Common Questions about
Wills & Estates

What if you die without a will?

Can you change your will?

Why should you have a will?

What should you put in your will?

What makes a valid will?

YPLEA
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To our readers

Yukon Public Legal Education Association provides people with general information about Yukon law. There are a few things to keep in mind as you read this booklet.

- This booklet describes Yukon law, which is not necessarily the same as the law in other territories or provinces.
- The information was accurate at the time of publication, but the law, like the weather, can change without notice.
- General information about the law is not a substitute for legal advice, just as a textbook on health cannot replace a doctor's advice on a specific problem. We recommend that you talk to a lawyer for legal advice.
- We could not possibly include every detail on this subject and still make our booklet brief and understandable.
- The examples included are based on actual problems with Wills, but are not actual situations. Any resemblance to actual situations is unintended.

Legal terms are written in **bold** letters. These are explained at the end of the booklets in Appendix 2.

We hope you will find this material helpful in learning about the law. If you decide to make important decisions for yourself after reading this booklet, you may wish to consult a lawyer to make sure that your decisions are appropriate for your situation. Information about finding a lawyer is included at the end of the booklet. See Appendix 1: *Choosing a Lawyer*.

Happy reading!

1: What is a Will?

A Will is a written document setting out your wishes about dealing with your **assets** (the things you own) after you die.

You may include other wishes for after your death in your will, although these other wishes will not be legally binding in the way that the giving away of your assets will be.

For example:

- You may appoint a **guardian** for your children who are under 19 years of age.
- You may include your wishes for your burial or cremation.

Your Will may also include directions about how to deal with assets and give powers to your **executor** (also called a personal representative).

In order to be valid (legally enforceable), your Will must be properly signed and witnessed.

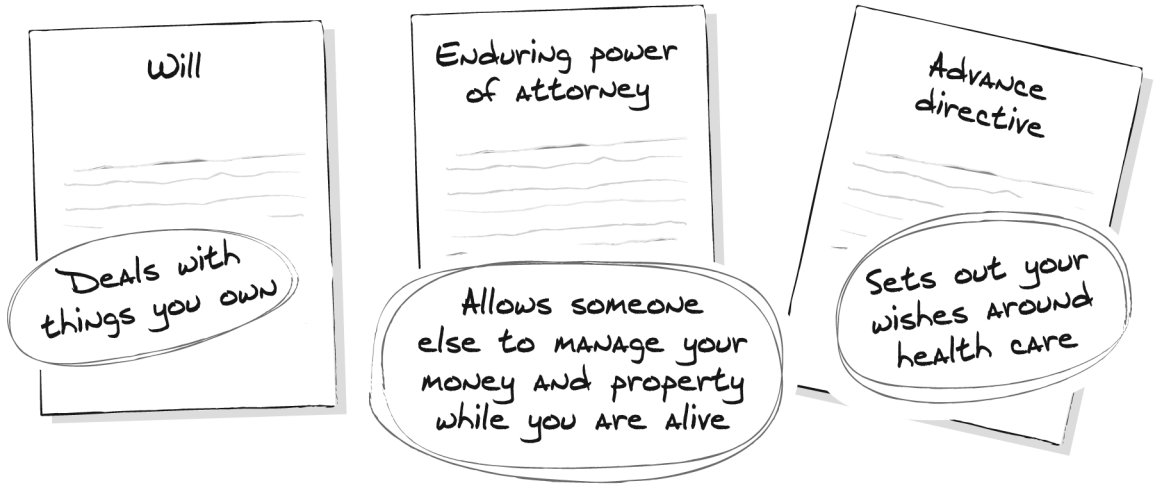
A Will can be updated or changed while you are alive and mentally capable. Unless there are unusual circumstances, you do not need the permission of your executor or any **beneficiary** to change your Will.

You are free to sell or give away any of your assets during your lifetime, even if the asset is mentioned in your Will. Your Will only applies to the assets you own on the date of your death. If an asset is mentioned in your Will but you no longer own it at the time of your death, the gift of it is said to have "failed". That part of your Will is simply disregarded.

When you die, your beneficiaries do not receive the inheritance or gift immediately. First the assets go to your executor.

Your Will only becomes legally binding after you die.

A Will is only one part of a total **estate plan** which can include your Will, insurance policies, an **enduring power of attorney** and an **advance directive**.



For information on either of these other documents, check other public legal education publications or speak to a lawyer.

2: Why should you have a Will?

Having a Will ensures that your **estate** will be distributed the way that you want. Not having a Will may cause delay, complication and uncertainty.

Some particular reasons for making a Will are:

- you want to choose your own executor rather than have that decision made by your relatives and need approval by a court;
- you have children but want your whole estate to go to your spouse unless your spouse dies before you do;
- you are living in a common law relationship;
- your family includes step-children, children from more than one relationship, or children from whom you are estranged;
- you are separated or divorced;
- you want your property to only go to the relatives you choose when you die, or in unequal portions;
- you own property on Settlement Land, lands set aside, or reserve land;
- you wish to give some of your estate to a charity or to someone who is not a family member;
- you want your children to receive their inheritance at an age other than 19 years;
- you want to name a guardian for your children should you die before they reach adulthood;
- you want to choose who will manage your children's inheritance until they are old enough to receive it or manage the inheritance of another beneficiary who is not able to manage their own finances.

3: What if you die without a Will?

If you die without a valid Will, you will be said to have died "**intestate**". Someone, usually your spouse or another relative, will need to apply to court to be appointed as **administrator** to act as your estate's **personal representative**. If no one takes this step, the **Public Guardian and Trustee** (an official employed by the Yukon Government) may make the application. The Public Guardian and Trustee will only act as a last resort.

The law requires an intestate person's property be used first to pay their debts. Money or other assets that are left after payment of all debts then go to relatives in a specific order or division. The rules for who inherits an intestate's estate are set out in Part 10 of the Yukon's ***Estate Administration Act***.

If you have a legal (married) spouse and/or children, your estate will go to them. If you do not have a legal spouse or children, your estate will go to your next of kin in a specific order based on the type of kinship – your parents have the first right, followed by your siblings, your nieces and nephews and then other blood relatives.

When someone dies without a Will, the distribution of their estate depends entirely on which of their relatives are alive at the time of their death. It does not matter what the deceased person's wishes were or might have been if those wishes were not recorded in a Will.

A person is also considered to have died intestate if their will is invalid. (See *Question 5: What makes a valid Will?*)

How your estate is divided after you die if you don't have a Will:

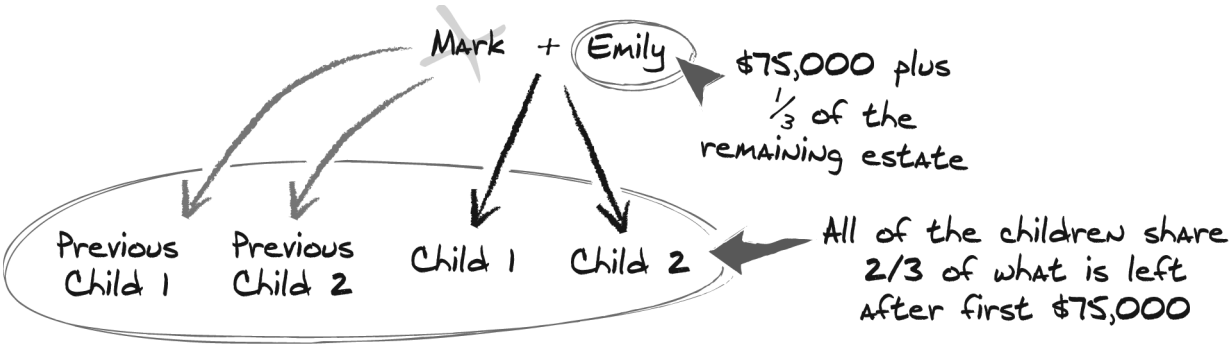
First debts are paid, then anything left goes to:

1) your legal spouse and/or children
2) if no spouse or children, then to your parents
3) if no living parents, then to your siblings
4) if no living siblings, then to your nieces and nephews

etc.

Example 1: **Remarriage**

Mark has two children with his wife, Emily. He also has two children from a previous relationship, whom he has not seen in over twenty years. Mark dies without a Will. Under the rules in the *Estate Administration Act*, Emily will receive the first $75,000.00 of his estate. The rest of Mark's estate will be divided; Emily will receive 1/3 of the estate and the four children share the remaining 2/3 between them equally. This likely isn't what Mark would have wanted, but because he did not have a Will, the law says this is how his estate will be divided up.



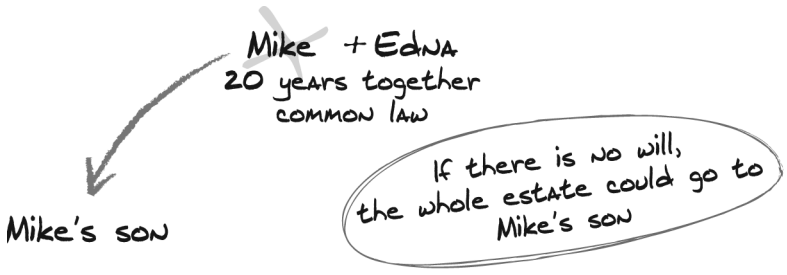
Other possible considerations

If you are a citizen of a self-governing Yukon First Nation, you should check whether your First Nation government has passed any legislation about Wills or estates. This could include provisions within related legislation, such as lands or housing legislation and policies. If your government has created laws that apply to Wills or property on Settlement Land, that legislation may apply instead of general Yukon law.

If you are a status Indian living on reserve or lands set aside and not a citizen of a self-governing Yukon First Nation, some of the information in this booklet may not apply to you. You should contact the department of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) or speak to a lawyer.

Example 2: **Common law relationship**

Mike has been living with Edna for twenty years, but they have never married. Their home is in Mike's name only. Mike keeps meaning to make a Will, and he often tells Edna that everything will go to her anyway. Mike dies, never having made that Will. Soon afterwards, Mike's son Jeremy comes to Mike's house, where Edna now lives alone, and tells Edna she has to move. Jeremy says that since Mike had no Will, according to the *Estate Administration Act*, everything goes to Jeremy. Edna is grieving for Mike, but now she has to go to court to try to keep her home. She needs to make an application to a judge to be recognized as Mike's **common law spouse** and then to be awarded a share of the estate. Jeremy may oppose Edna's application and even argue that if Mike had wanted the house to go to Edna he would have made a Will or transferred it to Edna while he was alive.



A common law spouse is not automatically entitled to share in their spouse's estate but they are entitled to apply for a share. They will need to make an application to court and then it is at the discretion of a judge whether they receive anything and, if so, how much.

If you are the common law spouse of a person who dies without a Will, you should seek legal advice as soon as possible. Under the *Estate Administration Act*, if you lived with a person in a marriage-like relationship for 12 months before the person's death, you are considered their common law spouse.

4: Who can make a Will?

Any adult who has the **mental capacity** to do so can make a Will. In the Yukon, adult means someone who is 19 years or older.

Mental Capacity

The standard for mental capacity depends on the type of decision being made. To make a Will, you must at the time of signing your Will:

- understand that you are making a Will,
- understand the effect of the proposed distribution of your estate,
- appreciate the nature and extent of the property (assets) that you own, and
- appreciate any obligations you have to your family and any dependants.

You are assumed to have the mental capacity to make a decision, including to make a Will, unless there is evidence that you do not.

You might lack decision making capacity if you have, for example: dementia, a mental illness, had a stroke, a brain injury or if your consciousness is impaired temporarily, including due to medication or anaesthetic.

However, just because you have one of the conditions above doesn't necessarily mean you don't have mental capacity, or don't have mental capacity some of the time.

It is important to remember that:

- You can have the mental capacity to make some decisions, but not others. For example, you might be perfectly able to decide what you want to wear that day, but not have the mental capacity to choose whether or not to sell your house.
- You may have mental capacity some of the time, and not other times. For example, you might find you think clearly in the morning, but lose that ability as you become tired during the day.

Undue Influence

Your Will must be made freely and voluntarily by you, without **undue influence**. It must be clear that you weren't pressured to include someone in your Will, or to leave someone out. Unfortunately, elderly people, especially if they are in poor health and dependent on others for care, are often subject to attempts to unduly influence them.

Example 1:

Marion is 86 years old. She has two daughters. One of her daughters, Caroline, lives nearby and helps out. Her other daughter, Heather, is far away but keeps in touch with her mother by phone. Caroline is angry that she does a lot of work and her mother still wants to split her estate equally between Caroline and Heather. Caroline starts to say nasty things to her mother about Heather. Every time Caroline visits, she asks her mother to change her Will to "make it more fair". When Marion says she does not want to talk about it, Caroline says she will not bring over the groceries Marion needs until she talks about the Will with her. Marion can get no peace, and finally, in order to have Caroline happy again, she agrees to change her Will.

A new Will made by Marion under these circumstances would be considered to have been made under undue influence. It shouldn't be legally binding. For the new Will to be challenged however, someone who knew the circumstances would need to bring the information before a court. If the only people who know about the undue influence are Marion and Caroline, once Marion is dead, there will be no one who would do that.

Example 2:

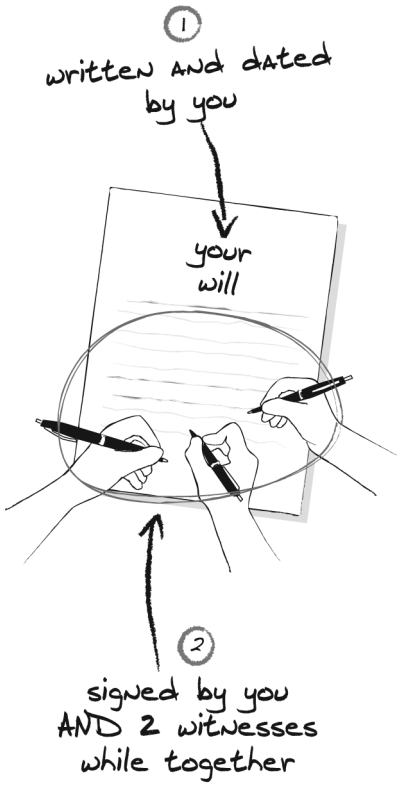
Anna is getting on in years and has been diagnosed with early Alzheimer's. Her husband died ten years ago and she has been living on her own, but now her children are worried about her. She has been talking about doing up a new Will. She keeps saying that her grandson, Jimmy, is the only one who cares about her. Jimmy has recently moved in with Anna, and other family members have heard Jimmy asking Anna for money. He drives her car on a daily basis and claims he is running errands for her. Yesterday, Anna's daughters went to visit their mother and found Anna crying and confused. She told them it had been months since anyone had come to visit, and that since her husband had died Jimmy was the only one who helped her out. Anna said again she was going to do a new Will.

If Anna signs a new Will at this point, she may lack mental capacity to do so. If Anna changes her old Will in favour of Jimmy, she likely is also doing so under undue influence.

5: What makes a valid Will?

The requirements of a Will are set out in the Yukon's *Wills Act*. Unless each of these requirements is met, your Will is not valid, and you will be considered to have died intestate (without a Will).

If you die intestate, the assets in your estate will be distributed among your relatives according to the law, rather than according to your wishes *(see Question 3)*. If you own property on Settlement Land and die intestate, it is also possible that your home could be distributed according to your First Nation's laws.



The requirements for a valid Yukon Will are these:

- Your Will must be in a written or printed document and dated.
- You must sign your Will (or have it signed on your behalf by another person in your presence and at your direction) at the very end of the document. In most cases, any words written after your signature will not be considered part of your Will.
- Your signature must be permanent (use ink, not pencil).
- You must sign your Will in the presence of two witnesses, both present together when you sign. (In other words, three people are there when your Will is signed: you and the two witnesses.) *See Sample Affidavit of Witness in Appendix 4.*
- Your witnesses must be at least 19 years old and have mental capacity.
- The two witnesses must also sign their names on your Will, in your presence and in the presence of each other.

Example 1: The improperly signed Will

Harold lives out of town. He is friends with his neighbours, Jim and Jennifer. One night he asks them to come over to witness his Will. Jennifer comes at 7:00. Harold has his Will typed and printed out and he signs it in front of Jennifer. She also signs the Will and then goes home. Jim is cutting firewood and comes over at 9:00. He signs the Will too.

Because Jennifer and Jim did not sign the document at the same time and did not both see Harold actually sign the Will, the Will is not valid.

More about witnesses to your signature:

Although it would not invalidate your entire Will, if either of the witnesses to your signature is a beneficiary or the spouse of a beneficiary under the Will, any gift you make to them or their spouse under your Will is invalid.

It is a Yukon Government policy that social workers, home care workers and other Health & Social Services employees, may not act as a witness to the signing of a Will or other legal document.

There are different validity requirements for Wills in other Canadian provinces and territories and in other countries. You should consult a lawyer to ensure that your Will is valid in the places where your property (especially land) is located. Your Will must be valid in any jurisdiction where you own land in order to have your Will apply to that land.

You should also consult a lawyer if you own any property located on Settlement Land to ensure that the provisions also are consistent with any laws that the First Nation has passed.

Handwritten Wills

Most of the regular requirements of validity do not apply to a **holograph Will** (an entirely handwritten Will).

A holograph Will is written entirely in your handwriting and then signed by you. In the Yukon, a court will usually recognize a holograph Will as valid even if it was not witnessed.

Note that holograph Wills are not recognized in many parts of Canada, the United States and other countries.

Holograph Wills can create uncertainty as to when they were made and under what circumstances. Unless a court decides to let it stand, the document will have no legal effect and will not be followed in distributing your estate. Any court application, even if successful, is likely to be complicated and expensive and your estate would probably have to pay for it.

Will forms that are partially pre-printed and partially filled in by hand are not holograph Wills and must still meet the regular Will validity requirements listed above. If another person writes out a Will for you and you only sign it, that is also not a holograph Will. *(See Question 6 "What about Will kits or forms?).*

Simply writing down what your wishes are is not enough. If your Will does not meet the requirements in the *Wills Act*, it will not be valid.

Example 2: The handwritten Will

Harold decides he wants to make a Will, but his handwriting is bad and he doesn't like computers. He asks Jennifer to handwrite a Will for him. Jennifer writes down exactly what Harold says. Harold says that he wants to read through the Will before signing it. Jennifer goes home, and later that night Harold signs the Will with no one witnessing it. The Will is handwritten, but not by Harold.

No one witnessed Harold signing the Will, and the Will is not a holograph Will because it is handwritten but not by him. The Will is not valid.

Avoiding Problems

In addition to the requirements listed in this section, there are other practices which you should follow to avoid potential problems:

- If you need to correct your Will at the time it is being signed, cross out the incorrect words and clearly write in the changed wording. You and your two witnesses must initial every change in the presence of each other.
- There should be only one original Will (bearing the original signatures) so that if you decide to destroy it in the future no other "originals" are mistaken for an existing valid Will. You can make copies after the Will is signed and witnessed, if you would like to do so.
- Your original Will should be kept in a safe place, and you should tell your executor where the Will is and how to retrieve it. A safety deposit box or personal safe are good options; make sure though that someone other than yourself will have access to it after your death.
- You may want to give a copy of your Will to your executor.
- The *Wills Act* provides for the creation of a Wills Registry, but at the time this book was published that had not been done.
- When signing the Will, you and the two witnesses should initial the bottom of each page that comes before the signature page so there is no question of pages in your Will being replaced after the Will was signed.
- Lawyers usually have at least one of the two witnesses sign an Affidavit affirming that they saw the testator sign the Will in the presence of the other witness. After your death, your Will must be proven to have been properly signed. Having one or both witnesses sign an Affidavit immediately after the Will is signed, is the easiest way to create this proof. A notary public or a lawyer will need to notarize the Affidavit.
- If your Will is contested after your death, it would be helpful if your witnesses could be located to give evidence about your mental capability, intention and freedom from undue influence at the time the Will was made. You should choose witnesses who are reliable adults and who can be located later if necessary.

6: What about Will kits or forms?

Will forms, also known as Will kits, can be used to prepare a valid Will. However, some problems frequently arise with Will kits.

- It can be difficult to fill in the blanks with words that are clear enough for a court and/or your survivors to know what you meant. Many commonly used words have a different meaning in law. For example, the word “money” does not include RRSPs, term deposits or Tax Free Savings Accounts. Words such as “personal possessions,” “family members” and “spouse” are words that mean different things to different people or in different contexts. Sometimes the legal meaning of a word or phrase is different than what you mean. This can create confusion or lead to arguments. Remember that people will be reading your Will after you are dead; you won’t be there to explain what you meant.
- Forms and kits are generally designed for use in places other than the Yukon (for example, in Ontario or British Columbia). Laws of inheritance, laws about family responsibilities and legal requirements for valid Wills vary from one jurisdiction to another. In particular, Wills laws in the Yukon are very different from in British Columbia. As a result, even if you follow the instructions for the kit carefully, you cannot be confident the document will be appropriate for use in the Yukon.
- Often, what Will kits and forms do not say is as important as what they do say. If you have not considered all possible situations that might exist when you die, a serious problem could arise. For example, if your Will says that all your property is to go to your spouse but then your spouse dies before you, you need to have said what you want to happen in that situation.

While you might think that asking a lawyer to review a Will you prepared with a Will kit will take less time and be less expensive than retaining a lawyer to draft a Will, that is almost never the case. Many lawyers will refuse to review a Will prepared with a kit because it would take them more time to do that than to draft a Will using their own template.

Example 1: Fred's use of a Will kit

Fred buys a Will kit and fills it out. He thinks his Will is straightforward. He leaves his house to his wife, Frances, and the money in his bank accounts to his children from a prior relationship who are 12 and 10. Fred's house is on Settlement Land and, while he has a good relationship with his ex-partner, she is a bit of a spendthrift, and he has done most of the planning and saving for their children's education and other future needs.

Fred passes away. Frances is a citizen of a different Yukon First Nation, and Fred's First Nation does not have a policy or law about whether Frances can remain on its Settlement Land. Fred's money cannot go directly to his children because they are too young to inherit, and Fred has not appointed a Trustee to manage it until they are older; either the Public Guardian and Trustee will charge a fee to manage it, or they will let his ex-partner manage it. As well, if Frances has to find new housing, she may need to make a claim against his estate as a dependant.

Example 2: **Betty's assets**

Betty runs a construction business. She owns a big property, and she uses most of the property to operate the business. She lives in an apartment above the main office.

Betty finds out she has an illness and decides to make a simple Will using a form she finds online. She leaves her shares in the business to her business partner, Gary, and the rest of the estate to her brother, John. Betty thinks this should be fair, but she hasn't really done the math. The property is in her name, not owned by the business. Some of the equipment is owned by Betty personally, even though it is used by the business. Betty's bank accounts are confusing, and she used a business credit card for personal expenses. Betty hasn't filed tax returns for the last 5 years.

Gary and John start to argue about the Will and what Betty meant to leave to each person. Gary thinks he should get the land and all the equipment, even though both were in Betty's name. John disagrees.

Betty may have created a bigger problem for the estate by not discussing these issues with a lawyer, who could have advised Betty on how to make her wishes clear and on steps she could take while still alive to avoid problems after her death.

Lawyers are trained to reduce the risk of problems arising by identifying possible issues and using language precisely. Because of their training and experience, a lawyer will be able to spot and address issues that may not occur to you if you write your own Will or use a kit.

7: What should you put in your Will?

If you write your own Will, it should follow the standard format, which is described on the next page. We recommend though that you use a lawyer to prepare your Will, so you can be confident it meets your needs and the legal requirements.

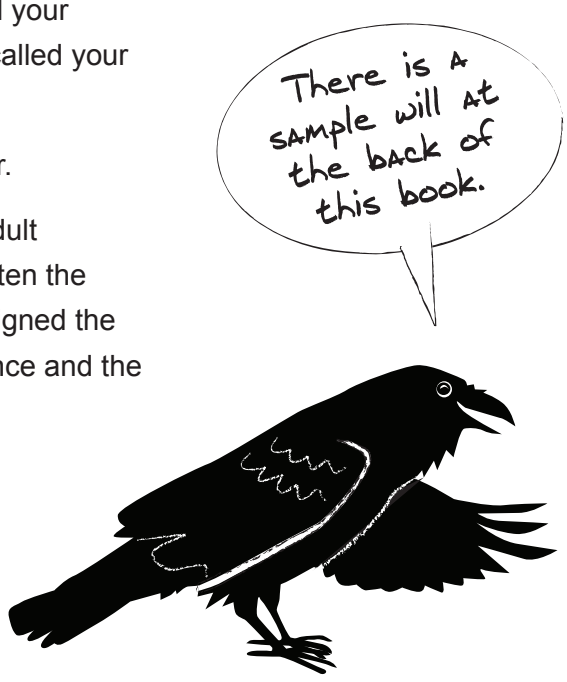
Here are some examples of situations that would make the services of a lawyer especially valuable:

- Karen received a big inheritance five years ago. She still lives modestly and doesn't think of herself as "rich," but she has substantial property, with money and other assets in various places.
- Margaret wants to leave gifts to several different people and to set up a charitable foundation for nursing students.
- Greg has two adult children with his first wife and three younger children with his second wife, Jenny. Jenny also has a child from a prior marriage who lives with Greg and Jenny part-time.
- Donald is a shareholder in a corporation. There are five other shareholders in the corporation. Donald wants to make sure that when he dies, the company will buy his shares, so that his wife, who is the beneficiary of his estate, will have money to support herself.
- Marie has a son in high school, another son who is a teacher and earning a good salary, and a daughter who struggles with addictions. Marie wants to leave her estate to her children but wants to make sure her daughter's share will be protected from her spending it unwisely, and that her younger son will have money for college or University.
- Michael and Molly have three adult children who are self-sufficient, and a disabled adult son who lives with Michael and Molly and who will need support for the rest of his life.

STANDARD FORMAT

Most Wills follow a standard format.

1. Wills are written in the first person; you should use "I", "me" and "my".
2. Start by saying who you are ("I, Susan Smith……") and that it is your intention that this document be your last Will.
3. If you are a citizen or a member of a First Nation, it is a good idea to state that after your name (e.g. "I am a member/citizen of the Kwanlin Dün First Nation").
4. Say that previous Wills and **codicils** (documents created to change a previous Will or Wills) are revoked or cancelled by this new Will.
5. Name a person to be your executor. Your executor is the person who will carry out the instructions contained in your Will.
6. List any gifts you want to make of specific assets or amounts of money to specific people. This type of gift is called a bequest. A **bequest** can be to a named individual, or to a class of people (e.g. "all my nieces and nephews").
7. Say what you want to happen to all the property which is left after all your debts and taxes are paid and your bequests delivered. This remaining property is called your **residual estate**, or **residue**.
8. Provide for any fee or payment for your executor.
9. Your signature and the signatures of your two adult witnesses are required at the end of the Will. Often the signature block will confirm that the witnesses signed the Will at the same time you did and in your presence and the presence of each other.



SPECIFIC THINGS TO CONSIDER

Choosing an executor

An executor may also be a beneficiary, and you may choose more than one person to together serve as your executor. It is a good idea to name an alternate executor, in case your first choice is unable or unwilling to serve as executor when the time comes.

An ideal executor is someone who knows your family, who is familiar with how you handle your financial affairs, who lives in the same community as you, and who has the time, ability and willingness to do the work involved. It can take months or even years to complete the executor's responsibilities, depending on the complexity of your estate.

Role of executor

Executors are subject to the rules for trustees set out in the *Trustee Act*, which, for example, affects the types of investments they can make and whether they can sell the estate's assets prior to distribution. If you want your executor to be exempted from any of those rules, you must say this in your Will. For example, you might want your executor or the trustee to take advantage of income tax reducing strategies, or to decide when certain assets should be sold, or if certain assets should go to a beneficiary as-is, without being sold.

Beneficiaries

While you can choose who to leave your assets to, it is important to consider whether you are meeting any obligations you have to **dependants**. If you do not provide for a dependant's ongoing support, they can apply to the court for a division of your estate that is different from what you set out in your Will.

Trusts

If any of your beneficiaries is under the age of 19, or is an adult who requires on-going help to manage their financial affairs, you can create a trust to hold that beneficiary's share of your estate. This requires that you appoint a trustee to manage the assets on specific terms. This trustee may be the same person as your executor or it could be a different person. You should speak to a lawyer if you want to create a trust, because rules about trusts are specific and go beyond the information in this booklet.

Guardianship of a child

You can appoint a guardian for your children in the Will. Note though that this appointment does not override the law or existing custody arrangements between you and the children's other parent. For example, if a mother's Will appoints a guardian for her children, but the children's father already has joint or full custody of the children, then the father will continue to have custody. Although the appointment may express your heartfelt wishes, the court has ultimate authority to decide who will care for any child.

Wishes for funeral and burial services

You may include in your Will your wishes for burial or cremation and your wishes with respect to a funeral or memorial service. It is wise however to share this information with members of your family before you die, since your Will might not be read immediately after your death.

Your executor is legally responsible for arranging for the disposition of your remains and normally will want to honour any wishes you have expressed in this regard. However, your executor is not legally bound by those wishes.

Executor fee

If your Will does not set out an allowance or fee for your executor, the Trustee Act entitles them to an amount that a judge determines is a "fair and reasonable". Administering someone's estate can be time consuming and complicated, particularly if your family disagrees with what your Will says or what it does with your estate. Providing a fair executor's fee can help ensure that your executor fulfills their role and prevent arguments with beneficiaries over what dollar amount is "fair and reasonable".

8: Can you change your Will?

You can change or cancel (revoke) your Will at any time before you die, as long as you are still mentally capable.

It is not recommended that you alter a Will that has been signed. If not done perfectly, this can lead to the Will (or parts of it) having no legal effect. In an emergency though, you can cross out the words you want to delete and clearly write in the words you want to add. You and two adult witnesses must date and sign or initial every change, in the presence of each other. Changes to Wills are subject to the same validity requirements as original Wills.

To change your Will, you can either make a whole new Will, or you can make a codicil (addendum) which then is attached to your original Will.

A codicil must meet the same legal requirements for validity as the original Will and must be signed with the formalities set out in the *Wills Act*. The witnesses may be different from the witnesses who signed your original Will. To avoid confusion, the codicil should be attached to the original Will - so they are always together. You should seek legal advice before preparing a codicil, or better yet have a lawyer prepare it for you.

Marriage after making of Will

Prior to 2021, the law in Yukon was that if you married after you made a Will, the Will became invalid - unless the Will itself stated that it was made in contemplation of the marriage. Since May 1, 2021 when the *Wills Act* was amended, this is no longer the law. If you married after May 1, 2021, your marriage does not affect the validity of a Will made before or after that date.

Note that if you made a Will and then married prior to May 1, 2021, your Will was invalidated by your marriage and was not revived by the 2021 change in the *Wills Act*.

Separation and divorce

If your Will was written after May 1, 2021, a divorce or separation of more than 12 months duration at the time of your death revokes any gifts to your spouse, including a common law spouse, in that Will, unless you stated a contrary intention in the Will itself.

When a gift is revoked, the asset will either go to an **alternate beneficiary** (if you named one), or it will be added to the residue of your estate and distributed as the residue is distributed.

If your Will was written before May 1, 2021, your spouse or common law partner is entitled to any gift you made to them in your Will, regardless of whether you later divorced or separated.

If you are separated or divorced and your former spouse is still included in your Will but you do not want them to share in your estate, then you should make a new Will as soon as possible.

To cancel your Will, you can do either of the following:

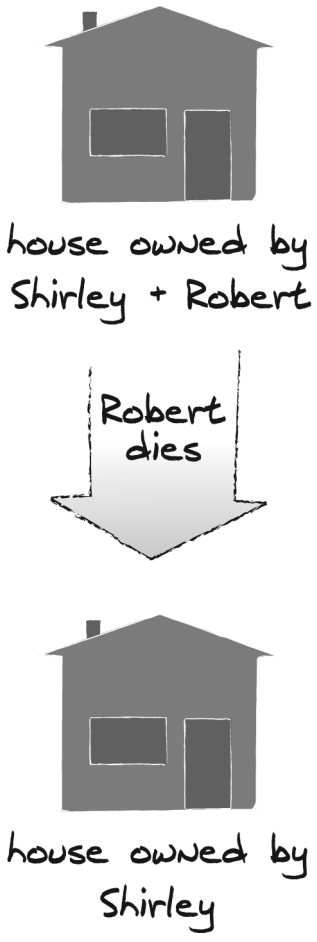
1. You can write and properly "execute" (date, sign and have properly witnessed) a document in which you state that you are revoking your previous Will or "all previous Wills and codicils made by me". Such a revocation statement is typically contained in any new Will.
2. You can deliberately destroy your Will with the intention of revoking it. This should be done in the presence of a witness, or you should create some other evidence that you destroyed the Will on purpose. If there isn't a witness or evidence that you intentionally destroyed your Will for the purpose of revoking it, then after your death someone could bring forward a photocopy of the original (now destroyed) Will and assert that although the original Will was not found, the photocopy should be treated as your final, valid Will. A witness to you destroying it, or a letter signed by you saying that you destroyed it on purpose, would avoid this possibility.

9: What can't you give away in your Will?

Some **assets** cannot be given away in a Will. The law is clear that only property which is owned by the deceased at the time of death can be transferred to another person by a Will. The following are some common types of property that cannot be disposed of by a Will:

1) Jointly owned property: 2 types

a) Joint tenancy If you own a property with one or more other people in a **joint tenancy**, you probably cannot give away your interest, by Will or otherwise. Joint tenants must always act together and joint tenancy generally includes a "right of survivorship". This means that if one of the owners dies, their interest in the property passes to the surviving joint tenant(s).



Examples of joint tenancy ownership are joint bank accounts or homes registered in joint names.

The moment one joint tenant owner dies, the property is no longer "owned" by that person. The deceased person's interest in the property does not become a part of their estate. The interest passes by law to the surviving owner or owners. For this reason, you cannot give away your share in a joint tenant asset in your Will.

There are exceptions to the rule that a joint tenant's interest goes to the survivor. For example, some banks have joint accounts where two people can sign on the account, but the account does not have a right of survivorship. Another exception has been created by courts. The Supreme Court of Canada has said that in some cases, if it is not clear a person meant their property to go to the surviving joint tenant, the property will become a part of the person's estate. If you are considering adding another person to your bank account to help you with banking, the better way is to appoint that person as your agent or "attorney". That way it is clear that the money in the account belongs to you.

Example: Joint Bank Account

George is widowed and has three adult children. His oldest son, Peter, lives in Whitehorse, and his two other children live out of the territory. Peter helps George with his banking, and the bank suggests to George that he add Peter's name to the account as a joint account holder. George does. All of the money in the joint bank account is George's and Peter doesn't put any of his own money into the account.

On George's death, Peter claims that the balance in the joint bank account belongs to him as the surviving joint account holder. George's other children think this is wrong but are not sure what to do.

The law says that to determine whether there is a right of survivorship, we need to look for evidence of the parties' intentions in what they said or did. Often though, there is little to look at. If George and Peter did not tell the bank in writing that there was no right of survivorship associated with the account, the bank may release the funds to Peter. To prevent this happening, George's other children should notify the bank that they are challenging Peter's claim.

b) Tenancy in common

The other type of co-ownership, sometimes called **tenancy in common**, gives each owner a fractional interest in the property. Each owner owns a set percentage interest, as opposed to all of the owners owning 100% together, as is the case with joint tenancy. It is not uncommon for land to be co-owned as "tenants in common." The owner of a tenancy in common interest can give away their share in the co-owned property in their Will.

It is important with any kind of co-owned property, whether a joint tenancy or a tenancy in common, that a written record be created and maintained of each person's interest in the co-owned property. That way, after any owner's death, the surviving owners and the personal representative of the deceased person, know how to divide the property. If the property is land, the Certificate of Title for the property produced by the Land Titles Office, will show on it each co-owner's interest.

If you don't know how your joint property is owned, you should consult a lawyer.

2) Life insurance

If you have life insurance and have named a person as the beneficiary of your policy, on your death the policy benefit is paid directly to that person. The benefit does not form part of your estate.

You can also name your "estate" as the beneficiary of a life insurance policy. If you do, the policy benefit does become a part of your estate. It can be used to pay debts and taxes owed by your estate.

In most cases, you can change the named beneficiary of life insurance in your Will, by saying clearly that this is your intention. It is better however to notify your insurance company and have them make the change on your policy records. This eliminates the possibility of the insurance company possibly paying the benefit to someone other than who you intended.

3) RRSPs and Pension Plans

You can also name a beneficiary for your Registered Retirement Savings Plan (RRSP), Tax-Free Savings Account (TFSA), Registered Retirement Income Fund (RRIF), superannuation or other pension plan. The money or other entitlement is transferred directly to the beneficiary and does not form part of your estate.

As with life insurance, you can change a beneficiary in your Will but the better way to do this is to notify the financial institution or pension administrator and have them make the change on your account.

The value in a RRSP or RRIF, and any accumulated income in a TFSA, are taxable. Unless the named beneficiary is a "qualifying survivor" (the plan holder's spouse or common law partner or financially dependent child or grandchild), income tax will need be paid in the year of death, either by your Estate or by the beneficiary.

Note that tax rules change frequently; you should check to ensure that any tax information you are relying on is up to date.

4) An interest in Settlement or reserve land

If you have an interest in Settlement or reserve land there may be certain limits on who you can give this property to under your will. For example, if your First Nation only allows citizens to live on Settlement Land, you may not be able to leave it fully to a non-citizen spouse or child.

It is important to be aware of any First Nation laws that may apply to your property before drafting a will and to talk to a lawyer to see if there are options to include these in your will.

See Question 11 for more information about this.

5) Life interests

If you have a **life interest** in any property (an interest that lasts as long as you live), your right to that property ends with your death. Therefore, you cannot give away that interest by your Will.

6) Other special interests in assets

Trapping concessions, outfitting concessions and non-titled land interests are special kinds of ownership rights that people may have through agreements with a government (such as the Yukon Government or a self-governing First Nation). While these interests can be valuable, they often cannot be transferred to another person - by a Will or any other method.

Sometimes an interest can be transferred but the transferee needs to have certain qualifications or meet certain requirements in order to own the interest.

If you own a trapline, an interest in an outfitting business, mining claims, a traditional cabin, or a land use application such as an agricultural application or a grazing lease, you should speak to a lawyer about how to deal with it in your Will. The lawyer can review your documentation and give you advice. If you decide not to speak to a lawyer, you should discuss your plan with the government body that issued the right to you.

Example 1: **Bob's trapline**

Bob is a citizen of a self-governing Yukon First Nation and he and his three cousins trap on a Category 1 trapline. Bob writes a Will leaving his interest in the trapline to his nephews Clayton and David, who are citizens of the same First Nation, although Clayton lives in Fort Smith, NWT.

When Bob passes away, Clayton learns that the Yukon government won't give him a trapping licence because he does not live in the Yukon. Bob's cousins have built all the cabins on the trapline and only one cousin is comfortable with David using them. While David is eligible for a trapping licence, he needs to work with the First Nation to get one and use the trapline.

Example 2: **Fred's untitled agricultural land**

Fred has agricultural land he acquired from the government through a land lottery. He has possession of the land but has to do certain work on it in order to be eligible for legal ownership. He builds a cabin and lives there but hasn't really started the clearing and work he needs to do. Fred leaves the land in his Will to his two sisters. When Fred dies, his sisters discover that they will need to do a lot of work in order to get title. If they don't do any work and get title, the land will go back to the government. One sister wants to do the work and own the farm. The other sister says she wants to be paid half of what the farm will be worth. The sisters start to argue because the land is hard to value and the land cannot be sold in its present state.

10: Other considerations?

Dependants

Under the Yukon's *Dependant's Relief Act* and the *Estate Administration Act*, a court may order that estate assets be used to provide for a financial dependant of the deceased. A "dependant" may mean the deceased's married or common law spouse, a child under 16, an older child with a mental or physical disability, or a former spouse, former common law spouse, or another family member who was dependent on the deceased for financial support for three years prior to the deceased's death.

The court's authority is not actually to change the Will, but a court can order that the gifts under the Will cannot be paid until the deceased's obligations to dependants are fulfilled.

If you make a Will that does not adequately provide for people who are financially dependent on you, your Will may be subject to challenge.

Dependency does not require that the dependant cannot get by without any of the assets of the estate. Dependant, especially in the context of a spouse, means that the deceased had a legal obligation to support the other person.

If you want to make a Will that might not adequately provide for your spouse (married or common law), even one from whom you are separated or divorced, you should discuss your estate plan with a lawyer.

Debts

When you make a Will, you should have a clear picture of what your debts are and what your assets are. If you think you might owe more than your estate will be able to pay, it is important to discuss this with your executor and with a lawyer.

Former spouses

If you are involved in divorce or other family law proceedings that are not resolved at the time of your death, your executor may need to finalize the terms of your separation and divorce before distributing any of the estate assets. Likewise, if you have an obligation to pay child support or spousal support, your estate might be responsible to keep paying that support, depending on the wording of your separation agreement or court order. If you are in this situation, you should consider discussing this with a lawyer before preparing a Will.

Assets in locations other than the Yukon

If you own land, or have bank accounts or other assets in a jurisdiction other than Yukon, it is strongly recommended that you speak with a lawyer about your situation. The information in this booklet may not apply to assets outside of the Yukon, and the estates process is different in other jurisdictions.

11: What happens if you are a citizen of a Yukon First Nation or have Indian Status?

Yukon Self-Governing First Nations

If you are a citizen of a Self-Governing Yukon First Nation and/or have an interest in land or property on Settlement Land, it is possible that different rules will apply to parts of your estate.

This is because this interest may be subject to First Nation laws or policies which change how your property can be dealt with under a Will. The following lists some of the different factors that could limit how you can give away your property in your Will:

- Is the property held as a permanent interest, a lease, a traditional holding or something else?
- Are all your beneficiaries in your Will citizens or members of the First Nation?
- Are there limits on who can hold interests in Settlement Land?
- Is it possible for family members who are not citizens to inherit (e.g. if an interest goes to a grandchild under a **per stirpes** distribution)?

The answers to these questions are not always easy to figure out. This means that it is important to speak to a lawyer who is familiar with the issues that could come up when dealing with property on Settlement Land in your estate.

If you are a citizen or member of a First Nation, it is critical that you talk to a lawyer about your estate, especially if you own property on Settlement Land, Reserve, or Lands Set Aside.

Indian Act Jurisdiction

If you both ordinarily live on reserve and/or lands set aside and have Indian Status, the *Indian Act* will likely apply to your estate instead of the *Yukon Wills Act* and *Estate Administration Act*.

This means that the different rules for Wills and intestacy in the *Indian Act* may apply. While many of these rules are similar to the Yukon's laws, if this applies to your estate it is very important to get legal advice on your will.

Please note that the *Indian Act* does not apply to Self-Governing Yukon First Nations who have "retained reserves".

If you are administering the estate of someone whose estate is under Indian Act jurisdiction, the CIRNAC (Crown-Indigenous Relations and Northern Affairs Canada) office in Whitehorse can help. At the time of writing, that office can be reached at 867 667 3399 or 1-800-661-0451.

First Nation Owned Housing

If you live on land or in a house that is being rented to you by your First Nation, including in a rent-to-own agreement, you may not have the right to give away the house or property in your Will.

However, it is important to know your First Nation's policies in order to see if you can still name someone who you would like the lease to be taken over by. Not all First Nations provide this option, but it is another thing that could be discussed with your First Nation or a lawyer to see what rights you may have in a rented home.

Matrimonial Property and Life Estates

If you live on Settlement Land and are a citizen of a First Nation and your spouse is not a citizen, special terms may need to be included in your Will and estate in order for your spouse to inherit. Depending on the First Nation's laws, there may be options (and in some cases, a duty) to allow your non-citizen spouse to stay in your family home on Settlement Land, even if they can't hold a formal interest in it. One of these options could include providing a life estate to a spouse.

Leaving someone a life estate requires special terms to be included in a Will, so it is very important to talk to a lawyer about what options may be available to provide for your spouse in your Will.

What Happens After You Die

If you are a citizen of a Self-Governing Yukon First Nation, unless your First Nation has passed a law about estate administration that displaces Yukon law, your estate is probated or administered through the processes set out in the *Estate Administration Act*. However, if you have a home or other property on Settlement Land, it is likely that your Executor will have to notify your First Nation of their application for probate and give the First Nation a copy of your Will.

If you have Indian Status and live on reserve/lands set aside, your family will likely have to make a different kind of application, through CIRNAC (see above). The Yukon CIRNAC office can provide guidance about this process to reduce confusion for your family and avoid problems.

APPENDIX 1: Choosing a lawyer

Most Whitehorse law firms prepare Wills for clients; check their websites or phone them for information.

If someone you know has recently had a Will prepared for them, you could ask them for the name of the lawyer who assisted them and whether they were satisfied with the service they received.

You can also obtain the names of lawyers who prepare Wills from the Law Society of Yukon, who maintain a list of Yukon lawyers by area of practice. The Law Society also operates the Lawyer Referral Service for the public. The Law Society office is located in Suite 304, 104 Elliott Street in Whitehorse. You can reach them by phone at (867) 668-4231 or through their website (*lawsocietyyukon.com*).

The Law Society will not recommend a particular lawyer, but it can give you the names of lawyers who practice Wills and estates law and those who have agreed to have their names on the Lawyer Referral Service list.

Lawyer Referral Service

For people in Whitehorse, the Lawyer Referral Service works this way:

1 . Phone or visit the Law Society office to obtain the list of lawyers and a certificate entitling you to a half-hour consultation with one of the lawyers on the list for $30 plus GST.
2. Make your own appointment with a lawyer on the list.
3. Bring the certificate with you to the appointment and you will be charged $30 plus GST for a half-hour consultation with the lawyer.
4. You are under no obligation to hire that lawyer. You may make whatever arrangements you both agree upon with the lawyer for further advice or work on your behalf.

Yukoners outside Whitehorse can also use the Lawyer Referral Service. Once you have obtained a Certificate, arrange a phone or online appointment with a lawyer.

Fees and Services

Lawyers set their own fees for preparing Wills, and these can vary widely. Expect to pay between $400 and $600 for a simple Will. You can contact law firms and ask for their standard rates for Wills before you choose which lawyer to hire.

Some lawyers will go to the hospital or a person's home if the person is too ill to go to the lawyer's office. If you cannot go to a lawyer's office due to mobility or health reasons, ask the lawyer if they would be willing to come to you.

APPENDIX 2: Legal terms

ADMINISTRATION OF THE ESTATE The settlement and distribution of the estate of a deceased person by the estate's personal representative.

ADMINISTRATOR A person appointed by the Supreme Court of Yukon to handle the estate of a person who died without a Will, or whose Will does not name an executor who is able and willing to serve in the role. The administrator is the personal representative of the estate and has a fiduciary relationship to the creditors and beneficiaries of the estate.

ADVANCE DIRECTIVE A legal document which is dated and signed by an adult, that gives the person named in the document (called a "proxy") authority to make healthcare, including end of life, decisions for the adult, if the adult becomes incapable of making decisions or expressing their wishes. An Advance Directive is sometimes called a "living Will". An Advance Directive is a part of an "**Estate Plan**".

ALTERNATE EXECUTOR A person appointed by a Will to handle the deceased person's estate in the event the original executor is unable or unwilling to do so.

ASSETS The things that you own such as land, vehicles, artwork, bank accounts.

BENEFICIARY A person (including an individual or an organization such as a charity) who inherits property from a deceased person under a Will, or under the intestacy rules of the *Estate Administration Act* or the *Indian Act*. A beneficiary also means a person who is named to receive the proceeds of an insurance policy or a retirement or pension plan or account.

BEQUEST A gift of a specific item or amount of money under a Will.

CODICIL A document created as an Addendum to a Will for the purpose of changing the original Will. A codicil must be signed, dated and witnessed by two adult witnesses with the same formalities as a Will.

COMMON LAW SPOUSE Person who was living in a marriage-like relationship with the deceased person for at least 12 months before the deceased person's death.

DEPENDANT A spouse or child of the deceased, or a former spouse or family member who depended on the deceased for maintenance and support. The potential claims of dependants against a deceased person's estate are set out in the *Dependants Relief Act*, the *Estate Administration Act* and the *Indian Act.*

ENDURING POWER OF ATTORNEY A written legal document which is dated and signed by an adult (called a "donor") giving the person named in the document (the "attorney") the authority to act on behalf of the donor with respect to the donor's property and finances. The word "enduring" means this authority does not end if the donor becomes mentally incapable. In practice, most Enduring Powers of Attorney are written so as to only become effective if the donor loses mental capacity.

ESTATE All of the property owned (or interests held) by a person at the time of their death.

ESTATE ADMINISTRATION ACT Yukon legislation which sets out how estates of deceased people are to be administered and the estate's distribution if the deceased person did not have a valid Will.

ESTATE PLAN An overall plan for what you want to happen to your estate when you die and if you become incapable. The plan can include your Will, insurance policies, an enduring power of attorney and advance directive, and reviewing how your jointly owned assets are held.

EXECUTOR A person appointed by a Will to manage and distribute the deceased person's estate. An executor's duties include arranging for the funeral, paying debts and expenses, filing an income tax return and distributing property to the beneficiaries. The executor is the personal representative of the estate and has a fiduciary (trust) relationship to the creditors and beneficiaries of the estate. An executor is sometimes called a "trustee".

FIDUCIARY Someone who is in a special position of trust, confidence and responsibility to another person or persons. An executor has a fiduciary duty to act for the benefit of the beneficiaries of an estate, to avoid conflicts of interest and not to profit at the expense of a beneficiary.

GRANT OF ADMINISTRATION See Letters of Administration.

GRANT OF PROBATE (also called **LETTERS OF PROBATE**) An order of the Supreme Court of Yukon confirming that: (a) a Will is valid; and (b) the person named as executor in the Will is authorized to administer the estate of the deceased person without further proof of authority.

GUARDIAN Either a person appointed by the court to make decisions on behalf of someone who is not mentally capable of making their own decisions or managing his or her own affairs, or a person appointed by a parent, including in a Will, to be legally responsible for the parent's minor children until the children reach the age of 19.

HOLOGRAPH WILL A Will written entirely in the handwriting of the deceased and signed by the deceased.

INTESTATE A person who dies without a valid Will.

ISSUE The direct descendants of a person, including children, grandchildren and great-grandchildren.

JOINT TENANCY A type of co-ownership of property in which each owner holds an equal interest in the entire property, including the right of survivorship. No owner may transfer their interest without the consent of the other owner(s). On the death of any owner, that owner's interest in the property passes to the surviving owner(s). See also the definition of "tenancy in common", a different type of co-ownership.

LETTERS OF ADMINISTRATION (also called **GRANT OF ADMINISTRATION**) An order of the Supreme Court of Yukon appointing a person as the administrator of the estate of a person who died without a Will, or who died without naming an executor who is able and willing to serve in the role. Letters of Administration grant to the person named in them as administrator, authority to administer the estate without further proof of authority.

LETTERS OF PROBATE See "grant of probate".

LIFE INTEREST An interest in a property that terminates on death. A person who holds a life interest in a property cannot dispose of the property in their Will because the interest dies with them.

LIVING WILL see “advance directive”.

MENTAL CAPACITY A person’s ability to make decisions that may have legal or other consequences. The standard for mental capacity depends on the type of decision to be made. To make a Will, someone must be able to understand, generally, the nature and location of their property and any obligations they may have to others. They must also understand what they are doing when they sign the Will.

PASSING ACCOUNTS This is the process by which a personal representative (executor or administrator) or other trustee brings an accounting of its actions to the Supreme Court for review and approval. A passing of accounts by the court is not required if all beneficiaries or other parties with rights in the estate accept the accounting given to them by the personal representative.

PER STIRPES A method of estate distribution in which, if a beneficiary died before the deceased, the beneficiary’s share goes instead to their living descendants. Per stirpes is the method of distribution mandated by the Estate Administration Act in intestacies where the deceased person had surviving descendants. The term “per stirpes” means by branch. The alternative term “per capita” means by head count.

A per stirpes distribution is an alternative to:

(i) shares of the estate passing only to named beneficiaries or members of identified classes who survive the deceased (e.g. “to divide my residuary estate equally among those of my children who survive me”), or

(ii) shares of the estate passing to named beneficiaries or members of identified classes whether or not they survived the deceased; if a beneficiary predeceases then their share goes to their estate instead (e.g. “to divide my residuary estate equally among my three children”).

The presence or absence in a Will of the term *per stirpes*, and the way it is used, have very significant consequences and it is wise to seek a lawyer’s advice before using the term.

PERSONAL REPRESENTATIVE The person with legal authority to administer the estate of a deceased person. The personal representative is the executor if appointed by a Will, or the administrator if appointed by the court (where there is no valid Will, or the Will did not name an executor who is able and willing to serve).

PROBATE The process of “proving” a Will by filing the original Will and other documents in the Supreme Court of Yukon, to establish that the Will is valid and is the last Will of the deceased. A Grant of Probate also confirms the executor’s authority to administer the estate.

PROPERTY A general term used to mean everything owned by a person. Property includes real property (land and buildings) as well as personal property (all other assets, including money, investments and moveable items).

PUBLIC GUARDIAN AND TRUSTEE An official employed by the Yukon Government and authorized by legislation to act as the personal representative of a deceased person if there is no executor able and willing to act and no competent Yukon relative or creditor applies to the court for Letters of Administration. The Public Guardian and Trustee cannot be ordered to act and it is the Public Guardian and Trustee's decision whether it will handle an estate.

RESIDUARY ESTATE Property remaining in an estate after debts and taxes have been paid and bequests distributed to beneficiaries. Also called the residue, residual estate or remainder.

RESIDUARY BENEFICIARIES The beneficiaries who are to receive or share the residuary estate.

TENANCY IN COMMON A type of co-ownership of property in which each owner holds a specific fractional or percentage interest in the property and there is no "right of survivorship". If one of the owners dies, their interest in that property becomes part of their estate. Tenancy in common interests can be left to a beneficiary in a Will or be transferred by the laws of inheritance in an intestacy. See also the definition for "joint tenancy," a different type of co-ownership.

TESTATOR A person who makes a Will.

TRUSTEE A person who holds property on behalf of another person. An executor is a trustee because they hold the estate assets in trust for the beneficiaries and creditors of the deceased. A trustee is also the name for a person who is appointed to manage the inheritance of a child or other person whose share of the estate is not being transferred to them immediately.

UNDUE INFLUENCE Persuasion exercised over someone else to interfere with their decision making and actions in the disposition of their assets. Undue influence can be exerted by one or more people over someone else, to persuade that person to sign a Will that does not truly represent how that person would want to see their property distributed when they die.

APPENDIX 3: SAMPLE WILL

This sample will is an example of what a Will might look like and serve as a guide to the overall format and appearance. It is not meant to be used as a precedent.

WILL

Date: January 2, 2025

LAST WILL

1. This is my last Will. I am Crystal Serena Smith. I was born on August 22, 1980, and I am a resident of Whitehorse, Yukon.
2. I revoke all my former Wills and testamentary dispositions. Testamentary dispositions include all gifts I have made in the past to take effect on my death.

EXECUTOR AND TRUSTEE

3. In this will, I refer to the person who is both the Executor of my will and the Trustee of my estate as my "Executor".
4. I appoint my husband, Cody Alan Smith ("Cody") to be my Executor. If Cody:

   (a) Dies before me,

   (b) Refuses to act or cannot act,

   (c) Refuses to or cannot continue to act, or

   (d) Dies before the trusts in this will are completed,

   then I appoint my brother, Jesse Aron Peter, to be my Executor instead.

GUARDIAN OF MY CHILDREN

5. If both Cody and I die before our children, Candice River Smith, born May 1, 2005 and Kyle Bradon Smith born February 15, 2008, attain the age of majority or leave our care, I appoint my sister, Kathy Dawn Peter, to be their guardian.

REMAINS AND COMMEMORATION

6. At the end of my lifetime, I wish my body to be cremated and for my ashes to be scattered in a location decided by my Executor, taking into consideration any wishes of my family members.

7. I want a celebration of life instead of a formal funeral. My Executor can determine where and when the celebration will be held, taking into consideration any wishes of my family members.

DISTRIBUTION OF MY ESTATE

Executor to distribute my Estate

8. I give my Executor all my property of every kind and wherever located (my "Estate") to administer as I direct in this Will. In distributing my Estate, my Executor may convert my Estate to money as set out in paragraph 17 of this Will.

Debts to be paid from my Estate

9. I direct my Executor to pay out of my Estate:

   (a) My debts, including income taxes payable up to and including my date of death,

   (b) My funeral and other expenses related to my death

   (c) Expenses relating to the probate of this Will and the distribution of my Estate, including legal and accounting fees

   (d) All duties and taxes that are payable in respect of property passing on my death.

   My Executor has the authority to prepay or delay payment of any taxes or duties.

Special gifts

10. If my brother, Jesse Aron Peter, survives me, I give to him:

   (a) My .308 Tikka hunting rifle, and

   (b) My Lowe boat, named the Black Fish.

   If Jesse dies before me, I give this rifle and boat to my sister Kathy Dawn Peter.

Personal items

11. I intend to make a list of items of purely sentimental value that I wish to give to specific individuals. If I have made such a list, I request that my Executor honour my wishes and deliver the listed items to the individuals named. I also request that the beneficiaries of my estate named in this Will respect my wishes and not object to my Executor carrying them out.

Remainder of my Estate to Cody

12. I give the remainder of my Estate to Cody if he survives me for at least 30 days.

Estate in trust for my children if Cody has died

13. If Cody does not survive me for 30 days, I direct my Executor to hold the remainder of my Estate in trust in equal shares for my children who are alive at my death.

Estate in trust for my child's descendants if my child has died

14. If any child of mine dies before me but leaves descendants alive at my death, those descendants will stand in place of my deceased child and will take that deceased child's share of the reminder of my Estate in equal shares per stirpes.

    The term per stirpes means that my Executor will divide the share among those descendants of my deceased child equally according to the branches of the family, and not equally according to the number of persons.

Beneficiaries who are under 19 years

15. If any person becomes entitled to a share of my Estate before attaining the age of 19 years ("minor beneficiary"), I direct my Executor to hold and invest that share until the minor beneficiary attains the age of 19, on these terms:

    (a) My Executor may use as much of the income and capital as my Executor decides for the benefit of the minor beneficiary;

    (b) My Executor may pay these amounts to the minor beneficiary's parent or guardian, or may otherwise use the income and capital for the minor beneficiary's benefit;

    (c) I direct my Executor to add any unused income to the capital of the minor beneficiary's share and then to pay the capital to the minor beneficiary when they turn 19.

Savings plans

16. If I die before I have received the proceeds of any pension plan, Registered Retirement Savings Plan, Registered Retirement Income Fund, Tax Free Savings Account or similar savings plan or annuity ("my Plans"), and if I have not designated a beneficiary under any of my Plans, then I designate Cody as my beneficiary under that Plan.

    If Cody is not living at the time of my death, and I have not designated a person other than Cody as my beneficiary under any of my Plans, the proceeds of that Plan are to be paid to and form part of my general estate.

POWERS OF MY EXECUTOR

To convert or retain

17. When my Executor administers my Estate, my Executor may convert my Estate or any part of my Estate into money, and decide how, when, and on what terms to convert it.

To invest my Estate

18. My Executor may invest my Estate as my Executor decides and is not limited to investments authorized by law for trustees.

To manage real estate

19. As long as any real estate forming part of my Estate is unsold, my Executor may manage the property generally, and my Executor may:

    (a) Rent the property for any period of time and on any terms that my Executor decides;

    (b) Accept cancellations of tenancies and leases;

    (c) Spend money for repairs and improvements, insurance and property taxes;

    (d) Grant options to purchase or lease, and

    (e) Subdivide.

To employ agents

20. My Executor may employ agents or qualified advisors to give advice to my Executor or provide services to my Estate, and my Executor may pay the reasonable fees and expenses of these advisors from either the income or the capital of my Estate. These advisors may include real estate agents, lawyers, accountants, and consultants.

To access financial accounts

21. I authorize my Executor to access any of my banking, financial or commercial accounts, including online accounts, to withdraw or transfer money, points, or credits of any kind from such accounts, and direct that my Executor transfer such money, points or credits, then close the accounts as soon as reasonably practicable.

To allot my Estate

22. In this Will I have directed my Executor to divide my Estate into shares. When my Executor distributes my Estate, my Executor may allot any item that forms part of my Estate to any share or portion of a share. To do this, my Executor may place a dollar value on that item, and whatever value my Executor decides upon will be final and will bind everyone interested in my Estate.

Social media accounts and digital assets

23. I authorize my Executor to access any of my internet-based accounts, including social media, email and other communication accounts, and I direct my Executor to close such accounts as soon as reasonably practicable.

24. My Executor is authorized to access, handle, distribute and dispose of my electronic and digital assets and they have the power to obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets.

OTHER MATTERS

Executor's fees in addition to gift

25. My Executor is entitled to a fee for acting as an Executor in addition to any gift or benefit I give to my Executor under my Will or under any codicil to it.

Bond or security

26. My Executor wherever resident shall be relieved from the requirement to post any bond or security for the administration of my estate, unless mandatory by law.

Headings

27. The headings in my Will are for convenience only and do not form part of my Will.

I have signed my name to this will on _____.

Date

Signed by Crystal Serena Smith as her last Will in the presence of us, both present at the same time. We have signed our names as witnesses to this will at the request of Crystal Serena Smith and in her presence, and in the presence of each other.

_____

Crystal Serena Smith

Witness #1:

Printed name _____ Signature _____

Address _____ Occupation _____

Witness #2:

Printed name _____ Signature _____

Address _____ Occupation _____

APPENDIX 4: Sample Form - Affidavit of Witness

The *Wills Act* requires a person making the Will (the "Testator") to sign their Will in front of two witnesses (see Question 5). After the Testator dies, the Will may be used to apply for a grant of probate from the court. The judge who reviews the application may want to have proof that the two witnesses were there at the same time, and both witnessed the Testator signing his or her Will. To give that proof to the court, it is recommended that one or both of the witnesses also sign a document called an Affidavit of Execution of Witness.

An Affidavit is a sworn statement, made before a notary public. Generally, the Affidavit must state that Witness 1 was present, along with Witness 2, and saw the Testator sign the document, after which Witness 1 and Witness 2 also signed the document, in front of the Testator. The Affidavit can also state that Witness 1 personally knows or was introduced to the Testator, that Witness 1 believed that the Testator was 19 years or older, and that the Testator had read over the Will and knew what he or she was signing.

Example situation:

Mary has decided to make a Will. She has the Will all ready, and calls her friends, Verna and Louise, who live in the same building to come over for tea. While they are there, she produces the Will, explains to her friends she wants to sign it, and then she signs in front of them. Verna also signs, and then Louise signs. Verna takes the Affidavit of Witness to a notary public, and signs an oath that:

• she was present, with Mary and Louise;

• she saw Mary sign the Will, in her presence and in the presence of Louise;

• she knows Mary;

• she and Louise signed the Will as witnesses in front of Mary;

• Mary appeared to understand what she was signing; and

• Mary is 19 years of age or older.

By completing the Affidavit of Witness, there is less likelihood of any person contesting whether the Will was actually signed by Mary, or whether the formalities of the signing were properly followed.

YUKON TERRITORY

AFFIDAVIT OF EXECUTION OF WILL

T O W I T :

I, _____, of _____, in
(full name of witness #1) *(town/city)*

_____, _____,
(province/territory) *(occupation)*

MAKE OATH (OR SOLEMNLY AFFIRM) AND SAY AS FOLLOWS:

1. My name, address and occupation are correctly set out above.
2. Attached to this Affidavit is the Original Last Will and Testament of _____, who is referred to in this Affidavit as the Testator.
(name of will maker)
3. I know the Testator, or I have been introduced to the Testator.
4. On the _____ day of _____, 20__, I was personally present and witnessed the signing of the Will by the Testator, who signed his/her name at the end of the Will.
5. The Will was signed by the Testator in the presence of _____, of _____ in
(full name of witness #2) *(town/city)*

_____, and me. We were both present at the same time.
(province/territory)
6. _____ and I signed the will as witnesses, in front of the Testator.
(full name of witness #2)
7. Before the Testator signed the Will, it was read over by him/her and I believe that the Testator understood it.
8. The Testator is 19 years of age or older.

Witness #1:_____
(sign and print name)

SWORN (or AFFIRMED) BEFORE ME at _____, in Yukon, this _____ day of _____, 20__.

_____
A NOTARY PUBLIC in and for the Yukon Territory

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