

Topic 1

WILLS & INHERITANCE



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A will is a legal document that does three important things:

1. It sets out how you want your money, property and other assets—called your estate—distributed after your death. The people who will inherit your estate are called your beneficiaries.
2. It names an executor who will be responsible for carrying out your wishes.
3. It names a guardian for minor children.

Having a will makes the transition of wealth so much easier for your family at a very high stress, emotional time. If you don't have a properly documented will, it can lead to disputes. And if you die without a valid will, a court will appoint someone to administer your estate. Your estate will be distributed according

to a formula set out in the laws of your province or territory. This may not be anything like your true wishes. It can also create delays and extra costs.



Would you like to learn more about wills and related documents for your estate? Read the **Scotiabank Estate Planning Guide**

What's to talk about?

A. **Do you have a will? Should you share the content of your will with your adult children?**

Talking about wills and the transfer of wealth can be uncomfortable for many families, but it's important that your family knows that you have a will in place. Also, if you don't talk about it with your child(ren), you lose an opportunity to make sure everyone understands your wishes and what's important to you. That can lead to surprises, misunderstandings, hurt feelings and conflicts later.

Here's how to start the conversation.

If you are a parent of adult children:

- Let your child(ren) know that you want to have a conversation about your will and your wishes when you die. Don't surprise them.
- Make sure have a legally valid will and let your child(ren) know.
- At minimum, you may want to let them know who your executor is and where you keep a copy of your will.
- Decide how much detail you want to share. You can be specific about what each child will inherit. Or talk in broad terms about what's important to you. "I want all my children to have an equal share in my estate." "I want you all to enjoy the family cottage together." "I want to leave some of my savings to my favourite charity." "I want to help each of my grandchildren with their education."

If you are an adult child:

- Your parent(s) may be uncomfortable talking about money, their wills and the end of their lives. Don't spring a conversation on them. Suggest you find a time to talk so they can tell you a little about their wishes.
- It's also okay to feel uncomfortable about bringing the topic up. If so, avoid direct questions. Try something like, "I/we would like to get clear on what your wishes are for your estate. I/we want to make sure that we all understand what is important to you and what we can do to support you." You could even start with something like, "I hate to ask these questions . . ." or "I dread the day when you'll be gone . . ."
- If you have siblings, talk to them first. You can share and support each other in having this conversation with your parent(s). You may even want to hold a family meeting where everyone can share what they know about wills.
- Make sure you have a legally valid will yourself and let your parent(s) know. It can help open a conversation.
- Another way to start a conversation is to try some general questions. "Have you thought about the future? Do you have a plan if something were to happen to you?"
- If your parent(s) doesn't/don't have a will, ask them why not. Is there something you can do to help them get started? Make sure they know why it matters for everyone to have a legally valid will.

Ready to learn more?
Read the **Scotiabank Estate Planning Guide**

B. How do you create a will — and who can help? What makes a will legal?

There are three ways to create a legally valid will in Canada:

1. You can hire a lawyer to write your will. This is the best way to make sure your will is valid and free of errors.
2. You can use a will kit. There are also websites that will help you create your will online.
3. Except in British Columbia, you can write a legal will by hand.



There are many rules to follow and lots to think about, especially if your situation is more complex. For example, if you have a dependent adult child or many children to share your assets you will have many more decisions to make.

Remember: any will can be contested, but it's easier to make mistakes if you don't get advice. Talking about it can help. Here's how to get started.

If you are a parent with adult children:

- Let your child(ren) know if you've had your will prepared and/or reviewed by an expert.
- If not, ask your children, friends or other close family members what kind of will they have and/or who helped them write their will.
- You don't have to share all the details with your child(ren). But you may want to let them know if you've had your will witnessed and signed.
- If you have updated your will, you may also want to tell them the date of your latest will.
- Read *Making a will and planning your estate* for a basic understanding of wills and estates in Canada.

If you are an adult child:

- Make sure you have a legally valid will and tell your parent(s) how you created it. If you used a will kit, tell them why and what it was like. If you used a lawyer, tell them why and how you went about finding one.
- You can offer to help your parent(s) write their will or use a will kit. But understand that they may not feel comfortable sharing financial information with you. If you have siblings, you must be careful about influencing your parent(s) when they write their will(s).

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C. **Who will ensure that your will and wishes will be carried out and enforced? Should you involve your adult child(ren)?**

In your will, you will name someone to carry out your wishes. This person is called your executor, your estate trustee or your estate representative. You can have more than one executor. You can also name a back-up.

Many people ask their child(ren) to be an executor, but you don't have to.

It's an honour to be an executor, but it takes a lot of time and effort. Not everyone is ready or able to take on this role. It's always a good idea to talk it over with the person you have in mind to see how they feel.

Here are some tips to get the conversation started.

If you are a parent with adult children:

- You must ask your adult child(ren) if they want to take on this role. Don't assume they will say "yes." And don't surprise them.
- For a complex estate or if you are concerned about potential family conflicts, consider appointing a professional, like a lawyer, as an executor.
- If you have more than one child, you may want to ask them to share the responsibility. This can work well if your children get along. But if they don't, the situation could create tensions and even disagreements.
- On the other hand, if you choose only one child to be executor, the others may feel hurt. Be sure to talk about it with all your children so they understand the reasons for your choice.

If you are an adult child:

- If your parent(s) already has/have a will, you can ask them who the executor is.
- If your parent(s) asks/ask you to be an executor, consider carefully if you want to take on the duties—either alone or with other siblings if you have them. Remember: you don't have to say “yes.”
- You can ask your parent(s) to review their will with you so you can understand what your role as executor might involve.
- If you do take on the role of executor, ask your parent(s) where to find important financial papers, including their will.
- Also find out if they want you to make arrangements for their funeral(s).

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D. **Why might you want to change your will? How do you go about changing your will?**

Your will may need to change as your life changes. Here are some common reasons to change your will:

- **You move to a new province.** Each province has different laws for wills and estates.
- **You have a new child or grandchild(ren).** Unless you've accounted for unborn children in your will, you will likely want to add a new child/grandchild as a beneficiary.
- **You get married/remarried.** In most provinces, unless your will has a “contemplation of marriage” clause, getting married invalidates your will—so you need to update it.
- **You get divorced.** Many provinces have laws that state an ex-spouse cannot receive a gift in your will or act as your executor. It would be best to remove them as a beneficiary or executor.



Family members can remind each other when it may be time to update a will. Here are some tips to get the conversation started.

If you are a parent with adult children:

- If a change to your will can affect your children or other beneficiaries, you may want to let them know. It's generally a good idea to avoid surprises later.
- You can ask your child(ren) for help if you are not sure how to update your will or need to see your lawyer.

If you are an adult child:

- Outdated documents can lead to someone's true wishes not being followed. For example, the assets the person leaves behind may not go their intended recipients. If you're aware of an important life change for your parent(s), ask them if they've thought about how it may affect their will(s).
- Offer to take your parent(s) to their lawyer to discuss changes to their will if needed. Or, if they have created their own will(s), make sure they understand how to revoke those documents and start over.



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E. **How do you talk about tough decisions related to “who will get what”?**

If you are a parent of more than one child, dividing up your estate in an equal way between them often makes sense. It can avoid family conflict over fairness or favoritism.

But what if one or more of your children have already received more financial help from you than the others? What if some are in a tougher financial position than others? Or have special needs?

And what about asking children to share a property, like a family cottage, or a family business? Do they get along well enough to make it work? Will they all be able to contribute equally? Or will someone feel taken advantage of?

These are tough questions. It can be even harder to talk about them with your family. How do you avoid disputes or hurt feelings?

Regular, clear communication can help. Here are some tips to get the conversation started.

If you are a parent with adult children:

- If you feel you have sound reasons for not dividing your estate equally, you may want to sit down with your kids and tell them what you're doing and why.
- If you plan to leave a sizeable part of your estate to charity, it's best to let your child(ren) know. Avoid surprises if you can.
- Be open to hearing your child(ren)'s point of view. If a change make sense, make it. But don't allow anyone to pressure you to change your will if you don't want to.

If you are an adult child:

- If your parent(s) plans/plan to divide their estate unequally, ask them to talk about why they made this decision. Listen calmly and carefully. Your first goal is to understand their wishes. Remember that it's their decision to make, not yours.
- If you think your parent(s) is/are not being fair, you may want to tell them how their plans make you feel. Try writing it down first, just to “vent”. Then organize your thoughts to be ready for a conversation.

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Let's Talk Money: Seniors Conversation Starters

Wills and Inheritance

Questions for you as an Older Adult

- Have you thought about the things that we have accumulated as a family—our home, some of our treasured family pieces, or certain things that are important to you—and have you thought about which of those things that you would want after I pass on?
- I have been thinking a lot about the great things that I have done in my life, and the joys that we have experienced as a family. Can we spend some time talking about my thoughts about what I want to happen with our family “treasures” when I reach “the end”?
- Did you notice that (insert name of recently deceased acquaintance) passed? It got me thinking about my own mortality. Can we talk about my thoughts on my goals?
- Have you ever thought about what would happen to your kids—God forbid—if something happened to you? Have you thought about a Will?
- Now that you have... (gotten a new job, married, had a child) have you thought about how that change has affected your family? Have you considered thinking about how that change might affect your kids?
- I do not plan on going anywhere soon—but in the event something happens I would like to share my goals about what I have built over time, and what will happen with it.

