



Wills



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INFORMATION EMPOWERS

What Is Éducaloi?

Éducaloi explains the law to Quebecers in language that is easy to understand. It also helps people learn skills to manage life situations involving legal issues. It is a non-profit organization that was founded in 2000.

Éducaloi's activities focus on these areas:

- a legal information website (www.educaloi.qc.ca/en)
- other legal information tools (pamphlets, guides, etc.) for a variety of audiences
- educational resources for teenagers, adults and educators
- helping other organizations explain the law in accessible language

IMPORTANT NOTICE

The legal information in this guide is up to date as of December 2014. This information is not meant as legal advice. If you need advice on a specific situation, consult a legal professional.

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Some Vocabulary

Will: a document that lets you choose what will happen to your money and property after you die. The contents of a will are usually confidential.

Liquidator: the official name in Quebec law for the person who settles someone's affairs after death. Some people know them better under the name "executors."

Succession: the official name in Quebec law for what is often called an estate. The succession is made up of the property of the person who died, plus amounts owed to or owed by that person.

Why Make a Will?

Here are some reasons:

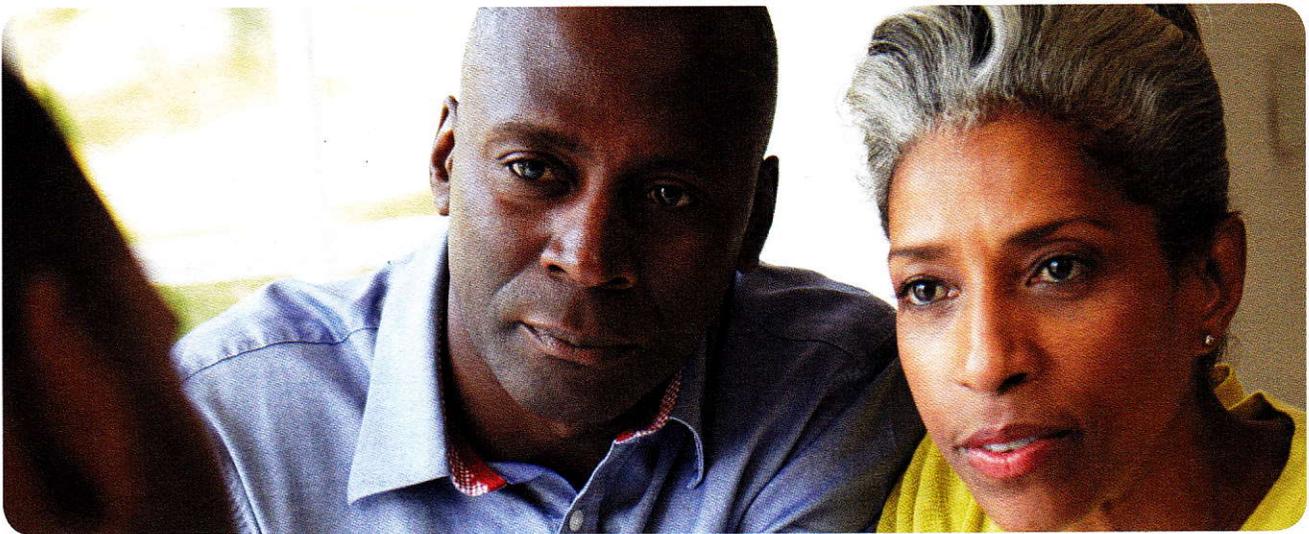
- choose who will get your money and property (your "heirs")
- name a liquidator
- describe the liquidator's powers, since you can add to or change the powers the law automatically gives to liquidators
- name a tutor for any children under 18 and decide who will manage their inheritances until they turn 18 (A tutor is someone who will act as a parent to the children.)
- plan for the tax impact and overall financial impact of your death
- avoid difficult situations:
 - make sure an unmarried partner inherits something (See the section Dying Without a Will.)
 - avoid conflicts between heirs

To learn more about the very important responsibilities of liquidators, see Éducaloi's website articles and print publications on this topic.

Requirements for a Valid Will

These are the main requirements:

- A will is an individual document. You cannot make a will as a group or a couple. There is one exception to this rule: spouses can leave property to each other or their children through a marriage contract made by a notary.
- The person making the will must have the mental "capacity" to make it. This means the person understands the nature of the document and what it says.
- People under the age of 18 can usually only make a will for property that has little value.
- The will must follow the legal rules for that kind of will. (See the table later in this guide about the various kinds of wills.)
- Usually, the person making the will must sign it. If this person is not able to sign, or cannot read or write, the law provides for some alternatives.
- A will made by a notary must be written in either English or French. The other two kinds of wills recognized in Quebec can be in any language, but you will need to get a translation into English or French to have these wills "probated" (made official) after death. The table later in this guide explains the three kinds of wills.



Validity of a Will and Age

The law assumes that a person who makes a will has the mental capacity to make it unless the opposite is proved. So even if the person making the will is elderly, this is not enough to find that the will is not valid.

To find that a will is not valid, the person challenging it must show one of two things:

- The person who made the will did not have the mental capacity to make it. Remember, capacity means someone understands the nature of the document and what it says.
- The person made a mistake about what the will said or did not freely agree to it.

Various Ways to Make a Will

Quebec law recognizes these kinds of wills: notarized, made in front of witnesses and holograph.

A notarized will is prepared by a legal professional called a notary.

A will made in front of two witnesses can either be prepared by a lawyer, by the person making the will, or by someone else. It can be handwritten, typed or made using a pre-made form.

A holograph will is written entirely by the person making the will. It cannot be typed or on a pre-made form.

The table in the following pages explains the advantages and disadvantages of the three types of wills.

Type	Advantages	Disadvantages
<p>Notarized</p> 	<ul style="list-style-type: none"> kept by the notary, possibility of getting official copies professional advice follows the legal rules less likely to be challenged no cost or delays for "probate" (confirming the will) after the person dies recorded in the registry (list) of wills of the Chambre des notaires (order of notaries) 	<ul style="list-style-type: none"> notary's fees: about \$300, plus \$10 to record it in the registry of wills of the Chambre des notaires
<p>Signed in front of two witnesses, prepared by a lawyer</p> 	<ul style="list-style-type: none"> can be kept by the lawyer professional advice follows the legal rules recorded in the registry of wills of the Barreau du Québec (order of lawyers) 	<ul style="list-style-type: none"> probate* required by a special court clerk or notary after you die (cost of over \$1,000 and delays) legal fees: about \$300 plus \$10 to record the document in the registry of wills of the Barreau du Québec
<p>Signed in front of two witnesses, prepared by you or someone else (non-lawyer)</p> 	<ul style="list-style-type: none"> simple quick no cost when writing it (or low cost if you buy a form) can be written by someone else 	<ul style="list-style-type: none"> probate required by a special court clerk or notary after you die (cost of over \$1,000 and delays) easily lost, changed or destroyed can lead to problems if not written properly could be not valid if legal requirements not followed less suited to complicated situations

Holograph

Montreal
January 1, 2000
This is the will of Jack Pét, born
December 31, 1978:
I leave all my property to my
wife, Lotta Pét.
Jack Pét

- simple
- quick
- no cost
- no witnesses needed

- probate required by a special court clerk or notary after you die (cost of over \$1,000 and delays)
- easily lost, changed or destroyed
- less suited to complicated situations
- can lead to problems if not written properly
- could be not valid if legal requirements not followed

*** Probate:** A process that, among other things, confirms that the will is actually the last will of the person who died and that it follows Quebec law.

Important: Making a will without legal advice can lead to problems after you die, not to mention additional costs and delays. Sometimes, people making wills on their own make wills that are hard to understand, incomplete or not legally correct. A will is part of what you leave to your family, and perhaps friends and your community, after your death. It is important to make sure it is done right.

What to Put in a Will

Here are examples of what you can do in a will:

- say who inherits what:
 - You can leave everything to one person or to several people, and say how much each will get (for example, equal or unequal shares).
 - You can leave a group of items to one person.
 - You can leave a specific item to one person.
- give a gift to a charity (You can name the charity and indicate the amount of money or other property you are giving.)
- name a liquidator, define the liquidator's powers, and say whether the liquidator will be paid. Since the liquidator can refuse this responsibility or might not be available, you can also name a replacement liquidator.
- name a tutor and replacement tutor for your children under 18 (A tutor acts as a parent to the children.)
- name replacement heirs (in case some die)
- indicate wishes about your funeral (Since your will might only be seen some time after your death, it can be a good idea to let people know about your wishes other than in your will.)

Who You Can't Name in Your Will

By law, you cannot leave things to these people:

- a notary who prepared your will
- a person who witnessed your will
- an owner, director or employee of a health and social services institution, if you made your will while being cared for by the institution (You can still name the institution itself in your will.)
- a pet (Only people and organizations can inherit. However, you can leave money to someone to be used to take care of a pet.)



Changing a Will

You can change or cancel your old will. The legal term for cancelling is “revocation”. You might want to change or revoke a will in these situations:

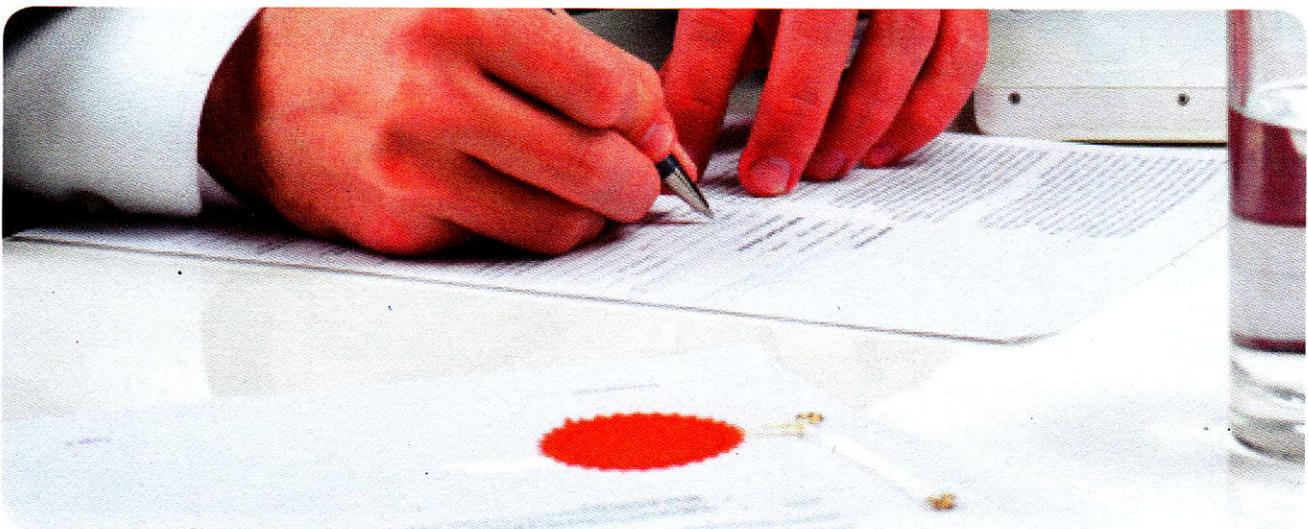
- You changed your mind about who to give your money or property to.
- Your family situation has changed.
- What you own has changed.
- The law has changed.

A change or revocation must respect the rules for making a valid will in the first place. See the sections above about the requirements for a valid will.

Full revocation of a will, without making a new one, is like having no will at all.

But if you only change part of a will instead of revoking all of it, the parts you don't change continue to apply. This is why it is usually a good idea to make a completely new will instead of just changing parts of an existing one.

Note that if you make handwritten changes on a notarized will, this takes away from its official nature, and it is no longer a notarized will.



Dying Without a Will

If someone dies without a will, the law decides who inherits. The law also decides how much each person gets.

The general rules are explained below. For the detailed rules on who inherits, see the chart in this article on Éducaloi's website: [Dying Without a Will](#).

Take special note of the situation of common-law (unmarried) partners. Adopted children are treated the same way as children born to their parents.

	Married (or civil union)		Not Married (never married, common-law partner**, divorced, widowed)	
1. With Children	Children: 67%	Spouse: 33%	Children: 100%	Common-Law Partner: 0%
2. No Children	Spouse: 67%	Parents: 33%	Parents: 50% Brothers/Sisters*: 50%	Common-Law Partner: 0%
3. No Children or Parents	Spouse: 67%	Brothers/ Sisters*: 33%	Brothers/Sisters*: 100%	Common-Law Partner: 0%
4. No Close Relatives	Spouse: 100% If no spouse (never married, common-law partner, divorced, widowed): go to "Not Married" column on right.		The closest relatives from among the grandparents, great-grandparents, aunts, uncles, grandnieces and grandnephews and cousins, etc., will inherit. The law decides each person's share based on certain factors, such as the degree of the relationship to the person who died and dividing shares between the mother's and father's side of the family.	
5. No Family (to the eighth degree)	Not applicable		State: 100%	

*If a brother or sister is already dead, then his or her share goes to the children of the dead brother or sister.

**Common-law means making a life together without being married or in a civil union.

Children From Several Relationships

If a person who dies without a will had children with more than one partner, all of the children (biological or adopted) are eligible to inherit from this person.

Step-children do not inherit, unless the new parent officially adopts them.

No Heirs: the Role of the State

If no one is eligible to inherit from the person who died, or if all the heirs refused their inheritances (because the person who died had a lot of debts, for example), the State takes possession of the property. The State means the government.

If no heirs are found or come forward within six months after the death, the State goes ahead and settles the estate. Revenu Québec takes on this responsibility.

An heir can still come forward to prove a right to inherit within 10 years of the opening of the estate. If the claim is legitimate, the State must pay it.



Resources

Éducaloi

www.educaloi.qc.ca/en

To order more copies of this guide or our other print products, go to "Contact Us" on our website home page and then to "Order Éducaloi's Products." You can also write to us at the address on the back of this guide.

Revenu Québec

www.revenuquebec.ca/en/default.aspx

Quebec City region: 418-659-6299

Montreal region: 514-864-6299

Elsewhere: 1-800-267-6299 (no charge)

Hearing impaired:

Montreal region : 514-873-4455

Elsewhere: 1-800-361-3795 (no charge)

Find a Notary

Chambre des notaires du Québec (professional order for notaries):

www.cnq.org/fr/trouver-un-notaire.html (website in French only)

You can search by region, language and accessibility for people with reduced mobility.

Free, Bilingual Notary Information Line

Call: 1-800-688-2473

Find a Lawyer and Get a Free or Low-Cost Consultation

Barreau du Québec (professional order for lawyers):

www.barreau.qc.ca/en/public/trouver/avocat/index.html

Or call:

Island of Montreal: 514-866-2490 (30 minutes for \$30)

Longueuil: 450-468-2609 (30 minutes for \$50)

Quebec City, Beauce and Montmagny: 418-529-0301 (30 minutes for free)

Other regions of Quebec: 1-866-954-3528 (30 minutes for \$30)

Free or Low-Cost Legal Services (legal clinics, etc.)

Barreau du Québec list:

www.barreau.qc.ca/en/public/acces-justice/services/index.html

La boussole juridique:

<http://votreboussolejuridique.ca> (website in French only)

Search tool by region of Quebec and area of law

Model Will

Quebec government:

www.publicationsduquebec.gouv.qc.ca/fre/products/978-2-551-25259-6

Will Search

Registry of wills of the Chambre des notaires du Québec:

www.cnq.org/fr/testament.html (website in French only)

514-879-1793 or 1-800-263-1793

Registry of wills of the Barreau du Québec:

www.barreau.qc.ca/en/public/testament-mandat/recherche/index.html

514-954-3411 or 1-800-361-8495 ext. 0

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