LEGAL INFO NOVA SCOTIA

Guide to Making Your Will



TABLE OF CONTENTS

Who can use the app? . . . 3

Making a Will. . . . 4

What kind of Will the app will make for you. . . . 5

Making a new Will with the app cancels any earlier Wills you made . . . 6

Talking with a lawyer . . . 6

A lawyer can help with problems . . . 8

What you need to get started . . . 8

Helping someone make a Will . . . 8

Your Family and Children . . . 9

Marital Status . . . 9

Beneficiaries . . . 12

Can I choose who gets my property?. . . . 12

Testators' Family Maintenance Act . . . 12

Matrimonial Property Act . . . 12

Guardianship of children. . . . 13

Assets, Debts, and Your Estate. . . . 13

Assets that are not part of your Estate. . . . 14

Debts and your Estate . . . 15

Primary executor . . . 17

Alternate executor 18

Specific gifts 19

Specific Gifts —What happens when a beneficiary of a specific gift dies or refuses the gift? . . . 20

Pets 20

What happens if the person I name to look after my pets dies or cannot care for my pets for some other reason? 20

What happens if I list my pets but choose not to name a specific person to look after them? . . 21

Residue – The rest of your estate 21

What happens if your spouse or the person you plan to marry dies before you or you both die simultaneously? 21

What happens if your spouse or the person you plan to marry dies before you or you die together? 22

What happens if any of your "backup" beneficiaries die before you? 22

What happens if any of your children die before you? 23

What happens if any of your beneficiaries die before you? 23

Signing Your Will and getting the Affidavit of Execution signed 24

If you cannot sign 25

If you cannot read your Will 25

What to do after you sign your Will 26

Can I change my Will? 27

Cancelling your Will 28

Burial and Funeral Instructions 29

Organ and Tissue Donation 29

Where can I get more help? 29

Finding a lawyer who does wills 29

Important links 30

Thank you to the following: 31

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Guide to Making Your Will



This guide will help you understand how to make your Will using the online wills app on the Legal Information Society of Nova Scotia website at **www.legalinfo.org/will**. Read this guide before you use the app. The app is free to use.

This guide explains the essential parts of making a will. It gives you information to ensure your will is signed and witnessed correctly.

Your will is an essential and powerful document. You want to get this right. **Talk to a lawyer** if you are unsure if you can use the app to do your will. This guide and the app will help you make a will, but it **does not give you legal advice**. The section below on 'Talking with a Lawyer' tells you how a lawyer can help and why it is better to have a lawyer do your will if you can.

Who can use the app?

You can use the app if:

- You live in Nova Scotia.
- You are 19 or older, or younger if you are married.
- You are naming an executor in Canada and, ideally, in Nova Scotia.
- You have a small or very modest amount of property.
- You have a straightforward personal and financial situation.
- You are mentally competent.
- You are making a will voluntarily without pressure or influence from anyone else.
- Read **"What the Wills App Does Not Cover"** to discover if the app is the right solution for you. For example, you should not use the app:

If there are concerns about your ability to think clearly and make decisions.

- If you feel pressured to write a will because someone insists you do one.
- If you have status under the Indian Act and live in a First Nation community (on 'reserve'). Provincial laws about wills do not apply on reserve. The Confederacy of Mainland Mi'kmaq has information for you on its website (cmmns.com).
- If you need to set up complicated financial arrangements, like a trust with special conditions.
- If you want to leave something to a charity.
- If your personal situation is complicated. Some examples are:
  - You are separated from a legally married spouse and have a common-law spouse you live with.
  - You do not have a close relationship with your spouse or child and want to leave them out of your will.
  - You have a 'blended' family—you have children from a previous relationship, and/or your spouse or partner does.

Making a Will

Your will is a written legal document where you say what you want done with your house, land, and other things you own when you die. These are called your assets and your estate. The people you name in your will to get a part of your estate are your **beneficiaries**.

Your will lets you name someone to carry out your last wishes. This person is called your **executor**.

In Nova Scotia, you must be at least 19 years old to make a will unless you are married.

You must be mentally competent to make a will, also known as testamentary capacity. **Testamentary capacity** means that at the time you sign your will, you must:

- Know that you are making a will and understand what a will is;
- Know what property you own and have a general idea of what it is worth;
- Know how much money you owe; and
- Be able to name the people in your family you should gift your estate to (even if you do not intend to) and other people you wish to leave something.

You should make your will while in good health so that your capacity to make one is not questioned. Whether you are capable of making a will can be questioned:

- If your ability to think is affected by illness (including dementia or Alzheimer's) or pain.
- If you are taking drugs (prescribed or otherwise).

- If you feel pressured to write a will because someone insists you do one. A will must be made without pressure or influence by anyone, including people you might rely on to help you financially, for housing, or personal needs and health care.

This is a partial list. But it gives you a sense of the challenges often made to a will's validity. More than one of those things may apply to a situation.

If you lose capacity after you have made your will, the will is still valid.

Even if you need some help understanding information or decision-making ability, you might still be able to meet the legal standards to make a will. A health problem that affects your thinking matters, but it is not the only thing that matters. For example, someone in the early stages of Alzheimer's who has a bit of trouble with thinking and reasoning might still be capable of making a will.

Whether you can make a will is a legal question, not a medical one. However, if that is your situation, you should **get help from a lawyer** who does estate planning and has experience working with people with decision-making, reasoning, or memory problems. The lawyer may need to talk with your doctor.

You **might** still be able to do a will under the right circumstances and with the information explained in a way you can understand.

You **must** get a lawyer›s help:

- If there are any concerns about your ability to think, make decisions, and make a will.
- If you need help understanding the critical information about making a will.
- If you need help to identify your options and understand the effect your choices may have.
- If you feel pressured to write a will because someone insists you do one.

If you do not have testamentary capacity or are pressured or influenced by anyone else to do one, you should **not** make a will. If you make one, someone could challenge your will in court, and your will would probably not be valid. In that case, you would be considered to have died without a will.

What kind of Will the app will make for you

The wills app makes a basic will. The app lets you:

- Name someone to fulfill your last wishes, called your "executor";
- Say who you want to take care of any pets;
- List some specific gifts and people you want to get them; and
- When you die, say who you want to get the rest of your estate.

You can name your primary (or main) executor in the will. The app lets you name up to two co-executors, although there are advantages to naming one alone. You can also name a backup executor.

You can make specific gifts to beneficiaries. Gifts can be specific, like jewellery, a car, books, or furniture. Or, they can be gifts of cash. The app lets you leave up to 10 gifts to different people. The will created by the app will list these gifts.

You can also say who you want to take care of your pets if you have any.

Finally, you can say who gets what is left of your estate after your funeral expenses, debts, taxes, and costs of managing your estate have been paid and any specific gifts have been given. This is called the **residue**.

Making a new Will with the app cancels any earlier Wills you made

When you make a new will, you cancel any earlier wills you had. Lawyers say the will is **revoked**. If you already have a will and use this app to make a new one, it will revoke any earlier wills you made.

A will can be revoked in other ways, too. There is more information about how a will can be revoked later in this guide under ‘Cancelling Your Will.’

Talking with a lawyer

A will is a powerful legal document. In Nova Scotia, you can write a will with the help of a lawyer or without a lawyer; the law does not say that a lawyer must write your will.

However, having a lawyer write or review your will is always best. A lawyer will help you make sure what you want is set out clearly and in proper order. A lawyer can save a lot of trouble and expense for the people who should benefit from your will and for the person you name as your executor.

You should have a lawyer read any document that may affect your will, such as a separation agreement, shareholder agreement, court order, deed where you own property jointly with someone other than your spouse, or beneficiary designations you make on investments and life insurance.

You should talk with a lawyer no matter what you put in your will. But some situations are more complex than others. Having a clear will makes all the difference in the world to those who depend on you.

It is really important to **talk to a lawyer** in several situations, including if your situation is on the list of **What the Wills App Does Not Cover**.

Talk to a lawyer:

- If you are a substitute decision-maker for a person with special needs;
- If you want to set up a trust with special conditions;
- If you have land and do not have clear title to it. The **Land Titles Initiative** helps residents in the communities of North Preston, East Preston, Cherry Brook/Lake Loon, Lincolnville, and Sunnyville get clear title to their land at no cost;
- If you want to name three or more co-executors to fulfill your wishes. Co-executors may disagree. This can cause significant problems for your estate;
- If you want to name an executor or beneficiary who lives outside Nova Scotia, especially in the United States.
- If you want to leave something to charity.
- If you have a complicated financial situation.
- If you have a complicated personal situation. Some examples are:
  - You are separating from your spouse or partner;
  - You are separated from a legally married spouse and have a common-law spouse you live with right now;
  - You do not have a close relationship with your spouse or child and want to leave them out of your will;
  - You have a blended family—you have children from a previous relationship, and/or your spouse or partner does.

Your will must be worded carefully. A lawyer can:

- Make sure your will clearly describes your wishes;
- Make sure your will follows the law;
- Help you deal with things that you might not have thought about;
- Tell you what you can do now to make it easier for your executor to deal with your estate after you die;
- Answer any questions about the process of dealing with your estate;
- Give proof in the future that you made your will by your own free choice, without pressure from anyone else; and
- Give proof in the future that you had testamentary capacity (were “of sound mind”) to make your will.

Even if you decide to make your own will, asking a lawyer to look it over to ensure it will do what you want is a good idea.

A lawyer can help with problems

You might feel that a family member or other person is pressuring you to leave money or property to them in your will. You can **talk to a lawyer** about this.

You might worry that someone who depends on you will be unable to manage their financial affairs if you die before them. In these cases, you can talk with the lawyer about how to best provide for that person.

What you need to get started

You need the following information to do your will:

- The full name of your spouse, partner, or person you plan to marry, if this applies to you;
- The full name of your executor or executors, including backup executor if you name one;
- The full names and ages of your children, if you have any;
- A description of any specific gifts you want to give after you die;
- Information about your pets, if you have any;
- The full name of any person you're asking to take care of your pets; and
- The full names of people you're giving gifts to in your will.

Helping someone make a Will

You cannot make a will for someone else. This is true even if you have **power of attorney** or are a court-appointed **representative**. An attorney or representative cannot make or change a will for someone else.

But the person making their will might need help using the app. If you're helping them, they **must still make every decision themselves**. And you must share with them the information in this guide, the app, and the instructions.

Your Family and Children

Marital Status

To make your will, you need to say your marital status. In the app, you will need to pick one of the following:

I am legally married

- Choose this if you are legally married and together with your spouse.

I am legally married but separated

- Choose this if you are legally married; and:
  - Living apart from your spouse and intending to end the relationship; or
  - Still living under the same roof, but no longer living as spouses; and
  - Not planning to get back together with your spouse;
  - Planning to get divorced or have applied for divorce.

Do not choose this option if you are just living apart for reasons like work-related travel, medical treatment, or placement in long-term care.

Important: The app does not let you benefit your spouse under your will if you are separated. See a lawyer if you want to do that.

Suppose you have children and are legally married but separated from your spouse. In that case, the app only lets you leave the rest of your estate (residue) to your children - not your spouse or anyone else.

If you do not have children and are legally married but separated from your spouse, the app only lets you leave the rest of your estate to people other than your spouse.
It is important to make a new will as soon as you separate because the law otherwise assumes that you want to leave money or gifts to your spouse if you are married, even if you are separated.

Separation does not cancel an existing will or parts of an existing will that name your spouse. But, if you make a new will after you separate, your intentions will be clear about whether you want your spouse to get a share of your estate if you die before you get a divorce.

A note about divorce

If you get divorced, parts of your will that give a gift to a spouse, provide a benefit to a spouse or appoint the spouse as executor are no longer valid. There are exceptions: your will, a separation agreement, a marriage contract, or a court order may say that these parts of your will are not

affected by a divorce. Check with a lawyer if you need more clarification about the effect of divorce on your will.

You should get family law and estate planning legal advice if you are separated, divorced, or divorced. You also need legal advice if you are separated but not divorced from a married spouse and have a common-law spouse you live with right now.

I am in a registered domestic partnership

Choose this if you are in a registered domestic partnership. A registered domestic partnership is created when you and your partner file a form (Domestic Partnership Form) with the Nova Scotia government. Registration gives you some of the same legal rights and obligations as married couples. You can learn more at nsfamilylaw.ca

I am separated from my registered domestic partner

- Choose this if you have a registered domestic partnership and:
  - You are living apart and intend to end the relationship; or
  - You are still living under the same roof but no longer living as a couple; and
  - You are not planning to get back together with your partner;
  - You are planning to **end the domestic partnership**.

Do not choose this option if you are just living apart for reasons like work-related travel, medical treatment, or placement in long-term care.

Important: The app does not let you benefit your registered domestic partner under your will if you are separated. See a lawyer if you want to do that.

If you have children and are in a registered domestic partnership but separated from your partner, the app only lets you leave the rest of your estate (residue) to your children - not your domestic partner or anyone else.

If you do not have children and are in a registered domestic partnership but separated from your partner, the app only lets you leave the residue of your estate to people other than your registered domestic partner.

It is important to make a new will as soon as you separate because the law otherwise assumes that you want to leave money or gifts to your registered domestic partner, even if you are separated. Separation does not cancel an existing will or parts of an existing will that name your domestic partner. But, if you make a new will after you separate, your intentions will be clear about whether you want your domestic partner to get a share of your estate if you die before you **end the registered domestic partnership**.

I have a common-law spouse

- Choose this if you live with your partner in a marriage-like relationship, treat each other as spouses, and both plan to stay together. Making a will is the only way to ensure your common-law spouse benefits from your estate when you die. See the guide's section on 'Dying without a will' for more information.
- The will you make using the app will say that your will is made in "contemplation of marriage" to your common-law spouse and is intended to take effect whether or not you get married. It says that just in case you later decide to get married to your common-law spouse. Marriage cancels your will (it is revoked) unless your will specifically says you are preparing to marry your common-law spouse. See a lawyer if you want your will to say something else. Check with a lawyer if you are not sure about the effect of marriage on your will.
- Do not choose this option if you live with a friend or roommate in a relationship that is not romantic or intimate.
- See a lawyer if you are separated but not divorced from a legally married spouse and have a common-law spouse you live with.

I am separated from my common-law spouse

- Choose this if you have a common-law spouse and:
  - You are living apart and intend to end the relationship or
  - You are still living under the same roof but no longer living as a couple, and
  - You are not planning to get back together;
  - You are planning to **end the relationship**.

Do not choose this option if you are just living apart for reasons like work-related travel, medical treatment, or placement in long-term care.

Important: The app does not let you benefit your common-law spouse under your will if you are separated. See a lawyer if you want to do that.

Suppose you have children and a common-law spouse but are separated from your spouse. In that case, the app only lets you leave the rest of your estate to your children - not your spouse or anyone else.

If you do not have children and have a common-law spouse but are separated from your spouse, the app only lets you benefit people other than your spouse in your will.

I am engaged to be married

- Choose this if you are planning to get married to your current partner (even if no date is set) and you want your will to be still valid after you get married. Marriage cancels your will (it is revoked) unless your will specifically says you are preparing to get married. This is called

being made '**in contemplation'** of marriage. If you choose this option, the Will you make using this app will say that your Will is made in "contemplation of marriage" to the person you are engaged to and that you want your Will to take effect whether or not you get married. See a lawyer if you want your will to say something else.

I am not legally married or in a domestic partnership or common-law relationship

- Choose this if none of the other options apply to you.

Beneficiaries

The people you name in your will to get money or gifts after you die are called **beneficiaries**.

Charities can also be beneficiaries, but the app does not allow you to leave a gift to charity. This is because specific tax information must be provided for any charity named in a will. You should also **get advice from a lawyer** or accountant about how a gift to charity might affect your **estate's final tax return**.

Can I choose who gets my property?

In most cases, you are free to deal with your property as you wish. However, Nova Scotia laws limit how you may distribute your property in your will. The laws expect you to give your dependents a fair share of your estate. Those laws are the **Testators' Family Maintenance Act** and the **Matrimonial Property Act**.

If you leave a dependent out of your will or leave them less than expected, they can go to court to make a claim against your estate.

Testators' Family Maintenance Act

The law tries to ensure your dependents have money and support whenever possible. Under the **Testators' Family Maintenance Act**, your children of any age, including legally adopted children, are dependents. A surviving married spouse or registered domestic partner is also dependent. Common law spouses, divorced spouses, and step-children who have not been legally adopted are not dependents under this law.

Matrimonial Property Act

The **Matrimonial Property Act** recognizes that both spouses contribute to a marriage. The law says that when one spouse dies, the surviving spouse can apply to the court for a division of the matrimonial assets, in addition to any other rights of the spouse under the will.

The surviving spouse must apply to the Supreme Court. The surviving spouse must apply for division within six months after the court has **granted probate or administration** of the estate.

A judge decides what share of the matrimonial property the surviving spouse should get.

Common-law spouses are not covered by this law unless you have a **registered domestic partnership**. Then, they are included from the date you registered the partnership.

Important: If you have a married spouse, common-law spouse, or registered domestic partner, and you and that person are together, you cannot leave that person out of your will using this app.

If you have children, you cannot leave them out of your will using this app.

If you are separated from your married spouse, common-law spouse, or registered domestic partnership, you cannot benefit that person in your will using this app.

See a lawyer if you want to do something different.

Guardianship of children

If you have children younger than 19 years old, you should name a legal guardian you want to care for if you cannot care for them for any reason while you are alive or you die. It is essential to name a guardian to help make sure your children have continuous care with people they know and who you trust.

The online wills app does **not** let you name a guardian for your children in your will because it is better to make a child guardianship document that is separate from your will. That way, it can be used if needed while alive, and your will stays private until you die.

You can still use the wills app if you have children, including minor children.

After you make your will, see a lawyer to make your Child Guardian Appointment. Or, use the free, basic **Child Guardian Appointment form** on the Legal Information Society's website to name a guardian(s) for your minor child or children.

Here is more information about child guardianship.

Assets, Debts, and Your Estate

Your assets are anything worth money. For example:

- Your house or condo;
- Any other land you own;

- Bank accounts;
- Investment accounts and GICs;
- Valuable jewelry;
- Valuable artwork;
- Other household and personal items;
- Your car(s).

Pets are also assets, as the law considers animals personal property. The app lets you say who you want to take care of your pets if you have any.

After you die, your assets together are called your **estate**.

Assets that are not part of your Estate

Your estate typically excludes:

- Assets with a named beneficiary. Here are some examples:
  - Registered savings accounts that let you name someone to get the money directly, like RRSPs, RRIFs, and tax-free savings accounts (TFSA);
  - Pension plans;
  - Life insurance policies.
- Property you own jointly with someone else, with the right of survivorship. For example, if you and your spouse own your home as '*joint tenants and not as tenants in common*,' the home goes directly to your spouse on your death.

When you die, these assets are said to "pass outside the will." For example, the bank or trust company transfers the RRSP or RRIF, or pays it out to the beneficiary you named. Note that this payment does not consider tax consequences, which must be paid from the assets that pass through your will. The same is true if you have life insurance that names a beneficiary (though typically, there are no tax consequences for life insurance proceeds). Suppose you name your estate as a beneficiary instead of a person or charity. In that case, the money goes to your estate and will be distributed as you direct in your will.



Tip: Check to ensure you know how your assets with a named beneficiary are set up and who will benefit when you die.

Assets you share with a spouse or minor children go to the surviving owners when you die. Shared assets with anyone else, including adult children, are not automatically assumed to go to the survivor owner. In writing, you should state what to do with those assets on your death and who should benefit from them.

For jointly owned accounts, on your death, the account may legally pass to the joint owner according to the financial institution paperwork. However, be aware that the joint owner may have a legal responsibility to share that account with other beneficiaries of your estate.

See a lawyer if you want to leave assets to family members other than your spouse or minor children by joint ownership.



Tip: Check to make sure you know how these shared assets are set up:

- Your jointly owned bank accounts—contact your bank to find out.
- Look at the deed to any property you have (house, land, condo) to see if you own the property with another person (called 'joint tenancy with right of survivorship,' which differs from tenancy-in-common) and if you understand what that means.
- Check with your bank or trust company to see who benefits from your RRSPs, RRIFs, TFSAs, other investments, or life insurance when you die.
- Also, ask if you can name a backup beneficiary (also called an "alternate beneficiary") for those assets that permit it. If you don't do this and the beneficiary you named dies before you, or at the same time as you, these assets go into your estate and are given out based on what you say in your will.

Debts and your Estate

If you owe debts when you die, like unpaid credit card bills and income tax, your executor must first pay your debts out of what is in your estate. Secured debts (for example, a mortgage) and a surviving married spouse's or registered domestic partner's interest in the matrimonial home have priority.

Only what is left after all debts are paid may then be given out based on what you say in your will.

If the estate does not have enough assets to pay all the estate debts, the estate is called **insolvent.** Debts for an insolvent estate must be paid in the following order of priority:

- Taxes owed to the **Canada Revenue Agency**;
- Funeral expenses, including a reasonable headstone;
- **Probate** taxes and court fees;
- Executor's commission and legal fees (treated equally);
- Reasonable medical expenses in the last 30 days of the will-maker's life;
- All other debts.

Choosing Someone to Carry Out Your Wishes

When you die, your **executor** carries out your wishes in your will. Your executor must make sure they know all your assets and debts, pay your debts out of your assets, and then distribute what is left in your estate based on your instructions in your will.

Your executor:

- Must be 19 years of age or older;
- Must be mentally competent;
- Should live in Canada to avoid tax issues, and ideally in Nova Scotia; and
- Can also be a beneficiary.

The executor's job includes:

- Paying off your debts with money from your estate and
- Giving your assets to your beneficiaries according to your wishes as set out in your will.

Your executor may also have to do paperwork for the Nova Scotia court that deals with estates, called **Probate Court**.

You must see a lawyer if you want someone other than your executor to take care of a gift you've made to a child under 19 in your will, as the app does not allow you to name someone else to do that.

An executor is also sometimes called a **trustee**. This is because they have legal title to your assets after you die while managing your estate until they distribute everything to the beneficiaries you name in your will. The executor must also file your final tax returns, and the *Income Tax Act* calls your executor a trustee. And, if you leave property to anyone who can't manage their finances (like minor children), the executor may manage the property for that beneficiary as trustee for them, too.

Being an executor can be a big job, so choose someone who is organized and knows when they need professional advice. Talk with the person you want to be your executor before you name them in your will. Ask if they are willing to do this for you.

Just because an executor is named in your will does not mean they must act on your behalf.

Make sure the person you choose has the time and the ability to carry out the many duties of an executor. Looking after an estate can be difficult, and it takes time. Sometimes, it includes responsibilities that last for years.

Here are some things to keep in mind:

- The best executor is a trustworthy, reliable, and competent adult.
- Your spouse, a friend, a family member, or a beneficiary may be able to do a good job as an executor. Many people choose their spouse or main beneficiary as executor.

- Think about choosing someone likely to outlive you.
- Think about choosing someone who knows about banking and business affairs.
- You should name a backup executor if your first choice dies, moves away, or cannot do the job for some reason.

Your executor must follow the instructions in your will as closely as possible. However, they will not be able to follow instructions that are illegal, impossible, or would harm someone. Some court orders and contracts may also affect whether your instructions can be followed.

Suppose you don't have someone suitable to be your executor. In that case, you can name a trust company, a professional advisor (lawyer, accountant, sometimes an investment advisor), or the **Nova Scotia Public Trustee**. You should talk with them first; they do not have to accept this role, and some professional advisors cannot or simply won't. You must check first with the **Office of the Public Trustee** if you want them to act as your executor.

Any executor you name may charge your estate to do the work.

Primary executor

Your first-named executor is called your **primary** executor. In most cases, it is best to name only one primary executor. However, sometimes people want to name two or more executors. The law allows you to name more than one person to act as your executor simultaneously; when two or more people act together, they are called **co-executors**.

The app allows you to name either:

- One primary executor, or
- Two primary co-executors who would act together.

Before naming co-executors to act together, consider whether your executors will work well together and whether they will be in the same geographic area when dealing with your estate. Co-executors must make decisions together. They must agree on all decisions.

The app only allows you to name up to two co-executors. **See a lawyer** if you want to name more than two co-executors; you should also seriously consider seeing a lawyer when you want to name more than one primary executor because of the possibility of co-executor disagreements tying up your estate.

If you name co-executors, the app includes a way for them to try to resolve any disputes: they will have to flip a coin to decide what to do. But if they disagree, they may need to go to court to settle their disagreement. This can lead to extra costs and delays, including stalling the administration of your estate until the disagreement is resolved.

An executor can also be a beneficiary. Think about whether this may create any conflicts with other beneficiaries.

After you name your first choice for executor or co-executor, you can name a backup executor if you wish. The backup executor is also called an 'alternate executor.'

Alternate executor

Your first-named executor (or co-executors) is your primary executor. You have the option of naming a backup executor. The backup executor is called an **alternate executor**.

It is always a good idea to name a backup executor. Even if the primary executor is named in your will, they can still take on the job or will always be able to do so.

The alternate executor steps in when the primary executor(s) will not or cannot act because:

- They change their mind about taking on the role;
- They become incompetent to make decisions; or
- They die.

It is best to name an alternate executor to be sure that your estate will be handled by someone you know well and trust if your primary executor(s) cannot or will not act.

If you have no alternate executor and your first choice is unable or unwilling to manage your estate, your beneficiaries must ask the court to name someone else. This can lead to extra costs and delays.

An alternate executor can also be a beneficiary.

The law allows you to name multiple people as alternate executors, acting as co-executors. However, the app only allows you to name one alternate executor to help avoid disagreements. If you want to name two or more alternate executors to act together, or if you want to name another alternate to back up your first alternate, you should **talk to a lawyer**.

Suppose all your chosen executors, including your alternate, die or become incompetent or change their minds about taking on the role. In that case, you should make a **new will** to pick new executors.

But suppose you die before you can make a new will. In that case, your beneficiaries must ask the court to name someone else to administer your estate based on your will. This is called a 'Grant of Administration with Will Annexed.' This will lead to extra costs and delays.

The Instructions in Your Will

The app lets you give instructions in your will about:

- **Specific gifts**, where you list items or cash amounts to go to specific people;
- **Pets**, if you have pets and want to name someone to look after them; and
- **Residue** means all your assets left after taxes, debts, and expenses are paid, and specific gifts are given.

Specific gifts

If you want to give your beneficiaries specific gifts, such as money or a special item, you can do this in your will. Beneficiaries are anyone who receives a gift in your will. The wills app lets you list up to 10 specific gifts for beneficiaries. The beneficiaries may be 10 different people, or you can give certain people multiple items.

It is optional to put specific gifts in your will and/or leave a list with instructions for your executor. You can let your executor decide what to do with specific assets you have without your guidance.

However, if you want to give your beneficiaries specific gifts after you die, such as an amount of money or a special item, here are three ways to do it:

1. You can list the gifts or items right in your will. The app allows you to list up to 10 specific gifts. However, if you later want to change your list, you will have to make a new will. It is optional to list specific gifts in your will. In the app, leave the slider at zero (0) if you do not want to list any specific gifts in your will.
2. You can give your executor a letter with your instructions. This way, you can change your mind more easily because the letter isn't part of the will. It's simply an expression of your wishes. You can also tell your executor your wishes for these gifts. You are trusting your executor to follow your wishes. If they don't, there are no consequences to the executor, and the intended beneficiary has no recourse.
3. If you leave your executor a letter with instructions about specific gifts, store the instructions with your will so your executor can find them.
4. You can also do both: List your most valuable items (up to 10) in the will and the less valuable items in a letter for your executor.

See a lawyer if you want to make different arrangements about specific gifts.

Specific Gifts —What happens when a beneficiary of a specific gift dies or refuses the gift?

In the will created by the app, if you leave a gift to a person in the will who then dies while you are still alive, that gift becomes part of the residue of your estate. This also happens if anyone you name to get a gift refuses the gift. The residue of your estate is what property is left in your estate after funeral expenses, debts, and taxes are paid, and specific gifts of cash or things are given out.

One exception is if:

- You leave a gift to your child or grandchild, and
- That relative dies before you, after you made your will, and
- That relative leaves children who are alive after your date of death.

Then the gift will pass to the person's children. If these three conditions are met, nothing needs to be added to the will to make this happen.

Talk to a lawyer if you want something different to happen if a beneficiary of a specific gift dies or refuses the gift.

Pets

The law says that pets and other animals are personal property. This means that you can give your pets to someone in your will. The app gives you the option to:

- List your pets, and name someone to look after your pet(s);
- Leave that person a gift of money to thank them or help with the expenses of caring for your pet. Your executor does not need to check how the new pet owner uses that money.

Talk with the person you want to care for your pets before you name them in your will to make sure they are willing to take on the caregiving role.

What happens if the person I name to look after my pets dies or cannot care for my pets for some other reason?

The person you name in your will may be unable to care for your pets when you die. If this happens, the will created by the app says that your executor must give your pets and any cash gift you specified for caring for your pets to someone who will provide your pets with a loving and healthy home, such as your family members or friends.

What happens if I list my pets but choose not to name a specific person to look after them?

Suppose you do not name someone to look after your pet(s). In that case, the will created by the app says that your executor must give your pets to someone who will provide your pets with a loving and healthy home, such as your family members or friends.

Talk to a lawyer to make other arrangements for your pets.

Residue – The rest of your estate

After taxes, debts, and expenses have been paid, and specific gifts of cash or things have been given out, money may be left in your estate. This is called the **residue**. This part of your will says what you want your executor to do with the residue — the rest of your estate. For example, a person's will might say, "*I direct my trustee to give the rest of my estate to my spouse*," and then say what should happen if their spouse dies before them or at the same time.

Reminder:

- If you have a married spouse, common-law spouse, or registered domestic partner and you and that person are together, you cannot leave that person out of your will using this app.
- If you have children, you cannot leave them out of your will using this app.
- If you are separated from your married spouse, common-law spouse, or registered domestic partnership, you cannot benefit that person in your will using this app.

See a lawyer if you want to do something different.

The options in the app for distributing the rest of your estate are below. The options are based on your situation. **See a lawyer** if your situation is not listed or if you want to make different arrangements from what the app allows.

You have a spouse or person you plan to marry, and you have children

If you have a spouse or a person you plan to marry, the app requires you to leave the rest of your estate (residue) to that person.

What happens if your spouse or the person you plan to marry dies before you or you both die simultaneously?

Suppose your spouse or the person you plan to marry dies before you or you die simultaneously. In that case, your child or children will get the rest of your estate in equal shares as "back-up" beneficiaries. If your child or children die before you, their share will go to their children (your grandchildren). If the dead child had no children, their share would go to your surviving children in equal shares.

See a lawyer if you want to make different arrangements, including if you want something different to happen if a beneficiary dies before you.

If **all** your beneficiaries die before you, make a new will. If you do not, the rest of the estate will be treated like you have no Will and will be distributed following the rules in the **Intestate Succession Act**. It will complicate things for your executor and beneficiaries and will mean delays and extra costs. It might also mean your estate will not be distributed as you want.

You have a spouse or person you plan to marry and no children

If you have a spouse or a person you plan to marry, the app requires you to leave the rest of your estate (residue) to that person.

If you have a spouse or a person you plan to marry, the app requires you to leave the rest of your estate to that person. As a backup, you must say what you want to happen with the rest of your estate if your spouse (or the person you plan to marry) dies before you or you both die simultaneously. You can divide the rest of your estate among up to 10 people who will be your "backup" beneficiaries. You can say what percentage of the rest of the estate you want each person to get. **See a lawyer** if you want to make different arrangements.

What happens if your spouse or the person you plan to marry dies before you or you die together?

If your spouse or the person you plan to marry dies before you or you die simultaneously, your "backup" beneficiary or beneficiaries (up to 10 people you choose to name in the app) will get the rest of your estate. You can say what percentage of the rest of your estate you want each person to get. **See a lawyer** to divide your estate into more than 10 parts.

What happens if any of your "backup" beneficiaries die before you?

The app gives you two choices to say what will happen if any of your "backup" beneficiaries die before you. You can choose to say:

1. The dead beneficiary's share will go to their children in equal shares. If the dead beneficiary had no children, their share would go to your other beneficiaries in equal shares.

   OR

2. The dead beneficiary's share will go to your other beneficiaries equally. If only one beneficiary survives you, they get the rest of your estate.

See a lawyer if you want something different to happen if a beneficiary dies before you.

You have children. You do not have a spouse or person you plan to marry, or you are separated from your spouse

The app requires you to leave the rest of your estate to your children in equal shares. You must see

a lawyer if you want to make different arrangements, including if you still want your will to benefit your married spouse, common-law spouse or registered domestic partner, even though you are separated.

What happens if any of your children die before you?

If any of your children die before you, that dead child's share goes to their children (your grandchildren). If that dead child has no children, their share will be divided equally among your other children.

If you want something different to happen if a child dies before you, you must **see a lawyer**.

If all your children die before you, make a new will. If you do not, the rest of the estate will be treated like you have no Will and will be distributed following the rules in the **Intestate Succession Act**. It will complicate things for your executor and beneficiaries and will mean delays and extra costs. It might also mean your estate will not be distributed as you want.

You do not have children, a spouse or a person you plan to marry, or you are separated from your spouse

The app lets you divide the rest of your estate among up to 10 people. You can say what percentage of the rest of your estate you want each person to get.

The app does not let you benefit your married spouse, common-law spouse or registered domestic partner if you are separated from that person.

See a lawyer if you want to make different arrangements.

What happens if any of your beneficiaries die before you?

The app gives you two choices to say what will happen if any of your "backup" beneficiaries die before you. You can choose to say:

1. The dead beneficiary's share will go to their children in equal shares. If the dead beneficiary had no children, their share would go to your other beneficiaries in equal shares.

   OR

2. The dead beneficiary's share will go to your other beneficiaries in equal shares. If only one beneficiary survives you, they get all the rest of your estate.

See a lawyer if you want something different to happen when a beneficiary dies before you.

If **all** your beneficiaries die before you, make a new will. If you do not, the rest of the estate will be treated like you have no Will and will be distributed following the rules in the **Intestate Succession Act**. It will complicate things for your executor and mean delays and extra costs. It might also mean your estate will not be distributed as you want.

Signing Your Will and getting the Affidavit of Execution signed

Download and print:

- Your Will;
- These Instructions for Signing Your Will;
- The fillable PDF Affidavit of Execution that applies to you. Step 4 below tells you which version of the affidavit to use. Fill it out, then print it.

1. Read your will. Think about having a lawyer look it over with you.

Checklist:

- ❑ I understand what the will says.
- ❑ The will says what I want it to and reflects my wishes.
- ❑ All names are spelled correctly.
- ❑ The pages are numbered correctly.

If anything in your will needs to be changed, you must make this change in the Wills App and print a new copy. **Do not cross things off or try to fix it by hand.** You must have a clean copy of your will to sign. Everything in it must be correct, and say what you want it to say before you sign it.

If there is something in the will that you do not understand, have a lawyer look over your will before you sign it.

2. Choose your witnesses.

Before you sign your will, arrange for two people to be your witnesses.

Your witnesses must be with you when you sign your will for it to be legally valid, in the same room, and for the whole time, all three of you are intialling and signing the will.

The witnesses must be at least 19 years old and mentally capable.

Your witnesses cannot be people named in your will as beneficiaries, and they cannot be married to someone who is a beneficiary in your will. The best practice is to have witnesses that have no connection to your beneficiaries.

If your executor is not a beneficiary or married to a beneficiary, your executor may also act as a witness.

Your witnesses do not need to know what your will says. They just need to know who you are and that you're signing your will in their presence.

3. Sign and date your will.

Sign your will while the two witnesses are with you, and tell the witnesses that the will is yours.

- Put your initials on the bottom right corner of each page.
- Fill in the date before you sign it.
- Sign your will at the end in the space provided.
- Your witnesses should also put their initials on the bottom right corner of each page.
- Your two witnesses must also sign the will in front of you and in front of each other.



Tip: The witnesses don't need to read your will, although if you are blind or will sign by making a mark, they will hear your will read out to you before you sign. The witnesses need to watch you sign your will and sign and initial it themselves in front of you.

If you cannot sign

Suppose you can read the will but cannot sign your name because of a physical disability like arthritis. In that case, you may sign by making your mark, like an "X," on the signature line. If you do this, use **version 2 of the affidavit of execution**.

If you can read the will but cannot sign your name or make your mark, you will need to see a lawyer. You will need to have someone else sign the will for you. There are special rules for doing that, and a lawyer can help you do that correctly to ensure your will is legally valid.

If you cannot read your Will

Someone must read the whole will out loud to you and your witnesses before you and your witnesses sign it. If you do this, use **version 2 of the affidavit of execution**.

4. Get the affidavit of execution signed.

An **affidavit of execution** is a sworn statement made by one of the witnesses to your will. When they sign it, they are confirming that they saw you sign your will on a specific date and that you signed it in front of both witnesses at the same time.

Download the fillable PDF affidavit of execution that applies to you. Fill it out, then print it. Use **version 2 of the affidavit** if you signed the will by making your mark and/or if you could not read the will and it was read out loud to you before you signed it. Otherwise, use **version 1**.

- **Affidavit—Version 1**
- **Affidavit—Version 2**

Arrange for one of your witnesses to swear the affidavit of execution in front of a lawyer, notary or commissioner of oaths. The witness swearing the affidavit must sign it in front of a lawyer, notary or commissioner of oaths. This should be done in person. This can be done anytime after you and your witnesses sign your will. But it is best to do it immediately because witnesses might move away or die before you after the will is signed.

Lawyers, notaries and some commissioner of oaths will generally charge a fee for this service from $40 to $75. You can call law firms near you to make an appointment for the witness and to find out the cost. If you cannot pay a lawyer, notary or commissioner of oaths, you can try **Nova Scotia Legal Aid**.

Once the affidavit of execution is complete, keep it with your will. After you die, your executor will use the affidavit at the **Probate Court** to show that the will was properly signed and witnessed. Suppose no affidavit of execution has been done by the time you die. In that case, your executor must find one of your witnesses and have the witness swear an affidavit. There will most likely be added costs, which will take extra time.



Tip: If your will has been properly signed, dated, and witnessed, it is valid. You will need an affidavit of execution, or something similar, if your estate will be probated.

What to do after you sign your Will

- Keep your will and the affidavit of execution where things like pets, mould, a fire, or flooding will not damage them. A safe place to store your will is a fire-proof metal box like a filing cabinet or cash box.
- Tell your executor exactly where your will is. Only an original will is valid in Nova Scotia and most other places, so your executor needs to have the original, paper and ink will when you die.
- Keep an up-to-date, detailed record of your assets (including accounts, insurance policies, investments) and debts. Keep this information with your will or where your executor can find it easily.

- Keep an up-to-date, detailed list with the contact information for all the beneficiaries you have named in your will, especially if the primary or backup executor you name does not know everyone personally. Keep this information with your will or where your executor can find it easily.
- If you have minor children, **see a lawyer** to make your Child Guardian Appointment, or use the free, basic **Child Guardian Appointment form** from the Legal Information Society's website to name a guardian(s) for your minor child or children.
- Look at your will every few years or any time you have a major event in your life, like a marriage, new common-law relationship, separation, divorce, the birth of a child, a move outside Nova Scotia, or the death of a beneficiary. Make a new will if you need to change anything.
- Regularly review any property you own jointly with someone else and assets with a named beneficiary, such as pension plans, life insurance, RRSPs, RRIFs, and TFSA, to make sure they still do what you want.
- If you decide to change your will, you can cancel (revoke) it by destroying it or making a new will. If you make a new will, destroy the old one so there is no confusion about which version should be used. See 'Cancelling your will' below for more information.
- Keep a current list of your personal electronic and digital assets. Examples are your email accounts, digital music and photographs, and social media accounts. Tell your executor what you want to happen with those assets.

Can I change my Will?

Yes. You can change your will at any time until you die if you are mentally competent and are not influenced or pressured by anyone else to make those changes. You should look at your will occasionally to ensure it is still what you want. For example, you may no longer own property mentioned in your will.

You may want to make changes because of big life changes like births, deaths, marriages, new common-law relationships, separations or divorces in the family.

There are two usual ways to change your will:

- **The best way is to make a new will.** The first clause of a new will usually says that it revokes any previous wills. The most recent will, if it is properly signed and witnessed, is the one that will be used following your death.
- You can write a separate document called a **codicil** to change part of your will. A codicil must name the will being changed, including a reference to the date the will was signed. It must clearly say which clauses are being removed or changed and set out the new terms of the will. The codicil should also say that apart from the changes it makes, you confirm the terms of the original will. You must sign the codicil and have your signature witnessed in the same

way as your will. **But codicils should be avoided**. A codicil is generally used only to make very minor changes to a will. Make a new will if you wish to make major changes or already have one codicil. Codicils are frequently lost and frequently written improperly. They are a hold-over from a time before computers when wills were handwritten or typed, and it was faster to write a codicil. Tools such as this wills app take care of that concern.



Tip: Never change your will by marking or crossing out words in the will. **Instead, make a new will**.

You must be mentally competent at the time you make the changes. You must also not be influenced or pressured by anyone else to make the changes. If it is found that you were not competent or were influenced to make the changes, your new will or codicil may be successfully challenged in court.

Cancelling your Will

There are five ways to cancel your will or parts of your will. This is called revoking a will.

- If you get married, your will is cancelled unless it says it is made as you prepare to marry that person and that you want it to stay valid after the marriage. This is called being made "in contemplation" of marriage.
- If you get divorced, parts of your will are no longer valid. In Nova Scotia, divorce revokes the parts of a will that give a gift to a former spouse, provide a benefit to a former spouse or appoint the former spouse as executor. There are exceptions: the will, a separation agreement, or a marriage contract may say that a divorce does not affect these parts of your will.
- You can write a document saying you want to cancel the will. You must sign it and have it witnessed in the same way as a will. For example, in one case, a bank manager had a person's will. The person became ill and signed a letter to the bank manager: "Please destroy the will I have already made out." The person had signed the letter in front of witnesses, and the letter cancelled the will.
- You can make a new will. A codicil just cancels clauses in a will.
- You can destroy the will or ask another person to destroy it in your presence. If your will is accidentally destroyed (for example, by a fire in which you die), a copy of the will can be used as long as there was no intention to cancel your will. However, a judge would need to consent for the copy to be used, as the legal starting point (presumption) is that only an original will may be used in Nova Scotia for probate and estate administration.

Burial and Funeral Instructions

Burial instructions are not legally binding. They are considered an expression of your wishes. Your executor might not read your will until after your funeral and burial, so if you put burial instructions in your will, your executor might not see your instructions before the funeral and burial happen.

For these reasons, the wills app does not let you add burial instructions to your will.

But you should talk with your executor and family to ensure they know what you want. Your executor is legally responsible for making your funeral arrangements, so this discussion is especially important if your executor is not a family member or there are different expectations among family members about how best to honour you. You can learn more about **Planning Your Funeral** here.

Organ and Tissue Donation

The Nova Scotia organ and tissue donation law says you are deemed to have agreed to donate your organs and tissues after you die. This is called 'deemed consent'. You can opt out if you do not want to donate your organs and tissues. You can learn more, including how to opt-out, at **novascotia.ca/organtissuedonation**.

For information about organ and tissue donation and how it works, visit **www.nshealth.ca/legacy-life**.

Where can I get more help?

The Legal Information Society of Nova Scotia has more **information about wills and other estate planning documents**.

Finding a lawyer who does wills

It is a good idea to speak with a lawyer who focuses on estate planning, including wills, and if possible, a lawyer with a Trust and Estate Practitioner or "TEP" designation. **Go here for information about ways to find a lawyer** who does wills and estates work.

Important links

- Confederacy of Mainland Mi'kmaq - **cmmns.com**
- Canada Revenue Agency: Doing Taxes for Someone Who Has Died - **canada.ca/en/revenue-agency/services/tax/individuals/life-events/what-when-someone-died.html**
- Canada Revenue Agency, Prepare tax returns for someone who died: *What Returns You Have To File* - **canada.ca/en/revenue-agency/services/tax/individuals/life-events/what-when-someone-died/final-return.html**
- Nova Scotia Legal Aid: **nslegalaid.ca**
- Nova Scotia Courts: Probate Court - **courts.ns.ca/probate_court/nspbc_home.htm**
- Nova Scotia Public Trustee - **novascotia.ca/just/pto**
- Nova Scotia Land Titles Initiative - **novascotia.ca/land-titles**
- Nova Scotia Domestic Partnership Form - **beta.novascotia.ca/register-your-domestic-partnership**
- Nova Scotia Family Law - **nsfamilylaw.ca**
- Nova Scotia Apply to Terminate Your Domestic Partnership - **beta.novascotia.ca/terminate-end-your-domestic-partnership**
- Nova Scotia Organ and Tissue Donation: **novascotia.ca/organtissuedonation**
- Nova Scotia Health Organ and Tissue Donation information: **nshealth.ca/legacy-life**

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