney.

For more information, visit their website at:

<https://stepstojustice.ca/>