Succession and wills:

what you need to know

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Source

A will is the means by which you make your voice heard one last time after your absence. Its purpose is to transcribe and enforce your wishes. Here is an article to help you better understand the laws surrounding succession in Quebec

What's in a Will:

As we've said, a will is the document that determines what will happen after your death. But what exactly is in a will?

First of all, the will groups and lists your property, your assets that will be left to your heirs and successors. It also contains the names of your heirs and successors and their respective shares. Who can be designated as heirs? Your children, parents, grandchildren, friends... anyone to whom you wish to leave something.

However, it is also your responsibility to designate the liquidator of your estate. This person will be in charge of closing the deceased's accounts and declaring taxes, and distributing the assets to the heirs.

A key person in the smooth running of your estate, you must also provide for his or her remuneration and a replacement in the event that the person chosen at the outset cannot assume the role of liquidator.

Each will is unique and will therefore contain points and clauses specific to your situation (married, divorced, without children, life insurance, etc.). In order for your last wishes to be respected, your will must be clear and contain no ambiguity regarding its content. This is why it is recommended to consult a notary or a lawyer to draw up your will.

Types of wills :

There are 3 types of wills recognized in Quebec: the holograph will, the will made before witnesses and the notarial will. However, in order for them to be valid, they must respect certain conditions.

A holograph will must be handwritten and include the date and place of writing as well as your signature. One of the main advantages of this type of will is that it does not cost you anything and it can be written at any time. However, a holographic will must be validated after your death, which entails costs for your successors. Note that it is your responsibility to write all your wishes clearly and to keep it in a safe place or it may be lost.

A witnessed will can be prepared by you or a lawyer, by hand or on a computer, but must be signed by two witnesses at the same time. The latter must then confirm that it is you and your will and sign it in turn. Like the holographic will, the witnessed will can be free of charge if you do not use a lawyer. However, it must also be validated after your death and kept in a safe place so that it is not misplaced.

A notarial will is a will prepared by a notary. Written in English or French, including the place and date, it must be signed by you in the presence of a notary and a witness. It must then be read to you so that you can be sure that it respects your

wishes. The main advantage of such a will is that it does not need to be validated, it can be easily found and it is difficult to contest. However, a notarized will will incur notary fees.

To choose between these 3 types of wills, you must determine your needs and the resources you are willing to invest in the production of the document. Rest assured, there is no one type of will that is better than another. If all the requirements are met, they have the same value in the eyes of the law and your wishes will be respected.

The mandate in case of incapacity

Except in the case of death, it is possible that at some point in our lives we will no longer be able to take care of ourselves or our property. This is called incapacity. Whether partial or total, incapacity can occur as a result of unfortunate events such as a serious accident, a mental or degenerative illness, or a mental handicap.

It is sometimes difficult to determine a person's unfitness. A person's fitness can be assessed by professionals. These professionals are in charge of carrying out a medical and psychosocial evaluation of the individual. This evaluation is necessary in order to obtain a mandate in case of incapacity.

The mandate in case of incapacity (or protection mandate) is the document that allows you to designate the person or persons who will look after your well-being and administer your property in case of incapacity. Unlike a will, which provides for what will happen to your property after your death, the mandate in case of incapacity is effective during your lifetime. As a private contract signed between individuals, the author of the mandate is free to include whatever he or she wishes. Generally speaking, it contains the clauses concerning the responsibilities you entrust to the mandatary with respect to the administration of your property, the protection of your person, but also the possible remuneration of your mandatary.

There are 2 types of mandates: the witnessed mandate and the notarized mandate. The conditions of drafting are similar to the notarized will and the witnessed will. Note that the witnesses you call upon do not have to be referred to in the mandate and must be easily traceable.

Keep in mind that your loved ones must be aware of the existence of such a mandate and have easy access to it in case of incapacity in order to submit your case to the court.

And without a will

Rest assured, if you do not have a Will at the time of your death, the law provides rules for naming heirs and distributing property among them.

Not everyone in your family will be an heir, and the heirs and distribution of property will depend on your situation. Generally speaking, your children and spouse inherit first, then your parents and finally your brothers and sisters.

Here are some examples:

Married or civil union	
Without children	Your spouse inherits 2/3 of your property Your parents share 1/3 of your property equally
With children	Your spouse inherits 1/3 of your property Your children share 2/3 of your property equally
Not married or in a civil union	
Without children	Your brothers and sisters share equally in half of your property Your parents share equally in half of your property
With children	Your children share equally in all your property
No spouse or children	
Without parents	Your brothers share all your property equally
With parents	Your brothers and sisters share equally in half of your property Your parents share equally in half of your property

Please note that :

- Your heirs are collectively liquidators of your estate

- Your common-law spouse is not an heir under the law.

- In the event of a divorce or separation without judgment, your ex-spouse can be one of the heirs.

In the end, securing your estate is not complicated if you have the necessary resources and know where to turn. This is an important step to take if you want your wishes to be respected and to alleviate the worries of your loved ones after your departure.