Will Planning Handbook

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Will Planning

Welcome

This handbook is designed to help you, the investor, prepare for important conversations about will planning. Whether you're starting from scratch or reviewing an existing plan, this guide walks you through essential decisions and provides tools to help you and your advisor create a will strategy that protects your legacy and provides peace of mind.

This resource is not legal advice. You should always consult with a qualified legal professional when preparing or updating a will.

1. Why Will Planning Matters

More than half of Canadian adults do not have a signed will. Yet the absence of a will—or a poorly constructed one—can lead to financial loss, family conflict, and delays in settling your estate.

A valid and up-to-date will:

- Ensures your wishes are known and respected
- Protects your loved ones from unnecessary legal challenges
- Appoints a trusted individual to handle your affairs
- Can help minimize taxes and administrative fees
- Allows for thoughtful charitable giving, if desired
- Creates a roadmap for your survivors, reducing emotional and logistical burden

Without a will, provincial laws decide how your assets are distributed—often in ways that don't reflect your personal values or family dynamics. Worse, the process can be time-consuming and emotionally draining for your loved ones.

Think of your will as a living document. It reflects your values, priorities, and responsibilities—not just your finances.

2. Key Concepts You Should Know

Term (Common-law Provinces)	Quebec Equivalent	Meaning
Testator	Mandator	The person who writes the will
Executor	Liquidator	Person appointed to carry out the will
Beneficiary	Heir	Person receiving assets
Estate	Succession	Assets passed on through the will
Power of Attorney	Mandate	Appoints someone to act during your lifetime

3. Types of Wills

Legal Will: (Prepared by a lawyer): The most secure and valid form, this type of will is recommended when you have dependents or substantial assets. A legal will ensures the language is clear and the distribution instructions comply with provincial laws. Most importantly, it reduces the likelihood of being contested in court. Legal wills can also address complex issues like guardianship, trusts, and business succession.

Handwritten (Holograph) Will: Valid in some provinces, this type of will must meet strict criteria. The entire will must be written and signed in your handwriting. While convenient, this format is often prone to challenges and misunderstandings, especially when instructions are vague or omit critical details.

Will Kit/Stationery Will: This will is inexpensive and accessible but must be filled out precisely. If you're missing a witness signature or using unclear language, it could invalidate the document. If you choose this route, it's wise to have it reviewed by a lawyer before relying on it.

Digital/Online Wills: These are becoming more widely available and appeal to those seeking a simple, low-cost solution. They can be completed from home through guided platforms and are often legally recognized if they meet provincial requirements.

- **Pros:** Convenient, affordable, quick to complete, accessible from anywhere.
- **Cons:** Legal recognition varies by province; some may still require printing, signing, and witnessing in person. Digital platforms may not capture complex wishes, and without legal review, there is a higher risk of invalidation.

Quebec-Specific:

- **Notarial Will:** Prepared and signed before a notary and a witness (or two), this type of will is the most secure form of will in Quebec and does not require probate.
- **Holograph/Witnessed Wills:** These are subject to court validation. While legal, they carry higher risk and can delay estate distribution. Clarity and proper procedure are key to acceptance.

Whatever form your will takes, it should always:

- Be clearly written
- Be legally witnessed
- Be reviewed with a professional
- Be stored in a secure, accessible location

4. When Should You Make or Update a Will?

Life changes often trigger the need to write—or revise—your will. Even if your personal situation seems stable, an outdated will may no longer reflect your current relationships, financial situation, or intentions.

You should consider creating or updating your will when any of the following occur:

- **Marriage, divorce, or remarriage:** Marriage can void a previous will in some provinces. Divorce may not automatically revoke your former spouse's role as executor or beneficiary.
- **Birth or adoption of a child:** Naming a legal guardian is essential to ensure your child is cared for by someone you trust.
- **Buying a home or significant asset:** Major acquisitions can alter the value of your estate and may require updated distribution plans.
- **Starting or selling a business**: Business succession planning can be integrated into your will to avoid disruption.
- **Moving between provinces:** Laws governing wills and estates vary across Canada. A will valid in one province may not be compliant in another.
- **Receiving an inheritance or windfall:** Significant changes to your financial picture may require rethinking how assets are divided.
- **Death or incapacity of a named executor or beneficiary:** These roles need to be reassigned promptly.
- **New charitable goals or legacy wishes:** If you decide to include a donation or foundation in your legacy, your will should reflect it.

Tip:

Even in the absence of major life events, review your will every 3-5 years with your advisor or legal professional to ensure it still aligns with your current intentions

5. Will Planning Checklist

There are many decisions you will have to make when you draft a Will. If not thoroughly considered, some of these decisions can have unintended consequences.

Here is a checklist of some of the issues that should be discussed before you make your Will:

The Executor/Executrix (Representative)	Yes	No	Things to Consider
Does the person have the interest to be the representative?			Be sure to discuss this role with your potential Executor/Executrix.
Does the person have the expertise?			Some estates can be complicated and you want to ensure that your representative has the ability to deal with it. A lawyer or accountant might be considered.
Does the person have the time?			Winding up an estate can be a lengthy and time-consuming process.
Does the person have a conflict of interest?			Is there an issue if the Executor/Executrix is also a beneficiary?
Does the person understand my intentions?			Where the representative is given discretion in distributing assets, you want to be confident that he or she will act as you would have wished.
What powers should the representative have (power to borrow money, renew contracts, invest money, etc.)?			Provincial legislation will restrict the actions of a representative in the absence of specific instructions from you.
Dependent Children and Guardianship			
Does the potential guardian want to assume this responsibility?			There needs to be a discussion before a guardian is named.
Will the guardianship require a change of location for my child?			Having to leave friends and schools can be a stressful experience at an already traumatic time.
Does the potential guardian have the financial resources to care for my child?			They may need financial assistance.
Do I want to leave money directly to the guardian for my child's care?			You could leave money directly to the guardian and trust them to act in the child's best interests. However, you may want a more formal arrangement (see Trusts below).
When do I want my children to receive their inheritances?			Through a trust, you can arrange for children to receive an inheritance when they are older and typically more able to deal with it responsibly.
Trusts			
Do I want to set up a trust for the care of my child?			By using a trust, you—through the trustee—can arrange to have the child cared for financially.
Who should be the trustee?			The trustee should be a responsible, trustworthy person who has the time and interest to behave in the child's ongoing best interests. You may or may not want a guardian to be the trustee.
What powers should the trustee have?			Trusts can be structured in such a way that the trustee has very broad or very narrow discretion to act.
How much should be put in the trust?			This will require some calculations and projections of the ongoing needs of the child.

Will Planning Checklist (cont'd)

Beneficiaries	Yes	No	Things to Consider
Are any witnesses beneficiaries?			Under law, a witness to your Will cannot be a beneficiary (or the spouse of a beneficiary).
Will the distribution of assets cause hard feelings?			Wills can be the source of a great deal of bitterness. You should consider the repercussions of the distribution of your assets.
Is my spouse being adequately taken care of?			You cannot 'write a spouse out of your Will'. If a surviving spouse feels that he or she is being treated unfairly, provincial family law can override the Will.
Will my children have grounds for a legal challenge?			Dependent children have rights under family law that will override the Will. In some cases, adult children might attempt to impose a 'constructive trust' on the estate where they can show that they helped and supported you and were not adequately compensated through the Will.
Should I give reasons for specific exclusion?			Where someone was intentionally left out of the Will, providing reasons may preclude bitterness or a legal challenge.
Are there preventions against Ademption by Advancement included?			Ademption by Advancement means that gifts made prior to death can be deemed an early distribution of estate assets and will reduce the eventual inheritance, which may not be intended.
Who is the residual beneficiary?			After specific bequests have been distributed, there may be estate assets left over. You should specify how and to whom those assets will be distributed.
Tax Issues			
What will be the tax implications on my death?			In the absence of a spouse (and dependent children in some circumstances), there will be a deemed disposition of all your estate assets and often capital gains taxes to be paid by the estate.
Will there be sufficient money in the estate to settle tax and other debts?			If there are taxes owing by the estate, your representative cannot distribute any assets until the tax has been paid. If there is not enough cash in the estate, then assets may have to be sold against your original wishes. You should estimate the amount of tax payable and make arrangements to have the cash available in the estate. Life insurance is often used for this.
Other Issues			
Do I have a 'Common Disaster' clause?			This is typically included in a spousal situation where each spouse names the other as the beneficiary and specifies how the estate should be distributed should they both die at the same time.

6. Common Mistakes to Avoid

- **No residual beneficiary:** Without one, leftover assets after specific gifts may be subject to provincial laws—not your wishes.
- **Unclear instructions:** Be precise. "Divide equally among my children" can be interpreted multiple ways—especially in blended families.
- **Simultaneous death scenarios:** If you and your spouse pass away together, who receives the estate?
- **Failing to update the will:** Life changes—like births, deaths, or asset sales—can make parts of your will irrelevant or invalid.
- **Improper witnessing:** A will must be signed by the testator and two witnesses (who are not beneficiaries) present at the same time. Errors here often render a will invalid.
- **Contradictory codicils:** Adding amendments without proper legal review can create conflict between old and new instructions.
- **Overlooking non-estate assets:** Some accounts (RRSPs, TFSAs, joint holdings) bypass the will. Make sure beneficiary designations align with your wishes.
- **Unplanned tax burdens:** If taxes or debts are underestimated, your beneficiaries might receive less—or be left with liabilities.

Avoiding these pitfalls protects your estate and simplifies the transition for your loved ones.

7. Tips for a Smoother Will Planning Experience

- **Don't delay:** Avoid waiting for the "perfect moment."
- **Be honest:** Your advisor and lawyer need clear instructions.
- **Communicate:** Let family members know your plans to reduce surprise or conflict.
- **Store securely:** Keep your will in a safe, accessible place, and let your executor know where.

8. Will Planning Action Plan

Step	Action	Responsible Party	Target Date
Choose executor	Confirm willingness and understanding	You	
Select guardian (if needed)	Discuss and document intentions	You	
Review financial situation	Estimate tax liabilities and liquidity	You/Advisor	
Meet legal counsel	Draft or revise your will	Lawyer	
Communicate plan	Notify key individuals	You	
Schedule review	Revisit your plan every 2-3 years	You/Advisor	

9. Additional Resources

In Canada, there isn't a single federal law for wills and estates. Instead, each province or territory has its own laws. This means that rules about wills, Powers of Attorney, probate, guardianship, and trusteeship are managed at the provincial or territorial level. For legal will planning, speak to a qualified estate planning lawyer in your province.

Here are some of the laws in the common-law provinces of Canada:

- **Ontario:** Succession Law Reform Act (SLRA) and Estates Act
- **British Columbia:** Wills, Estates and Succession Act (WESA)
- **Alberta:** Wills and Succession Act (WSA)
- **Nova Scotia:** Wills Act, Probate Act, and Intestate Succession Act
- As for Québec, wills and estates fall under the Québec Civil Code, specifically its Book Three on Succession.
- In Manitoba, its wills and estates law is The Wills Act.
- Additional information: Canada.ca
- Snapshots Executor Guide
- Digital Planning Guide

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