A will is a legal document in which you stipulate who is to inherit your property and the share to be received by each heir. While it seems simple on the surface to make a will, you must nevertheless take the time to become well-informed before drawing one up.

Who cannot inherit from you?
What types of wills are recognized by law?
What is the liquidator's role?
When does a will have to be probated?
All of these questions are answered in the brochure *My Will*.

This publication, prepared by the Ministère de la Justice du Québec, contains a form that you can complete yourself and use as your will.

The information in this brochure is consistent with the legislation in effect in July 2014.

Justice Québec

la justice à votre portée

My Will

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My Will

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What is a will?

A will is a legal document in which you stipulate who is to inherit your property and the share to be received by each heir. You can revoke your will at any time. In other words, you can make a new will as often as you like.

You can also add or amend certain clauses by means of another document of a testamentary nature. To be legally valid, an amendment (also called a codicil) must meet the same requirements and formalities as the will, but it need not be in the same form.

For your will to be valid, you must be of full age when you make it, as well as of sound mind and under no constraint or undue influence.

Minors can, however, bequeath their non-valuable property—CDs, tapes, bikes, photographs and toys, for example.

A person's legal capacity to make a will is not diminished by the requirement to call upon an adviser or a tutor for assistance.

There are three types of wills: holograph wills, wills made in the presence of witnesses and notarial wills. The type of will you choose will depend on your wishes or situation, or any other reason you may have.

IMPORTANT

- Before writing your will, you should make a written inventory of your property (house, cottage, savings bonds, etc.) and debts (e.g. mortgages, loans). Such an inventory, if up-to-date, complete and dated, will be of great help to the persons settling your succession.

- A will is not the best place in which to specify how you wish your body to be disposed of and the type of funeral service to be organized since, in most cases, the contents of a will are officially disclosed only after the deceased has been buried or cremated. You should therefore indicate your wishes in this regard in a document that can be read immediately after your death.

- If you have assets of a certain value or whose transfer after your death could have tax implications (for example, RRSPs), you would do well to consult a specialist before drawing up your will.

About heirs

Your heirs have six months in which to accept or renounce your succession. A notarial act or judicial declaration is required to give effect to a renunciation.

Heirs who accept a succession must discharge its debts. However, they are not as a rule required to pay the portion of the debts that exceeds the value of the property inherited. Nevertheless, they must pay the debt amount in excess of assets if, for example, they do not inventory the property of the deceased, they do not distinguish their own property from that of the deceased or they decide to liquidate the succession without following the rules set down in the Civil Code of Québec.

Single heir

If you leave all of your property to one person, you should provide for one or more other heirs in case the first person dies before you, or you both die at the same time.

Minor child

Parents of a minor child can name a tutor for the child in their will, in case both parents die before the child becomes of full age. When one parent dies, tutorship is assumed by the surviving parent. If both parents die before the child is of full age, but not at the same time, the tutor is the person named by the last living parent.

"Groups" of heirs

The use of generic terms such as "my children", "my nephews and nieces" or other similar expressions to designate your heirs can give rise to a contestation before the court.

Suppose, for example, that you write "I bequeath all of my property, in equal parts, to my children". If one of your children were to die before you and leave children of his or her own—your grandchildren—the latter would inherit the portion of your succession that you had bequeathed to your deceased child. If you do not wish your grandchildren to inherit, you must state this clearly in your will.

Your spouse

Regardless of the matrimonial regime—separation as to property, community of property or partnership of acquests—a succession cannot be liquidated until the family patrimony has been partitioned and the terms of the matrimonial regime have been applied. This means that you cannot bequeath the surviving spouse's share of the family patrimony or share of property under the matrimonial regime. Nor can you limit the rights of the surviving spouse in the event he or she remarries or enter a new civil union.

Under the rules governing the partition of family patrimony, the surviving spouse is entitled to half of the net value of the following property accumulated **during the marriage or civil union**: the principal residence and the secondary residences used by the family, the furniture used by the family to furnish and decorate the residences, the motor vehicles used for family transportation, the rights accrued in a pension plan, and the earnings registered under the Act respecting the Québec Pension Plan or equivalent programs.

Persons who cannot inherit

A legacy, that is, property left to someone under a will, is considered null and void by law if it is in the name of a spouse you divorced, unless you stipulate that the legacy stands in spite of the divorce.

Legacies made to the owner, the administrator or an employee of a health or social services institution where the maker of the will was a resident are also null under the law, unless of course the owner, administrator or employee is the spouse or a close relative of the deceased.

People who act as witnesses when you sign your will, as well as the notary and the notary's spouse or relative in the first degree (such as the notary's children), cannot inherit from you.

IMPORTANT

- You cannot require an heir to accomplish an impossible task in order to receive his or her inheritance, or to carry out an illegal or amoral action or an action detrimental to public order.

Holograph will

The holograph will is the simplest kind of will. It costs nothing and can be only a few lines long.

Below is a sample holograph will.

> *I, Laura Fraser, bequeath all of my property to my daughter, Colleen.*
>
> *Signed: Laura Fraser*
> *Montreal, January 15, 1994*

If you opt for a holograph will, it must be written entirely in your handwriting and bear your signature. Accordingly, you cannot use a form, typewriter or computer. No witness is required for this type of will. You should date the will, even if it is not necessary to do so for the will to be valid.

No one but you will know of the existence of the will, unless you choose to inform someone you trust of its whereabouts to ensure that it is found when needed. You can also entrust it to a notary or a lawyer, who will see that it is entered either in the Register of Wills kept by the Chambre des notaires du Québec or in that of the Barreau du Québec.

Upon your death, your heirs must have your will probated by the Superior Court or a notary before carrying out your last wishes.

IMPORTANT

- If you write your will in a language other than French or English, your heirs must have it translated, and then file the translation and the original with the Superior Court or a notary at the time the will is probated.

Will made in the presence of witnesses

Like the holograph will, a will made in the presence of witnesses is a will that you draw up yourself. A simple form is provided at the end of this publication for that purpose.

You can write the will by hand or on a typewriter and sign it yourself. You can also have someone else draw it up, and either sign it yourself or have the person who prepared it sign for you.

In the case of this type of will, however, you must declare, in the presence of two witnesses of full age, that the document is indeed your will. You must sign or initial each of the pages. In addition, both of your witnesses, who must be present at the same time, must sign or initial the bottom of each page. You are not obliged to disclose the contents of your will to the witnesses. People who act as witnesses when you sign your will cannot inherit from you.

As with a holograph will, you can entrust a will made in the presence of witnesses to a notary or a lawyer, who will see that it is entered in the Register of Wills. Otherwise, you can inform a person you trust of the whereabouts of your will.

Your heirs must have the contents of your will probated by the Superior Court or a notary, as in the case of a holograph will.

IMPORTANT

- If you think that the settlement of your succession will be less than straightforward, because of the value of the property bequeathed or the protection you wish to ensure for young children or a person suffering from a disease, or for any other reason, we suggest that you consult a specialist before making your will.

Notarial will

More formalities are involved in a notarial will, that is, a will drawn up by a notary. Such a will must be made before a notary in the presence of a witness, and must specify the date and place of its making. If you opt for this type of will, you can request that the notary read it to you alone, that is, without the witness being present.

Notarial wills offer a number of advantages. For example, since the notary keeps the original of the will, there is no risk of your losing it and your heirs will be certain to have it on the day of your death. You benefit from the notary's experience and advice. There is no risk of your making any mistakes that could prove troublesome for your heirs. There is no fear of anyone contesting the carrying out of your last wishes, as this type of will holds up better in a court of law. Lastly, contrary to the two other types of wills, the notarial will does not have to be probated by the Superior Court.

A deaf person who is unable to speak, read or write

A deaf person who is unable to speak, read or write may make:

- a **notarial will**, provided the person conveys his or her wishes to the notary through a sign-language interpreter. The testator, in the presence of the notary and a witness, declares, by the same means, that the document that the interpreter translated to him or her is his or her will;
- a **will in the presence of witnesses** through a sign-language interpreter. The interpreter makes the testator's wishes known to the person the testator has chosen to draft the will. In the presence of witnesses and by means of the interpreter, the testator then declares that the document that the interpreter translated to him or her is his or her will.

  Where possible, the testator affixes his or her signature or a personal mark at the end

of the will. Otherwise, a third party may sign for the testator, in the testator's presence and in accordance with the testator's instructions. The witnesses then sign the will immediately in the presence of the testator.

The sign-language interpreter

The sign-language interpreter is chosen by the testator from among those qualified to exercise their functions before the courts. The interpreter cannot be married to or in a civil union with the testator or be related to the testator or the testator's spouse, to the third degree.

Before exercising his or her functions, the interpreter must swear that he or she will act with impartiality and accuracy and not disclose any information related to the mandate. The oath is made in writing in the presence of the testator and witnesses and, in the case of a notarial will, in the presence of the notary, or, in the case of a will in the presence of witnesses, in the presence of the person drafting the will. The original of the oath is attached to the will.

The liquidator

The liquidator (previously referred to as the testamentary executor) is the person entrusted with seeing to the liquidation of your succession. The liquidator retains his or her powers throughout the period required to liquidate your succession, and must execute primarily the following tasks: make an inventory of your property; pay the debts of the succession; distribute the property; and publish a notice of closure or end of inventory in the register of personal and movable real rights as well as in a newspaper of the locality where you were living at the time of your death.

You do not have to name a liquidator in your will, but it is always wise to do so. You can even name a replacement should the first person designated not be able or not wish to take on the task.

If you do not name a liquidator, the role will fall to all of your heirs, who can either assign each other specific tasks or agree on naming a liquidator. If your heirs cannot reach an agreement in this respect, the court can name a liquidator, where an interested person so requests.

If the liquidator is not your heir, it would be wise to provide for his or her remuneration.

It should be noted that the rules for liquidating a succession set forth in the Civil Code of Québec need not be followed if the succession is manifestly solvent and all of the heirs agree with proceeding that way. However, were the debts of the succession to exceed the value of the property left by the deceased, the heirs would be required to discharge the total debt amount.

Probate of the will

The validity of holograph wills and wills made in the presence of witnesses must, without exception, be probated by the Superior Court or a notary. It should be noted that wills prepared or drafted by a lawyer are considered to be wills made in the presence of witnesses and, as such, must be probated. Similarly, amendments to the initial contents of a will must also be probated if they are made in holograph form or in the presence of witnesses.

Probate does not mean that the will cannot subsequently be contested. Rather, probate serves primarily to:

- make the will accessible for public consultation, since it is filed in the archives of the Superior Court or of the notary having probated it;
- establish, by all appearances, the validity of the will;
- allow for the issuance of certified true copies of the original.

A will must be probated by the Superior Court in the judicial district of the residence of the deceased, or by a notary.

IMPORTANT

- **Notarial** wills and amendments (also called codicils) are authentic deeds and, as a result, they do not have to be probated to ensure their validity.

Testamentary clause in a marriage or civil union contract

Marriage or civil union contracts can contain a testamentary clause whereby the surviving spouse receives all the property of the spouse who dies first. Legally, this clause carries the same weight as a notarial will.

If the testamentary clause is identified as being irrevocable, you must obtain your spouse's consent to have it amended. However, if, when the testamentary clause was drawn up, it was stipulated as being revocable, or if it makes no mention of irrevocability, you can make a will as you see fit.

Life insurance of the deceased

If a beneficiary is expressly designated in your life insurance policy, the life insurance money does not constitute part of the succession.

If your policy states that the insurance is payable to the "succession", "successors", "heirs", "liquidators" or "legal representatives" or any other person designated by a similar term, the life insurance money is included in the succession.

All designations of the spouse as a beneficiary lapse in the event of a divorce or annulment of a marriage, or the dissolution or annulment of a civil union.

Survival of financial obligations

Obligation of support

You cannot, in a will, terminate an obligation to provide support or be released from your financial obligations toward persons to whom you owe support, such as your former spouse in a marriage or civil union, your children or your parents.

Your heirs will therefore be obliged to assume your financial obligations toward them for a certain length of time.

For example, if your surviving spouse or a child receives nothing in the will, or feels entitled to more, they may seek redress from the liquidator of the succession, provided they are in financial difficulty. The contribution that may be paid in this case is limited to half of what your spouse or child would have received had the succession been opened as provided for by law in cases where there is no will (see the section entitled “In the absence of a will”, pages 14 and 15). Any amount already received from the succession is subtracted from this contribution.

The above financial contribution can be equal to 12 months of support in the case of a former spouse to whom you were paying support at the time of your death, and to six months of support for all other creditors of support. In either case, the contribution cannot exceed the lesser of the value of twelve or six months of support, or 10% of the value of the succession.

Except in the case of a former spouse to whom you were paying support at the time of your death, the amount of contribution is determined with the liquidator, who must obtain the consent of the heirs or, if no agreement is possible, by the court. The amount can be paid in a lump sum or in instalments.

IMPORTANT

- Grandparents no longer have obligations of support toward their grandchildren.

Surety

Your death puts an end to any commitments you may have made as the guarantor or surety of another person. Your heirs will be required to discharge only that person's debts outstanding at the time of your death. They will be under no obligation for the debts contracted by the person after your

In the absence of a will

If you do not make a will, your property will be distributed among your legal heirs, who are your spouse (the person with whom you were married or joined in a civil union, or from whom you were separated but not divorced, or with whom your civil union was not dissolved) and your children or, if you have no children, your parents.

Before any property is distributed, the surviving spouse receives half of the net value of the family patrimony and the property to which he or she is entitled under your matrimonial regime. Specific rules govern the distribution of the remainder of the succession. These rules are as follows:

- If you leave a spouse and children, your spouse is legally entitled to one-third of the succession, your children to two-thirds.
- If you have no children but are survived by your spouse and parents, two-thirds of the succession is legally the surviving spouse's, while one-third is rightfully your father and mother's. Any siblings you may have do not inherit.
- If you have no children or living parents but are survived by your spouse and brothers and sisters (or by the children of a deceased brother or sister), the surviving spouse is legally entitled to two-thirds of the succession, privileged collaterals to one-third.
- If you have children but no spouse, the entire succession goes to your children.
- If you have no spouse or children, the succession devolves to your parents, your siblings and the siblings' children. If there are no such relatives, the property is distributed to the other direct ascendants or collaterals.

The table below summarizes the rules governing the distribution of property in the absence of a will.

DISTRIBUTION \ HEIRS	Children or their representatives	Surviving spouse	Father and mother, or one or the other	Siblings or their representatives	Nephews and nieces
	Everything	▬	░	░	░
	2/3	1/3	░	░	░
	▬	Everything	▬	▬	▬
	▬	2/3	1/3	░	░
	▬	2/3	▬	1/3	░
	▬	▬	Everything	▬	▬
	▬	▬	1/2	1/2	░
	▬	▬	▬	Everything	░
	▬	2/3	▬	▬	1/3
	▬	▬	1/2	▬	1/2
	▬	▬	▬	▬	Everything

▬ No such successors

░ Exclusion of such persons from the succession, given that other successors take priority over them

De facto spouses and in-laws (brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, etc.) are not considered legal heirs under the law. They can inherit from you only if you specify them as your heirs in your will.

IMPORTANT

- You should re-read your will from time to time in order to ensure that it is still consistent with your wishes, needs and current situation.

Instructions for completing the will form

Fill in the blanks below with the information requested (refer to the corresponding numbers in the key).

Page I

I, ____1____,
residing at ____2____,
revoke all testamentary dispositions previous to this will.

I declare that I am ____3____**.**

I dispose of my property as follows: ____4____

Page III

Other dispositions

I name ____5____as my testamentary liquidator.

In the event of the above-named person's death, refusal, resignation or legal disability to act, **I name** ____6____ as a replacement.

I name ____7____as the tutor of my minor children.

Date ____8____

____9____
Testator's signature

I declared the above text to be my will and the signature on it to be my signature, after which the persons below signed together, in my (the testator's) presence.

Date ____10____
Name of witness ____11____
____________12______________
Signature of first witness
Address ___________13_________
Profession ________14_________

Date ____10____
Name of witness ____11____
____________12______________
Signature of second witness
Address ___________13_________
Profession ________14_________

KEY

1. Your name
2. Your address
3. Your civil status (e.g. married, single, divorced)
4. Name of your heir or heirs, and the property you are leaving them (indicate amounts in figures and in words to avoid all confusion and reduce the risk of contestation)
5. Name of the liquidator of your succession
6. Name of the replacement for the above person
7. Name of the tutor you designated for your children
8. Date on which you and the witnesses sign the will
9. Your signature
10. Date on which you sign and have the witnesses sign
11. Name of the witnesses
12. Signature of the witnesses
13. Address of the witnesses
14. Profession of the witnesses

IMPORTANT

Make sure that each page of your will has been initialled by you and the witnesses.

In the same collection

Cohabitation Contract
(Ministère de la Justice)

Application for the Probate of a Will
(Ministère de la Justice)

Joint Application for Divorce on a Draft Agreement
(Ministère de la Justice)

Joint Application for Review of Accessory Measures
(Ministère de la Justice)

Joint Application for the Determination of Custody, Access and Child Support
(Ministère de la Justice)

My Mandate in Case of Incapacity
(Public Curator of Québec)

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This is my last will and testament

I, ______________________________,

residing at ______________________________,

revoke all testamentary dispositions previous to this will.

I declare that I am ______________________________.

I dispose of my property as follows:

____

____

____

____

____

____

____

____

____

____

Initials

______________	______________	______________
Testator	**First witness**	**Second witness**

Initials

Testator **First witness** **Second witness**

Other dispositions

I name ____ as my testamentary liquidator.

In the event of the above-named person's **death**, refusal, resignation or legal disability to act, **I name** ____________________________________ as a replacement.

I name ____________________________________ as the tutor of my minor children.

Date _____________________________, 20 _____

____
Signature of testator

I declared the above text to be my will and the signature on it to be my signature, after which the persons below signed together, in my (the testator's) presence.

Date ____________________________

Name of witness ________________

____
Signature of first witness

Address __________________________

____

____

Profession ________________________

____

Date ____________________________

Name of witness ________________

____
Signature of second witness

Address __________________________

____

____

Profession ________________________

____

Initials

_________________ **Testator**

_________________ **First witness**

_________________ **Second witness**

My Will

Name