

THE WILL

WHAT HAPPENS to your property at your death?

No matter how little or how much property you may own, you want to be sure that it is distributed to the right people after your death. It would be very comforting to know that at the time your loved ones are mourning your death, you will have done everything in your power to avoid problems. A will lets you choose your heirs and clearly outline your last wishes. If you do not make a will, the law will instead determine who inherits your property. A proper will is a guarantee that your wishes will be respected. It will also make settling your succession that much easier.

WHAT TYPE OF WILL IS SUITABLE FOR YOU?

Although you may be aware that there are many types of wills, you may not know what they are. Our legal system recognizes three types of wills:

- Notarial or authentic will:
This type of will is made before a notary in the presence of a witness or, in certain cases, before a notary and two witnesses.
- Holograph will:
A holograph will is entirely handwritten by the testator and signed by him without the use of any mechanical process. It does not require the presence of a witness.
- Will made in the presence of witnesses:
This type of will does not have to be handwritten by the testator (it can be typed, for example) but must be signed by the testator or by a third person for him in his presence and according to his instructions. Before two witnesses meeting certain requirements, the testator must declare that this document is his will. The two witnesses must also sign the will in presence of the testator.

If you choose to make a notarial will, it will take effect immediately upon death. But if your will is not a notarial will, it is subject to probate by the Superior Court after your death.

Notarial wills are not subject to probate because the law recognizes notaries as public officers, and allows them to confer authenticity on their wills.

The notary will suggest adding a clause to the will requiring that it be read and explained to the heirs. The reading of the will is the first step on the road to successfully settling a succession. Both liquidator and heirs will feel more comfortable about the procedures to follow in order to respect the final wishes of the deceased.

Thus, following a death, the notary will gather all the heirs together to inform them about the content of the will and its consequences. The notary will also play the role of facilitator by asking questions that no one else would dare ask for fear of ruffling other family members' feathers. The notary can also act as a mediator if the contents of the will give rise to conflicts. Lastly, the notary will explain to the liquidator designated by the testator his or her role and responsibilities.

SEVERAL GOOD REASONS FOR CHOOSING A NOTARIAL WILL

A will is an extremely important legal document: the settlement of your succession is based on it. It is therefore essential that the will be well drafted, complete, and above all, free of ambiguity.

When you have recourse to the services of a notary, a lawyer with expertise in the planning of successions and drafting of legal documents, you can be sure that there will be no problems in the interpretation of your will. Your notary knows how important it is to choose the right words and he will formulate your last wishes in legal terms according to your instructions. He will also help you remember everything that should be included to make the settlement of your succession an easy task.

Another advantage of a notarial will is that the notary will keep the original in a safe place, where it cannot be lost or destroyed. The notary also has your document entered in the Register of Testamentary Dispositions of the Chambre des notaires du Québec. The will itself is not filed in the Register, only the fact of its existence is recorded, thus maintaining confidentiality while making it easy to locate after your death.

THE REGISTER OF TESTAMENTARY DISPOSITIONS, AN EXCEPTIONAL SYSTEM

The notaries of Quebec, guardians from the beginning of the most intimate secrets of Quebecers, created in 1961 a registration system to ensure better protection for your wills. This system, known as the Register of Testamentary Dispositions of the Chambre des notaires du Québec, now contains more than 6,000,000 will inscriptions.

A SYSTEM WITH MANY USES

As a result of changes made to the Register in 1978, wills other than notarial wills may now benefit from the advantages of the Register.

Thus, a holograph will or a will signed in the presence of witnesses may be entered in the Register in the same manner as a notarial will. Registration must, however, be done through a notary of your choice.

A SYSTEM THAT HAS ADVANTAGES

Conceived and created to guarantee that your last wishes are respected, the Register has definite advantages:

- It ensures the confidentiality of the will, since only its existence is registered
- It facilitates the tracing of your last will after your death
- It eliminates the risk that your will never comes to light or is found late in the settlement of the succession
- It avoids the possibility that the will, even if in holograph form or made in the presence of witnesses, may be accidentally destroyed or maliciously done away with by heirs disappointed with its provisions

With these advantages, the Register greatly facilitates the discovery of your testamentary dispositions and accelerates the settlement of your succession.

A SYSTEM THAT IS READILY ACCESSIBLE

When you choose to make a notarial will, you avoid many complications. The notary, in addition to advising and guiding you, has the will entered in the Register.

If you nevertheless decide to draw up your will in holograph form or in the presence of witnesses, it is recommended that you forward it to your notary who, after depositing it in his records to ensure its conservation, will enter it in the Register.

To ascertain the existence of a will following death, you should consult your notary or go directly to the Register of Testamentary Dispositions of the Chambre des notaires du Québec with proof of death.

Registers of Testamentary Dispositions and of
Mandates Given in Anticipation of Incapacity
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Consult your notary: he leaves nothing to chance.

LACAILLE, Lise
The Notary and Daily Life
Detail



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September 1999
Updated: December 2002
www.cdnq.org