INDIGENOUS SERVICES CANADA

Wills and Estates Planning

BC Region - 2020

GCDOCS # 16239960

Indigenous Services Canada
Services aux Autochtones Canada

Canada

1 Wills and Estates Overview (Power Point presentation)

2 Initial Steps to Take when a Family Member Passes Away

3 Assistance with Funeral Costs

4 What is an Estate Administrator or Executor?

5 Will Kit: Writing Your Own Will
Published by the Aboriginal Financial Officers' Association of BC

6 Sample Will and two blank will forms

7 Section 51 of the *Indian Act*: Administration of a Mentally Incapable Adult's property

8 Section 52 of the *Indian Act*: Minors' Individual trust accounts

9 The Family Homes on Reserves and Matrimonial Interests or Rights Act hand out

10 Wills and Estates Glossary of Common Terms

Wills and Estates under the *Indian Act*

An Overview

Estates Unit, BC Region

January 2019– GCDOCS #16552442

Indigenous Services Canada | Services aux Autochtones Canada

Canada

Does the *Indian Act* apply to your estate?

- The *Indian Act* estates sections apply if you:
  - are status (registered) First Nations person, or entitled to be registered under the *Indian Act* and live on reserve*; or*
  - live on reserve, but
    - leave temporarily for educational reasons or seasonal employment; or
    - leave the reserve for medical reasons or to go into a care facility.
- The estates sections do not apply if you:
  - are status (registered) or entitled to be registered First Nations person and live off reserve;
  - are non status and live on reserve.

2 ISC INDIGENOUS SERVICES CANADA

Who we are and what we do…

- We act for the Minister of Indigenous Services, carrying out his responsibilities under the *Indian Act* by:
  - approving Wills and confirming the appointment of Executors and Administrators;
  - settling the estates of people who have passed away, when nobody in the family is able to do so;
  - managing the finances of people who are unable to manage their own money due to mental incapacity; and
  - paying out Minors' trust accounts held by Indigenous Services.

3 ISC INDIGENOUS SERVICES CANADA

What is your "estate"?

- Everything you <u>own</u> on the day that you die, including:
  - land and buildings owned both on or off reserve;
  - all of your personal belongings;
  - money in your bank account; and
  - a car or boat.
- Everything you <u>owe</u> on the day you die:
  - taxes, credit card debt, final phone and cable bills;
  - any debt that's not life-insured.
- The person who looks after your estate deals with these matters.

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What may not form part of your estate?

- Joint bank accounts, joint bonds or investments (check with your bank).
- Joint tenancy of property (when it's held with someone who is still alive – the "right of survivorship" applies).
- "Right of survivorship": the item automatically passes to the surviving owner with the right paperwork filled out.
- Land and any buildings owned by your band, such as custom allotments and traditional land holdings.

5 ISC INDIGENOUS SERVICES CANADA

Page 15 – "*Writing Your Own Will*" guide

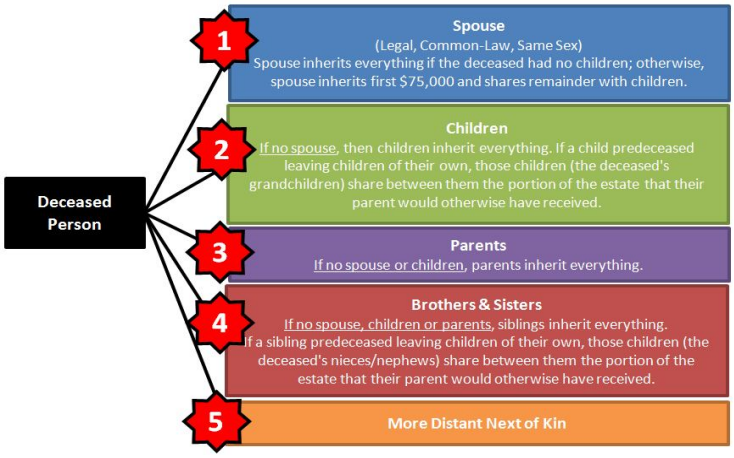
If you don't have a Will…

- If you don't have a Will, Sections 48 and 50 of the *Indian Act* says who will inherit from your estate (the heirs).
- If you have reserve land, these sections do not allow certain heirs to inherit it.
- The person looking after your estate must follow the legal rules.

6 ISC INDIGENOUS SERVICES CANADA

Page 4 – "*Writing Your Own Will*" guide

Section 48 of the *Indian Act*



7 ISC INDIGENOUS SERVICES CANADA

Sections 48 & 50 - if you have reserve land

- Section 48(8)

  if you don't have a Will and your closest living relatives are nieces/nephews, your reserve land must be transferred to the band.
- Section 50

  if land is inherited by a person(s) who isn't a member of your band, the Superintendent of Indigenous Services must sell the non-member's share of the land and give them the sale proceeds instead of the land itself.

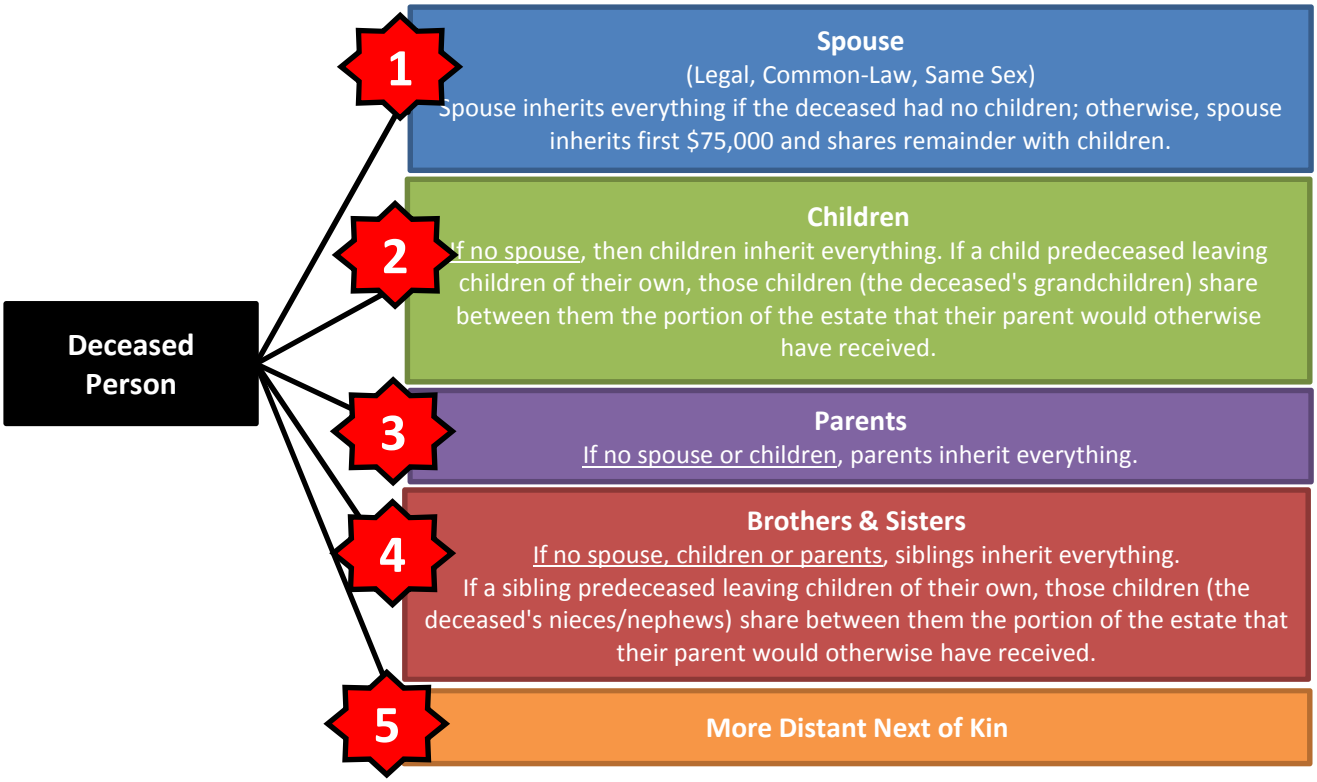
You can avoid these issues by making a Will.

8 ISC INDIGENOUS SERVICES CANADA

Page 16 – "*Writing Your Own Will*" guide

SECTION 48: WHO INHERITS WHEN THERE IS NO WILL?

(or: if there is a Will but it doesn't dispose of all of the deceased person's assets)



- 48(1): If the deceased left a surviving spouse, but no children, the spouse inherits everything.
- 48(2): If the deceased left a surviving spouse and 1 or more children, spouse gets the first $75,000 and remainder is shared between spouse and children (if more than 1 child, spouse gets 1/3 of the remainder and children split 2/3; if only 1 child, child gets 1/2 of the remainder and spouse gets the other 1/2).
- 48(4): If the deceased left children but no spouse, children divide entire estate equally between them.
- If a child of the deceased died before him or her leaving children of their own, those children (the deceased's grandchildren) share between them the portion of the estate that their parent would otherwise have received.
- 48(5): If the deceased left no spouse and no children, the deceased's surviving parent(s) inherit everything
- 48(6): If the deceased left no spouse, children or parents, the deceased's siblings inherit everything
- If a sibling of the deceased died before him or her, but had children of their own, those children (the deceased's nieces and nephews) share between them the portion of the estate that their parent would otherwise have received.
- If anyone who is entitled to inherit from the deceased is alive at the time of the deceased's death, but dies before receiving their share of the deceased's estate, that share is payable to the estate of the deceased heir.
- 48(8): If the only surviving relatives of the deceased are nieces/nephews or more distant next of kin, any interest in reserve land held by the deceased reverts to the Band.
- 50: If anyone who is entitled to inherit some or all of the deceased's reserve land is not a member of the same First Nation as the deceased, the Superintendent of Indian Affairs must offer the non-member's interest for sale and pay them any sale proceeds.

So, do you need a Will?

- Section 48 of the *Indian Act* might work for you and your family.
- You should really have a Will if you:
  - are separated (but not divorced);
  - have children from more than 1 relationship;
  - have a spouse, children or grandchildren who are not status or who are not members of your First Nation and you own reserve land;
  - have a friend, step-children or custom-adopted children who you want to leave something to;
  - if you have a common law spouse and have children from a previous relationship.

9 ISC INDIGENOUS SERVICES CANADA

Page 5 – "*Writing Your Own Will*" guide

By making a Will, you can choose who gets your estate.

- You can:
  - provide for your loved ones, children, stepchildren, grandchildren;
  - decide who will get your reserve land (and any house built on it);
  - give your possessions, jewelry, vehicles, artwork and money to family members you choose;
  - name a guardian for your young children; and
  - choose who will carry out your wishes.
- If you have land: avoid having Section 48(8) or Section 50 apply to your reserve land.

10 ISC INDIGENOUS SERVICES CANADA

Page 9 – "*Writing Your Own Will*" guide

Some things you can't do in a Will…

- You can't give away something you don't actually own, such as:
  - A house built on band land, whether it be band, social, or CMHC housing. If any of these apply to you, check with your band's housing department to find out what happens to the house when you die.
  - Generally, anything held jointly with someone else because the right of survivorship applies (check your bank's rules about joint accounts or other joint assets, they may be dealt with through your Will).

11 ISC INDIGENOUS SERVICES CANADA

Page 15 – "*Writing Your Own Will*" guide

What needs to be in a Will?

- If you live on reserve, the *Indian Act* says a valid Will must:
  - be in writing;
  - be signed by the will-maker;
  - give away something the will-maker owns; and
  - be intended to take effect after death.
- Ideally, a Will should also:
  - be dated;
  - and have 2 adult witnesses who are not beneficiaries or their spouses. (A provincial requirement).
- Audio/video taped Wills or oral instructions are not accepted.

12 ISC INDIGENOUS SERVICES CANADA

Page 7 – "*Writing Your Own Will*" guide

Making a typical Will…

- identify yourself (your full name, band membership etc.) and state your home address;
- revoke (cancel) any previous Wills;
- name the executor(s), then the alternative executor(s);
- name a guardian for your minor children (if any);
- give directions for your funeral;
- make gifts of specific items (if any);
- give the 'residue' of your estate (the 'residue' is everything that is left after payment of your debts and gifts of any specific items);
- date and sign your will; and
- have witnesses' sign, date and print their names.

Page 27 - "*Writing Your Own Will*" guide & Tab 6

When making a Will, remember that…

- The will maker must:
  - be able to understand what s/he is doing when writing a Will ("mental capacity"); and
  - be free from any extreme pressure or influence by someone wanting to benefit from the Will ("duress" or "undue influence").
  - leave clear instructions in the Will.
- Section 46 of the *Indian Act* gives six reasons as grounds for voiding a will.
  - The person wanting to have a will voided must provide the proof.

Pages 20 & 21 – "*Writing Your Own Will*" guide

Changing or making a new Will.

- You can make changes to your Will:
  - a codicil prepared by a lawyer or notary.
- You should make a new Will if there's been a major change in your life:
  - you got married or had children;
  - you've been living common law with a partner for over a year and you have children from a different relationship;
  - you're separated or got divorced, and your "ex" is named in your current Will;
  - the executor or a beneficiary named in your Will has passed away.

15 ISC INDIGENOUS SERVICES CANADA

Page 19 - "*Writing Your Own Will*" guide

Do you need a lawyer…

- A lawyer isn't required to help you write your Will but you may wish to seek legal advice if:
  - your estate is complicated;
  - you have minor children and custody arrangements;
  - you have off reserve property or possessions of significant value; or
  - you own a business.

16 ISC INDIGENOUS SERVICES CANADA

Page 6 - "*Writing Your Own Will*" guide

Where should you keep your Will?

- The will maker is responsible for the safe storage of the Will. You can keep your will:
  - in a safety deposit box – held jointly with someone (for access);
  - in a fireproof box at home;
  - In a safe at home or if permitted at the band office; or
  - with a trusted family member/friend.
- Remember to tell your executor or someone you trust where you stored your original Will.
- Upon the death and not before, the original Will has to be sent to our office to be approved ("probated"). A photocopy or certified true copy of a deceased person's Will is not accepted.

Page 19 – "*Writing Your Own Will*" guide

Information & Publications

Writing Your Own Will – A Guide for First Nations People Living On Reserve in BC

www.afoabc.org (Click on "What We Do", then on "Resources").

Estate Administration On Reserve: Templates Package

Contact us and we'll email this to you.

Or you can download it from the Legal Services Society of BC's Aboriginal website at http://aboriginal.legalaid.bc.ca/ (click on "Legal Aid", look under "Free Publications")

Understanding Estates Management on Reserve – Family Homes on Reserves and Matrimonial Interests or Rights Act:

https://www.coemrp.ca/wp-content/uploads/2015/12/Understanding-Estates-Management-Booklet.pdf

Planning for Incapacity

My Voice Advance Planning Guide

https://www.health.gov.bc.ca/library/publications/year/2013/MyVoice-AdvanceCarePlanningGuide.pdf

https://www2.gov.bc.ca/assets/gov/people/seniors/health-safety/pdf/advancecareplanningquicktips.pdf

https://www2.gov.bc.ca/assets/gov/people/seniors/health-safety/pdf/aboriginaladvancecareplanningbrochure.pdf

19 ISC INDIGENOUS SERVICES CANADA

Contact Information

Estates Unit, BC Region

- Tele: 604.775.5100
- Toll free: 1.888.917.9977
- Email: BCestates@Canada.ca

Individual Land Holdings

- Tele: 604.775.5100
- Toll free: 1.888.917.9977

(Ask to speak with an Individual Land Holdings Specialist)

20 ISC INDIGENOUS SERVICES CANADA

ESTATE ADMINISTRATION ON-RESERVE

Initial steps to take when a family member passes away

1. Make funeral arrangements.
2. Obtain an official Death Certificate or funeral director's Burial Certificate from the funeral home (or the BC Vital Statistics Agency).
3. Report the death to the Indian Registry Administrator or membership clerk at the band office, including as much as possible of the following information:
   - The name, address, date of death and band membership of the person who passed away, and whether or not their home was on reserve;
   - Proof of the death (a photocopy of the Death Certificate or Burial Certificate);
   - The date of birth and social insurance number of the person who passed away; and
   - The names, addresses and telephone numbers of the deceased's next-of-kin and the executor named in the deceased's Will (if the deceased left a Will).

   The Indian Registry Administrator or membership clerk at the band office will report the death to Indigenous Services Canada (ISC) in Vancouver.
4. Search for a Will.

   If the deceased left a Will, send the original Will, not a photocopy, to the BC Region Estates Unit in Vancouver by courier or registered mail.

   The address is:

   Estates Unit
   Indigenous Services Canada, BC Region
   600 – 1138 Melville Street
   Vancouver BC V6E 4S3

What happens next?

Estates Unit staff will write to the deceased's next-of-kin and/or the executor named in the deceased's Will. If the deceased was ordinarily resident on reserve, a personal representative (normally, a family member, someone chosen by the family, or the executor named in the deceased's Will) will be appointed for the estate in accordance with the *Indian Act*.

For more information:

Contact the Estates Unit in Vancouver by telephone at 604.775.5100 or 1.888.917.9977 (toll free in BC), or email us at BCestates@canada.ca.

ASSISTANCE WITH FUNERAL COSTS

Indigenous Services Canada does not provide assistance with funeral costs, however, assistance may be available from one of the following sources:

On Reserve

Contact your band's social assistance department.

Off Reserve

Contact the BC Ministry of Social Development at ***1-866-866-0800*** or go to their website at ***https://myselfserve.gov.bc.ca/***

A supplement may be provided to pay necessary funeral costs of any person who dies in BC if the estate of the deceased person or any responsible person has no immediate resources to meet these costs. There is no requirement that the deceased person, or the person's family, must be BC Employment and Assistance recipients to qualify for the supplement. Costs are to be recovered whenever possible**.** This supplement is available under the Employment and Assistance Regulations.

Canada Pension Plan Death Benefit

The death benefit is a one-time payment to, or on behalf of, the estate of a deceased Canada Pension Plan contributor. The maximum benefit is $2,500. The actual amount paid in any given case depends on the contributions the deceased made to the Canada Pension Plan during his or her lifetime. There is a minimum contributory requirement of at least 3 years, and if the deceased contributed to the Canada Pension Plan for more than nine years, he or she must have contributed in one third of the calendar years in the contributory period **or** 10 calendar years, whichever is less.

The Canada Pension Plan also provides other benefits. These are:

- **The survivor's pension:** a monthly pension paid to the surviving spouse or common-law partner of a deceased contributor;
- **The children's benefit:** a monthly benefit for dependent children of a deceased contributor.

*****FOR MORE INFORMATION, OR TO DOWNLOAD AN APPLICATION FORM FOR A PENSION OR BENEFITS, GO TO: WWW.SERVICECANADA.GC.CA OR CALL 1-800-277-9914*****

Canadian Forces Members

Veteran's Affairs Death benefit
When military families lose a loved one in the line of duty, there can be great suffering as the surviving spouse and children struggle to find their place in the civilian world. Veterans Affairs

Canada pays a death benefit to help ease that struggle. The death benefit is a one-time, tax-free cash award. The death benefit is not designed to be life insurance. Instead, it recognizes the impact the death of a service member has on the functioning of their immediate family, including the permanent loss of guidance, care and companionship. It is paid in addition to the usual pension-related death benefits paid under the Canada Pension Plan and the *Canadian Forces Superannuation Act*. The death benefit is adjusted annually according to the cost of living index. More information regarding the benefits offered by Veterans Affairs Canada may be found at https://www.canada.ca/en/veterans-affairs-canada.html or by calling toll free at 1.866.522.2122.

*****PLEASE CONTACT VETERANS' AFFAIRS CANADA DIRECTLY FOR INFORMATION*****

4. Insurance Corporation of B.C. (ICBC)

Basic Autoplan insurance from ICBC may cover partial funeral costs and death benefit payments for you, your spouse and your children if the death occurred as a result of a motor vehicle accident. Payments for death benefits vary depending on whether or not the insurance policy holder was the main wage earner in the home and if there are any children or dependents.

There are also payments if the deceased is a child. Payments for a child come in a lump sum, whereas payments for adults combine a lump sum and weekly payments for 104 weeks.

*****PLEASE CONTACT ICBC OR YOUR AUTOPLAN BROKER DIRECTLY FOR INFORMATION*****

5. WorkSafeBC

You may be entitled to financial help from WorkSafeBC when a family member dies from a work-related accident or disease.

The amount and type of assistance will vary according to the number and age of dependents in the family and the earnings of the worker, as prescribed by the *Workers Compensation Act*. Financial assistance is considered when WorkSafeBC has accepted a claim for a work-related death.

- The actual costs up to $7,200 for funeral and related costs is available.
- An emergency lump sum of approximately $2,150 is provided to a spouse or common-law spouse to help with immediate needs. This is a one-time payment in addition to any other WorkSafeBC assistance.
- The actual cost (up to a maximum of approximately $1,000) of transporting the body to another location for burial or cremation may be available.
- After a work-related death, Survivor benefits include a monthly pension, which may be provided to a worker's dependent spouse or common-law spouse and to dependent children.

For more information, please contact a Sensitive Claims Coordinator at 604 231-8594 or Toll-free in B.C. 1 888-WORKERS (967-5377), local 8594. Go to www.worksafebc.com for more information. *****PLEASE CONTACT WORKSAFE BC DIRECTLY FOR INFORMATION*****

WHAT IS AN ESTATE ADMINISTRATOR OR EXECUTOR?

An estate can be handled or administered by an executor or an administrator.

Executor

When a person makes a will, they name someone (or a group) responsible for handling their estate once they have died. This person or group (e.g., a law firm or bank) is known as the executor.

The executor handles all of the legal and financial matters and ensures that the details of the will are carried out.

Administrator

If someone who lived on-reserve dies without a will or does not name an executor in their will, INAC will appoint a person to handle the estate. This person is known as the administrator, and they have the same duties as an executor.

If no one is willing or able to administer the estate, INAC will become the administrator by appointing a departmental employee to settle the estate.

If you have been appointed as an administrator/executor, Indigenous Services Canada will send a guide for estate administration on reserve to you to help you with the day to day administration of the estate.

What do administrators or executors do?

The administrator or executor is responsible for handling all of the legal and financial matters of the estate, and is accountable to the heirs or beneficiaries named in a will. The duties of an administrator or executor for the estate of someone who has died include:

- identifying and protecting the estate property and belongings;
- claiming work benefits;
- Posting the Notice to Creditors, Heirs and Other Claimants;
- providing a full report to the heirs or beneficiaries on what has been done;
- paying the estate debts, including funeral expenses;
- filing taxes and obtaining the Clearance Certificate from Canada Revenue Agency;
- distributing what remains to the people named in the will or to the family in accordance with the provisions of the *Indian Act ;*

Indigenous Services Canada's Role:

- review and address concerns and complaints about the handling of an estate
- review the administration of the estate by the administrator/executor upon request by the family.

AFOA
BRITISH COLUMBIA

Writing Your Own Will

A Guide for First Nations People Living on Reserve

Revised November 2013

prepared by

Aboriginal Financial Officers Association
of British Columbia

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Writer and Legal Researcher: Alison Sawyer, LL.B.
Policy Reviewer: Katherine Blair, LL.B., AANDC – BC Region
Editing and Layout: Donna McMahon
Cover and Illustrations: Robert Mearns

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Copies of this booklet are available from:

Aboriginal Financial Officers Association of BC
1010 - 100 Park Royal
West Vancouver, BC V7T 1A2
Phone: (604) 925-6370 Fax: (604) 925-6390
www.afoabc.org

IMPORTANT NOTE

This publication explains the law in general. It is not intended to give you legal advice on your particular problem. Each person's situation is different, so you may need to get legal help.

This Guide is written for First Nations people who are registered under the Indian Act and are "ordinarily resident on reserve" in British Columbia. (See page 4 for definition of "ordinarily resident on reserve".)

We say "First Nations person" throughout this Guide, but the information in the booklet does not apply to First Nations people living off-reserve or on treaty settlement lands (for example, Nisga'a or Tsawwassen members). This Guide also does not apply to Métis or other aboriginal people who are not registered under the Indian Act. We also say "band member" in this Guide to refer to people who are registered under the Indian Act and living on-reserve.

We say "Certificate of Possession" and "CP land" throughout this Guide to refer to a person's interest in a parcel of land on-reserve that is registered in the Indian Land Registry. Most parcels registered in the Indian Land Registry have a certificate, but some don't have a certificate because they haven't been surveyed.

All the names of people used in examples in this Guide are made up. They are not real people.

ABBREVIATIONS USED IN THIS GUIDE:

AANDC	Aboriginal Affairs and Northern Development Canada
CP	Certificate of Possession for land on reserve (see definition on page 5)

Table of Contents

1. Introduction: Why have a Will?

1.1 What is a Will? 4
1.2 What happens if a First Nations person dies without a Will? 4
1.3 Why should a member of a First Nation have a Will? 5
1.4 When do I need a lawyer? 6

2. What Makes a Will Legal?

2.1 Rules for Wills under the Indian Act for First Nations people living on Reserve 7
2.2 Rules for Wills under the laws of British Columbia 8

3. Who Should Benefit from the Will?

3.1 Identifying the People in your Will 9
3.2 Leaving a Family Member out of your Will 9

4. Common Types of Wills

4.1 Wills written by Spouses 10
4.2 Parent to Child Wills 10
4.3 Care of Minor Children 12

5. Choosing your Executor

5.1 More than one Executor 13
5.2 Substitute Executor 13
5.3 Executor's Duties 13
5.4 Directions to the Executor 13

6. Giving Property in your Will

6.1 Specific Gifts of Property or Cash 14
6.2 The Remainder of your property 14
6.3 Naming Alternates 14
6.4 Property that can be distributed by a Will 15
6.5 Property that cannot be given in a Will 15
6.6 Giving Land on Reserve 16
6.7 Social Housing 18
6.8 What property cannot be given in a Will by a First Nations person? 18
6.9 If you own land off-reserve 18
6.10 Making an Inventory of Property 19

7. After the Will is Signed

7.1 Where to keep the Will 19
7.2 Changing the Will 19

8. Disputing a Will

8.1 Grounds for Disputing a Will 20

9. Legal Process after Death

9.1 Obtain a Death Certificate 22
9.2 Find the Will 22
9.3 Notify AANDC 22
9.4 AANDC'S Involvement 22
9.5 Land located off-reserve 23
9.6 Common Experience Payments 23
9.7 Other Responsibilities of the Executor 23

10. Example Will-Spouse to Spouse .. 24

11. Example Will-Parent to Child 25

12. Example Blank Will with Instructions 27

13. Blank Will Form 29

14. Other documents to prepare at the same time you make a Will ... 34

15. Where to go for more information or help 35

1. Introduction: Why have a Will?

1.1 What is a Will?

A Will is a written statement of what you want to happen to your possessions after you die. The person who writes a Will is called the "testator" or the "will-maker". Will-maker is the term we will use in this Guide.

1.2 What happens if a First Nations person dies without a Will?

If a First Nations person who is ordinarily resident on reserve or Crown land dies without a Will, their property is distributed according to the Indian Act. Spouses, children, grandchildren, great grandchildren, parents and brothers and sisters can inherit (in that order), but if the only next-of-kin are nieces and nephews, they cannot inherit an interest in CP land on reserve unless the land is left to them in a written Will (see Section 1.3).

Family members who are not registered Indians and who are not living or entitled to be living on that reserve cannot inherit CP land either.

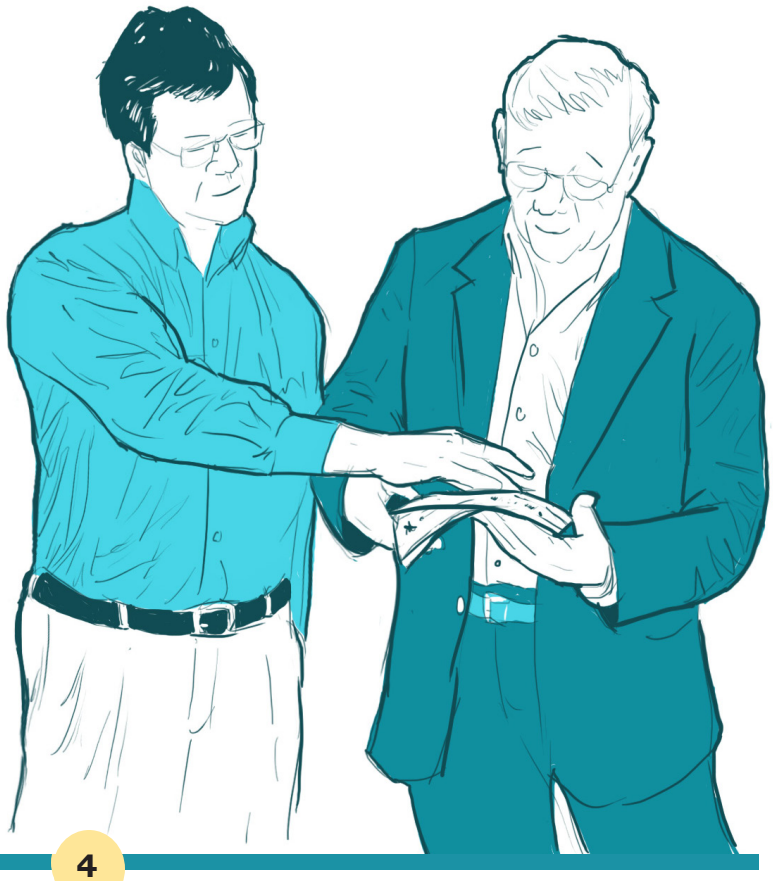
When a person dies without a Will, the person looking after the estate may have to sell everything and then divide the cash among the family members. This may not be the best way to distribute your property. Also, more distant family members will get left out. The result can be hard feelings and complications that could have been avoided with a written Will.

"Ordinarily resident on reserve"

means that the person makes his or her home on reserve. A person may be considered ordinarily resident on reserve, even if they are away from the reserve for a while.

For example, someone may have lived on reserve all of their life, but when they are elderly they have to move into a care facility off-reserve. That person is still be considered to be ordinarily resident on reserve, even if they live in the care facility for many years.

Someone who is away from home to attend school or do seasonal work is also still considered to be ordinarily resident on reserve.



1.3 Why should a member of a First Nation have a Will?

Oral tradition (simply telling your wishes to friends or family) may not work in modern times for many reasons. Families are more complicated. People live on and off-reserve. Some are band members, some are not. And different legal rules apply to different types of property.

When there is a written Will, there are fewer reasons for family members to argue about the division of the property, because your wishes will be clear to everyone. It is also easier for the will-maker to make gifts of various possessions to friends who are not family members. Finally, there is less need for the Estates Unit of Aboriginal Affairs & Northern Development Canada (we call it "AANDC" from now on) to be involved in your estate.

Here are some other reasons for writing a Will.

- If you have children under 19, you can leave directions for who is to become their guardian and look after them.
- You can name the person or people who you want to manage your estate when you die.
- If you have a Certificate of Possession ("CP") for land on reserve, a Will gives you more choice about who you can leave that land to. Without a Will, nieces and nephews cannot inherit CP land (see box). With a Will you can leave CP land to any family members as long as they are able to inherit your CP land (they must be members of your band).
- You can also leave other property to people who are not registered or not living on reserve to compensate them for not being able to receive a gift of land.
- You can make a gift to people who are not family members.
- You can leave instructions for how to distribute your household goods and personal possessions.

A **Certificate of Possession**, or CP, is a document that shows that a person's parcel of land on reserve has been surveyed and registered in the Indian Land Registry.

CP land can only be held by a person who is a member of the band. A person with a CP has the right to decide what happens to their CP land. They can sell it or give it away while they are alive, and they can choose who will inherit it in their Will.

Nieces and Nephews: If there is no Will and the only people entitled to inherit a deceased person's CP land are nieces and nephews, the CP land is returned to the Band. *Section 48(8) of the Indian Act.*

Here is an example of what can happen when there is no Will.

An elder lived in his own trailer (manufactured home) on band land. He had many children and grandchildren who were entitled to share in his estate. Some of his family lived off-reserve in the city. Only one family member wanted to live in the trailer, but not everyone in the family agreed that this person should be given the trailer. Unless everyone entitled to inherit from the elder could agree, the law required that all the elder's property be sold and divided equally among his descendants.

The trailer was old and worth very little money, and it was hard to sell. The amount each family member finally got from the sale was so small that it wasn't much use. If the elder had written a Will, he could have given the trailer to the person who wanted to live in it. That would have been a real benefit and a lot less trouble.

1.4 When do I need a lawyer?

You can make a simple Will yourself, without a lawyer, but you should probably get legal advice if:

- you own and run a business
- you own land off-reserve
- you own a great deal of property (such as bank accounts or investments), especially if any of it is off-reserve
- you are separated but not divorced, or in the middle of a complicated divorce, or there are unresolved issues about the children
- you are planning on giving nothing to a close relative, separated spouse or adult children, and you think they will argue about being left out of the Will.

Lawyers usually charge a flat rate of around $500 for preparing a Will.

At the back of this booklet is a list of places to go for more information or assistance. with making a Will.

2. What Makes a Will Legal?

There are rules about what form a Will must be in to be valid (legal). A Will is proved to be legal when it is approved by an official at AANDC after the will-maker has died.

AANDC has to be involved because of federal law. The Indian Act (sections 42 to 50) and the Indian Estates Regulations say how to handle the affairs of a deceased First Nations person who lived on reserve. This is why the Will of any First Nations person living on reserve has to be sent to AANDC for written approval.

If the will-maker was not ordinarily resident on reserve, the Will must be approved by the British Columbia Probate Registry, and the law that applies to the estate is the law of British Columbia, not the Indian Act. However, if the will-maker had CP land, it must still be transferred in accordance with the Indian Act (so the land can only be passed on to someone who is a member of the same First Nation as the deceased).

AANDC's written approval of a Will, and the documents given by the British Columbia Probate Registry, do the same thing. These documents give the executor of the deceased person's estate the legal right to settle the estate. For example, the executor takes those documents to the bank to transfer money from the deceased persons' bank account, or they take the documents to the Indian Land Registry to transfer the CP land. An estate cannot be settled without these papers.

2.1 Rules for Wills under the Indian Act for First Nations people living on reserve

Under the Indian Act, will-makers must:

- be 16 years of age or older, and
- be able to understand what they are doing when they write the Will, and
- be free from extreme influence or pressure by people wanting a share of their possessions. (This is called "duress" or "undue influence". See section 8.1.2 on page 20 for more information.)

The Will must:

- be in writing (handwritten or typed on a computer and printed out), and
- be signed by the will-maker, and
- give instructions on distributing the will-maker's property after death, and
- those instructions have to be clear and easy to understand.

If these rules are followed, AANDC usually approves the Will. If there are problems in understanding the Will or if relatives complain to AANDC, the Will may not be approved, or the approval may be delayed while the complaints are investigated.

The following people can challenge a Will by writing to AANDC:

- anyone who is entitled to share in the value of an estate under a Will
- anyone who would be entitled to part of the estate if there were no Will
- anyone who the will-maker was legally required to support.

If a Will is challenged, AANDC staff will read the Will carefully, and look for written evidence from family members and the executor to try and figure out what the will-maker intended and why. This is one reason why it is a good idea to have witnesses when you make your Will. They can answer any questions that might come up later.

AANDC can usually make a decision without going to Court. However, if the situation is complicated and can only be decided by having witnesses testify in person, AANDC may go to the BC Supreme Court for a decision. If this is necessary, the estate and/or family members must pay the legal expenses involved.

2.2 Rules for Wills under the laws of British Columbia

AANDC recommends that Wills written by First Nations people also follow the Wills law of British Columbia. These are the BC rules:

Form:

- The Will must be written on paper, either in handwriting or printed out from a computer. Electronic forms, such as audio tape or video recording, are not valid.
- The will-maker must sign their name at the bottom of the document.
- The will-maker must state that they are writing their final Will and that the document replaces any former Will they may have written.

Capacity:

- The will-maker must be 16 years or age or older and mentally capable.

Witnesses:

- Two people must witness a signature on a Will. The people must each be over the age of 19 and mentally capable of knowing what they are doing. (More details about witnesses in the Sample Will with Instructions on page 28.)
- The witnesses cannot be named in the Will to receive gifts, and they cannot be spouses of people who are to receive gifts in the Will. If the witnesses will receive gifts in the Will, those gifts are void (the gifts are not legal).

3. Who Should Benefit from the Will?

A person writing a Will is free to make gifts of their property to anyone they want. They can give their property to family members, to friends or to charity. There are no rules about who to leave your property to in a Will. You can leave part of your estate to some members of your family and none to other members. You can leave some to family and some to friends.

3.1 Identifying the People in your Will

Every family member who might be entitled to share in your estate must be notified of your death and of your Will by your executor, whether you have included them in your Will or not. For that reason, you should make a list with names and addresses for your executor. Make sure that you include nick-names and any names that a person is known by as well as their legal name.

This list should include all of your immediate family and descendants. Identify any children who are custom-adopted (see box on page 11).If you have a large family you might not list all of your cousins or nieces and nephews. Instead you might list all the families that are related to you and how. That way the executor can find them. It is especially important to identify any friends you might want to leave something to. Also if you want to leave something to a charity, you should find out the charity's legal name.

If you have all this information prepared for your executor, and keep it up-to-date after you've made your Will, then you don't have to put details like addresses into your Will, just the name of the person or charity. If you have not prepared a list, then all the details have to go into the Will to ensure that your gifts go to the right people.

3.2 Leaving a Family Member out of your Will

You may decide NOT to leave property to one or more family members. If those persons were being supported by you or were dependant on you in some way, you should state why you are not leaving them anything. This makes it harder for them to prove that the terms of your Will should be changed for their benefit. (See Section 8, page 20, on Disputing a Will).

EXAMPLE PARAGRAPHS

I love all my children equally, but I am leaving most of my money to my daughter Susan Johnson because she has serious health problems and is unable to work. My other children are supporting themselves.

OR

I am not giving a share of my estate to my son, Charles Johnson. He left my home when he was 17 because he wanted to do drugs. He has been living on the streets in Vancouver. I only see him when he needs money. I have given him thousands of dollars over the years, more than I have given my other children. For this reason I do not want to give him anything in my Will.

4. Common Types of Wills

4.1 Wills written by Spouses

4.1.1 Joint Wills

Joint Wills are very common and are written by spouses (either married or common-law). The wife writes a Will giving all her property to her husband, if he survives her. The husband writes a Will giving everything to his wife, if she survives him. Without a Will, the surviving spouse would have to share the estate with the children of the deceased.

Joint Wills also state that if the spouses die together, their descendants (such as children or grandchildren) inherit all their property. Usually they are each other's executor.

4.1.2 Mutual Wills

Mutual Wills are written by spouses (either married or common-law) who have young families. The spouses want to make sure that their own children inherit when they grow up, not a new spouse. Mutual Wills can also be used to make sure that all the children of a blended family inherit equally from both parents. In that case, the surviving spouse leaves their estate to both their own biological children and to their step-children (the children by a former marriage of the other spouse), but not to just the children of the survivor and not to any new husband or wife who comes along later.

Mutual Wills are not made very often, because the spouses have to agree that the surviving spouse will not alter their own Will after inheriting the property of the deceased spouse. For example, a surviving husband could write a new Will and disinherit the children of his deceased wife in favor of just his own children or a new wife. In that case, those children would be able to sue for their share of the estate on the grounds of breach of contract.

Mutual Wills are more complicated than Joint Wills, and must be written carefully. Although we are mentioning this type of Will here, anyone considering Mutual Wills should consult a lawyer. This kind of Will is not suitable for doing yourself.

4.2 Parent to Child Wills

Parent to child (descendant) Wills are the other most common type of Will.

When giving property to children, it is a good idea to decide what to do with the share of a child who might die before you. You can write into the Will that the share of a child who dies before you (the term is "predecease"), is divided equally among the descendants of that child. Or you can divide that child's share equally among their surviving siblings.

Sample sentence: "I give the remainder of my estate to my children, John Joseph, Lisa Johnson, Sarah Johnson and Philip Johnson. If any of my children predecease me, then that share is to be divided equally among my remaining children."

EXAMPLE:

Giving Everything to Adult Children

When John's wife died, John decided to write a Will leaving all his property to his children. John was 68 years old and his children were adults with children of their own. He decided to leave his property, which included CP land, to his children, but not to his grandchildren. He thought maybe one or two of his grandchildren might not be members of his First Nation, which meant they couldn't inherit a share of his CP land. And he trusted his children to share fairly with their own children.

So John made a Will leaving everything to his children. His instructions were that Susan, Charles and Joseph were to inherit equal shares. If one of them died before John, their share would be divided equally between the two surviving children. This was much simpler than naming all the grandchildren and trying to work out their shares.

EXAMPLE:

Giving Everything to Adult Children and then Grandchildren

Ellen wanted to provide for her grandchildren if her children died before her. (She knew that they were all members of her First Nation and living on reserve.) Ellen worried particularly about her son who worked as a faller in the forest industry. So her instructions in her Will are that all her property goes to her children. She then says if any of her children die before her, that their share is to be divided among that child's children.

Custom Adoption: Who are your children?

Some First Nations people raise children who are not their own by birth and have not been legally adopted (for example, a brother's or sister's child).

If you have children who are not biologically yours, and you want to be sure they are treated the same as your biological children in your Will, be sure to mention these custom-adopted children by name, instead of just saying "I leave everything to my children".

AANDC can recognize custom-adopted children, but there is a lot of paperwork involved for your family and it is much easier if you just list the children by name in your Will.

4.3 Care of Minor Children

CUSTODY Under the new BC Family Law Act that came into force in March 2013, the term "child custody" has been replaced by "**parenting responsibility.**" If you have an old custody order, you do not need a new one. It means the same thing as parenting responsibility.

If you have parenting responsibility for children under 19, it is important to name a guardian for your children in your will. This is especially important if there are good reasons for the other parent not to have parenting responsibility. If minor children in your care are custom adopted, not legally adopted, you may want to talk to a lawyer about what to do.

When you have a good reason for not wanting the children's other parent to have parenting responsibilities, you should briefly state the reason in your Will (see example). If you have stated your reasons clearly and chosen responsible guardians for the children, there is a good chance your choice will be upheld.

Whoever you name should be responsible, and of course they must be willing and able to be a guardian. You would ordinarily name someone close to the children, such as an aunt and uncle who have been involved in their upbringing.

Even if you are happily married, it is a good idea to think about making a will and naming a guardian in it. Sometimes couples die at the same time, for example in a car accident.

SAMPLE PARAGRAPHS:

I direct that my sister, Judy Johnson, have full parenting responsibility for my children and become their legal guardian. I do not want their biological father, Robert Johnson, to be their guardian because he has not lived with the children since the eldest was 4 and has never visited them more than once or twice a year. To my knowledge he has never been sober. To my knowledge, he has not been named guardian in any family court proceeding or by any kind of agreement with me. For these reasons I am directing that my children be given into my sister's care.

OR

I direct that my sister, Judy Johnson, have full parenting responsibility for my children and become their legal guardian. The biological father of the children, Robert Johnson, has a joint custody order with me dated July 20, 2001. He moved to Ontario in 2002 and has not visited or communicated with the children since then. My sister has been helping me raise the children. The children know and like her. For these reasons I am directing that my children be given into her care. If Robert Johnson decides he wants to look after the children after my death, then I direct that he can only do so jointly with my sister.

5. Choosing your Executor

You must name someone in your Will to take control of your property when you die. The person whom you name to look after your estate is called an executor ("executor" is a man and "executrix" is a woman, but you can use "executor" for both). The executor is your representative and it's their job to follow the instructions in your Will.

The job of executor is important. It can involve a lot of paperwork. The executor may have to work with a lawyer to get your estate approved and distributed. You need to choose your representative carefully.

Your executor should be:

- trustworthy and able to work on their own,
- in good health (so that they survive you and can do the job),
- able to manage the paperwork involved, and
- able to communicate with and be respectful of all your family and friends (your beneficiaries).

Once you have decided on someone, it is a good idea to ask them if they are willing to do the job.

5.1 More than one Executor

You can have more than one executor so that there is more than one person to do all the work and make decisions. However, this can cause problems if they don't get along with each other. Most will-makers just have one executor.

5.2 Substitute Executor

You can also name a substitute executor, in case the first person is unable or unwilling to do the job (for instance, they are ill, or they have moved away). It is a very good idea to name a substitute.

5.3 Executor's Duties

Here are some examples of what an executor does:

- Gets your Will approved by AANDC.
- Finds your surviving ex-spouse, children, near relatives and beneficiaries.
- Locates and takes control of your home, vehicles, bank accounts, tools, household goods, and personal possessions, including jewelry, art and crafts.
- Notifies hydro, phone, cable and all other services of your death.
- Looks after your house until it is transferred.
- Notifies your creditors and banks of your death.
- Claims death benefits.
- Makes funeral and memorial arrangements.

You can see that there are many responsibilities. This is why it is important to think carefully before you choose your executor.

5.4 Directions to the Executor

You need to put in your Will that you want your executor to pay all your debts, funeral expenses and all the expenses of winding up your affairs and settling your estate.

6. Giving Property in your Will

6.1 Specific Gifts of Property or Cash

There are two ways to give property after you die. One is to give instructions (also known as making a "bequest") in your Will. For example: "I give my friend, Joe White, $1,000 cash" or "I give my nephew, Dan Smith, my box of carving tools".

A better way to give small items is to put instructrions in another document, not in your Will. You can write a letter to your executor with a list of all the gifts you wish to give, and keep it with your Will.

You can change the letter any time without changing your Will.

In a letter, you can also give your executor general instructions. For example: "Let my cousins choose what they want from my tools. If they can't agree, then you, as executor, decides who is to get what." Or: "My children can take what they want of my household and personal belongings. The executor is to give them their choice in order from the oldest to the youngest."

6.2 The Remainder of your property

The "residue" is all the rest of your property remaining after any specific gifts of property or cash have been given. You don't know how much will be left after your debts have been paid and any gifts distributed. You also don't know what the value of your CP land and house will be at the time of your death.

Most people leave all their remaining property to their spouse and children.

6.3 Naming Alternates

It is a good idea to give instructions in case any of the people named in your Will die before you.

For example, "I leave the remainder of my estate to my wife. If she predeceases me, then her share is to be given to each of my three children and if any of my children die before me, then to their descendants in equal shares."

You can decide whether or not you want your grandchildren and great-grandchildren to take a share if any of your sons or daughters die before you. If you name each of your children in this section of the Will, then you have to specifically say that if any of them die before you, their individual share is to go to their children or grandchildren. (See examples on page 11.)

If you left your remaining property to "my children" without naming them, then the share of any child who predeceases you is divided among the surviving children unless you say otherwise.

Remember that if some of your children are custom adopted, you should include the names of all your children, not just say "my children." See box on page 11.

6.4 Property that can be distributed by a Will

In a Will you can only give property that you own in your own name, or jointly with another person (explained below in 6.5).

The property can be personal items such as household goods, jewellery, boats and vehicles, and tools or equipment. The property can also be a Certificate of Possession to reserve land or a house or land situated off reserve. Money or investments in the bank are property too.

Debts are also part of the property of an estate. These include credit card debt, bank loans, lines of credit, utility bills and funeral expenses.

6.5 Property that cannot be given in a Will

6.5.1 Joint Ownership

People often own property with one or more other people. This is called joint ownership. The property could be a bank account, land, a boat, a vehicle or a lease. Joint title comes with "right of survivorship" and automatically (with the right paperwork, see below) passes to the surviving owner. Jointly owned property does not have to be included in a Will.

In March 2014, the rules changed so that a will maker can include jointly held property in their will and give their half to somebody else. In that case, a person who owned the other half of the property would not automatically inherit the whole property.

Surviving owners of joint property take the death certificate into the bank or to the Motor Vehicle Branch, and usually ownership is transferred without any problem. In the case of a Certificate of Possession in joint names, the surviving CP holder takes the death certificate to AANDC (or to the First Nation, if it manages its own land under the First Nations Land Management Act) and the CP land will be transferred to the surviving CP holder.

Sometimes land is owned by more than one person as "tenants in common." In that case, the property must be included in your Will for you to give your portion of it to somebody else.

If you have CP land on reserve with someone else and you are not sure if you are joint tenants or tenants in common, call an Individual Land Holdings Specialist at AANDC to find out, before you make your Will. If your First Nation manages its own land, contact the band instead. AANDC or the band will give you a document with the legal description of the land and how it is owned.

6.5.2 Named Beneficiary

When you buy some kinds of property, such as life insurance or pensions, you name a "beneficiary" who will receive the property when you die. The person named as the beneficiary only has to provide proof of their identity and proof that the holder of the policy has died to receive the funds. Beneficiaries do not have to be named in your Will.

You can write a Will saying that everything you own goes to your children, but if your insurance policy names your wife or husband as the beneficiary, your wife or husband will get the insurance money.

6.6 Giving land on Reserve

First Nations people who are writing a Will because they want to say who inherits their land, can only give the land if it is registered in the Indian Land Registry System (or under the First Nations Land Management Act, for bands that manage their own land). CP land can only be given to people who are members of that band, or are entitled to become members and are not already members of another band.

If the will-maker occupies a traditional land-holding on reserve (also known as a custom allotment), that land probably cannot be given in a Will, because the band legally owns the land, not the will-maker.

An example of a custom allotment is a house, owned by the will-maker, that is built on band land. It would have to be dealt with through the band (usually, under the band's housing program). Some First Nations have very clear custom allotment systems in place, with rules that allow a will-maker to decide who in their family will get to live in their house after they die. Other First Nations do not have such clear rules.

If your house is built on band land, rather than CP land, you should check with your band to find out if you are allowed to decide who will occupy your house after you die.

6.6.1 Non-band Members

If the will-maker gives land on reserve to a person not entitled to receive it, the Superintendent of AANDC must put the land up for sale (the sale will only be open to band members) and give the money from the sale to the non-band member. There are many ways to avoid this. One is for the will-maker to leave their CP land to family members who are entitled to receive it, and give other property to family members who are not entitled to CP land.

Here is another way.

EXAMPLE 1:

David owns CP land but his wife, Debra, is not a registered Indian. The couple have lived together in a house on the CP land for 36 years. They have no children, but David has a favourite nephew who is a member of David's First Nation.

David wants to leave his CP land to his nephew, but he also wants to make sure that Debra can still live in their home after he dies, for the rest of her life. David talks to a lawyer friend and they come up with the idea of leasing the CP lot to Debra.

David hires a lawyer to help him with the lease, and contacts a Lands Management and Leasing Officer at AANDC. The process takes about a year. What David gets is a 30-year prepaid lease between Canada (on David's behalf) as the landlord (lessor), and Debra as the tenant (lessee). Because it is a long term lease, it will not end when David dies. Debra will still be entitled to live on the lot until the lease ends or she dies. She can also sublease the lot and use the money to support herself if she can't manage on her own and needs to move into a care facility.

David then writes his Will, leaving the CP land to his nephew who is a band member. The nephew will inherit the CP land when David dies, but the lease to Debra will continue until Debra dies or the lease comes to an end.

Leasing reserve land is complicated, and should never be done without advice from a lawyer. A person who leases their land is giving up their right to occupy the land for as long as the lease lasts. For instance, in Example 1, if David leased the land to Debra and they got divorced, David could not just take the land back. Once the lease was in place, Debra could make David move out and she could live in the house by herself or with a new husband.

A lease also creates legal obligations for the person leasing the land, such as maintaining the land and repairing buildings. They may also have to clean up the property and remove buildings after the end of the lease. The person leasing the land needs a lawyer's advice so they understand what they are agreeing to.

Leasing your land may be an important part of your plan for your estate, but it takes time, involves AANDC and a lawyer, and there are a lot of legal requirements that must be met, including environmental assessments.

A 'lease' that is made informally, and is not signed by AANDC on behalf of the CP holder, is not legally valid and will not provide any protection to a non-band member spouse or children after you die.

EXAMPLE 2:

Jennifer Jones inherited CP land. Her husband has already died and she wants to pass the CP land on to her son, Jimmy, but she can't because her son is member of another band. What she can do is lease the land to her son on a 49-year prepaid lease (the longest possible lease period without approval by the band membership).

To do this, she needs to work with a lawyer and AANDC. When she dies, AANDC will have to sell the land, but the lease will be in effect, so whoever buys the land will have to continue the lease to Jimmy Jones until the lease ends or Jimmy dies. If Jennifer makes a Will leaving the CP land to a band member, the person inheriting the land would have to continue the lease.

Important Note: If you have CP land that is already leased or has a business on it, you should consult a lawyer about your options, before you make your Will.

6.6.2 Giving Property to Minor Children

CP land, money and possessions can be given in a Will to a person under 19, but the minor cannot lease or sell the CP land. To lease or sell the land for a minor, a guardian of the minor's interest in the CP land must be appointed by AANDC to do legal transactions on behalf of the minor.

6.7 Social Housing

If you are a band member living in band housing that is rented to you, you may express your wishes about who will be able to stay in that housing after you die. The band does not have to follow your wishes, but they may listen to what you have said in your Will.

You can say you would like your surviving family members to remain in the housing unit. You could also suggest that a close family member who is entitled to live on reserve, but who hasn't been able to find housing, be placed in your unit.

6.8 What property cannot be given in a Will by a First Nations person?

- A house owned by a First Nation which only allows the band member to use it
- Traditional land holdings
- Trapline licences from the Province of BC

A will-maker may still express their wishes about these things in a Will, but the wishes are not legally binding.

6.9 If you own land off-reserve

"Real property" (which means land) must be transferred according to the laws of the place where the land is located. Therefore, if you own land off-reserve (such as fee simple or strata-titled property in British Columbia) your executor will need to have your Will approved by the BC Probate Registry as well as AANDC. (See section 9.5, page 23, for more information).

In BC, probate fees must be paid up front (before the property is sold). Probate fees are based on a percentage of the value of the estate, including all of the real property (land) and personal property (bank accounts, cars etc.) located in BC. Probate fees are not charged on the value of real property and personal property located on-reserve.

If you own property off-reserve in BC, it is a good idea to make sure that your bank accounts and other investments are held at a bank branch located on-reserve. This will decrease the probate fees that will have to be paid later. Contact AANDC and/or a lawyer for additional information.

If you own land off-reserve in another Province or outside Canada, you may wish to get advice from a lawyer in the place where your land is located, because your BC Will may not be valid there.

6.10 Making an Inventory of Property

It is helpful to make a list of all your property before writing a Will. The existence of the list as part of your records helps show that you were in a capable state of mind when you wrote your Will.

If you describe your property and its location, then your executor will have an easier time finding it. Often, items like artwork are stored away in a place that is difficult to find. These items can add quite a bit to the value of the estate. There are stories of property being found after an estate was settled. Hidden property is a problem for everyone.

Your list should include any life insurance policies, home insurance, pensions you are entitled to, vehicles and boats (including registration numbers), all bank accounts, Certificates of Possession or occupancy agreements. Include property that is not part of your estate such as trapline licenses. If you own any of these jointly with another person, be sure to write that on the list.

See Inventory form, page 32.

7. After the Will is Signed

7.1 Where to keep the Will

You should keep the original Will (with the original signatures) in a metal box so that it is protected from fire and flood. The box should be locked. It could be a safety deposit box at the bank or a lock box or metal file cabinet in your home. Some band offices may arrange for the storage of original Wills for their members. Some law offices or notaries keep original Wills, some do not. AANDC does not store Wills.

It is a good idea to give a photocopy of the signed Will to your executor. You should also tell him/her where you are keeping your Will and your personal records.

No matter where you keep your Will, it is a good idea to file a Wills Notice with the Vital Statistics Agency of BC. The Wills Registry doesn't get a copy of the Will. You just tell them when your Will was signed and where it is kept. There is a small fee (about $30).

If you leave your Will in a safety deposit box at a bank, it is a good idea to take your executor into the bank with you and have them co-signed on the box. That way they can get into the box quickly and easily when they need to.

7.2 Changing the Will

A Codicil is a written change to a Will. It is added as a new last page. You refer to the Will by your name and the date it was made, and say you want to make changes. Then you write out the sentences you want to change. To be legal, a Codicil has to be dated and signed. If your Will was witnessed, then the Codicil should be too. You can use different witnesses.

8. Disputing a Will

Anyone who is entitled to share in the value of an estate under a Will, or who would be entitled to part of the estate if there were no Will, or who the will-maker was legally obliged to support, can challenge a Will. They can challenge the way the Will was written, and they can also challenge the choices made in the Will by the will-maker.

AANDC approves Wills and deals with disputes about Wills if the deceased was a First Nation person who was a registered Indian under the Indian Act and made their home on reserve. It does not matter where the Will was written or where the person was at the time of death, so long as they were ordinarily resident on reserve. (See page 4 for a definition of "ordinarily resident on reserve.")

8.1 Grounds for Disputing a Will

8.1.1. Mental Capacity

The will-maker must have the mental ability:

- to know what property they own,
- to know who all their family members are,
- to understand what a Will is, and
- to know what they are doing when they write a Will.

The will-maker may be showing signs of dementia or may have some mental illness. The person may be an addict. The will-maker can have all sorts of problems, but if he or she understands those four points on the day they write and sign their Will, then the law says they have the mental capacity to make a Will.

8.1.2. Duress and Undue Influence

Sometimes family members and friends have strong opinions about how somebody should leave their property, and they put pressure on a will-maker to leave property to them in a Will or to make a new Will. There are many ways to pressure someone, especially if the person is old or sick. Family members may argue or threaten. They may withhold care. They may sit beside the person and tell them what to write.

If the executor or anyone else has reason to believe there was a problem with the way a Will was made, they can challenge the Will by writing to AANDC. The challenge must be in writing and must refer to one or more of the grounds for disputing a Will stated in Section 46 of the Indian Act. These grounds are discussed on the next page.

8.1.3 Obligation to Provide Support

The Indian Act has a section saying that your Will should provide for people that you are responsible for. If you do not leave a share of your estate to a family member who you supported for many years, that person may be able to challenge your Will.

Under the law of the province of British Columbia, a spouse or children who are left out of a Will (or who are given much less than expected) can go to court to get a share of the estate. The Indian Act is even broader. Any family member can challenge the Will if they were financially dependent on the deceased person and if they will suffer hardship by not being given anything.

Here are some examples of financial dependence:

- An adult child is being supported by the will-maker while they go to school.
- The will-maker is helping support a family member who is sick or disabled.
- The will-maker is paying child support for minor children.

If you want to leave a dependent family member out of your Will, you need to give a good reason why. (See section 3.2, page 9.)

8.1.4 Vague or Confusing Terms

The Indian Act uses the words "vague, uncertain or capricious" to describe a Will that is hard to understand or doesn't make sense.

For example the will-maker might write a Will that says "I direct my executor to distribute my property to my family so that everyone is happy." That is too vague to be legal.

As another example, the will-maker might say "Everyone in my family is to be given a share in my estate." But they have not said what size of share (such as an equal share) so it is uncertain how much each person is to get.

Another example of uncertainty: "I give my tools to my neighbour". Since the neighbour isn't named, it is not clear which neighbour is meant.

If it is unclear who a gift should be given to and a family member contacts AANDC, AANDC might void (cancel) the gift.

Sometimes people make peculiar Wills because of feelings they have that get in the way of being sensible. Perhaps a will-maker was feeling annoyed at his children the day he made his Will and he had just received a nice card from his grandniece, so he left everything to the grandniece and nothing to his children. If there wasn't a good reason to ignore his children, AANDC would probably consider this decision "capricious" and the children could successfully challenge the Will.

9. Legal Process after Death

Administering an estate is quite complicated, and we only go into the first steps in this booklet. There are other books available on how to be an executor. (See Section 15 for where to get more information.)

As long as there is enough money in the estate, the executor can pay for any reasonable help they need. For example, the executor may want to hire an accountant to work out assets and debts, and to prepare paperwork, such as a final tax return. Executors usually hire a lawyer or get legal advice if there is a lot of property in the estate.

If there is not enough money in the estate to pay off all the deceased person's debts, the executor should consult a lawyer.

9.1 Obtain a Death Certificate

If the person did not die in a hospital, then a doctor must be called. Either the hospital or the doctor will issue a Medical Certificate of Death. This certificate usually goes to the funeral home because that is where the body goes. The funeral home then registers the death with the BC Vital Statistics Agency and applies for a Death Certificate. There is a fee. The family can also apply for an original Death Certificate if the funeral home did not get one.

9.2 Find the Will

The family or the executor should look for a Will as soon as possible. The usual places are in the person's home, in a safety deposit box at the bank, or with the person's lawyer. Some band offices may also arrange for the storage of original Wills for their members. AANDC used to accept Wills for safekeeping, but doesn't any more.

A search of the Wills Registry at the BC Vital Statistics Agency should also be done, even if a Will is found, to make sure that no other Will was made later.

9.3 Notify AANDC

Once the original Will has been located and the Death Certificate has been received, AANDC must be told of the death. The person's Indian Registry number (the number that appears on their status card), the name of their First Nation, a copy of the Death Certificate and the original Will must all be sent to the Estates Unit. (The original Will is returned to the executor after it has been approved.)

9.4 AANDC'S Involvement

9.4.1 Confirming Residency

AANDC first confirms with the deceased's First Nation that the deceased was both a registered Indian and "ordinarily resident" on reserve.

Ordinarily resident includes people who died while they were away temporarily (such as at college, traveling, or living somewhere else for a short time but intending to return), or who died in hospital or a long-term care home, but their last home before that was on reserve.

AANDC also searches the Indian Land Registry to see if the deceased had a registered interest in reserve land. (This search does not include traditional land holdings. Traditional land holdings are not included in an estate. See section 6.8.)

If the deceased was ordinarily resident off-reserve or if they were not a status Indian, then the estate is administered according to the laws of whatever province or state the person lived in.

9.4.2 Getting AANDC Approval

If there is a Will and the Will names an executor, AANDC asks the executor to apply to administer the estate. In most cases the executor will be appointed and the Will approved. The Will cannot be acted on until AANDC has approved it.

The executor is sent a Personal Representative's Package containing information and forms.

If there is no Will, AANDC writes to the deceased's family members (see who inherits under the Indian Act in section 1.2, page 4) and asks for someone to step forward to be the administrator of the estate. If nobody volunteers, a staff member at AANDC becomes the administrator.

9.4.3 After AANDC Approval

AANDC does not give legal advice. If the executor needs legal advice they must go to a lawyer. The lawyer can be paid for from the estate.

AANDC will get involved if someone challenges the legality of the Will or has a complaint about how the administrator or executor of the estate is doing their job.

AANDC will assist an executor in dealing with the transfer of land on reserve.

9.5 Land located off-reserve

As noted in section 6.9, "real property" (which means land) must be transferred according to the laws of the place where the land is located. This means that land in BC that is off reserve cannot be transferred using estate documents from AANDC. If there is land off reserve, the executor needs to contact AANDC for an Order to allow the land to be dealt with through the BC Supreme Court (Probate Registry).

9.6 Common Experience Payments

If the deceased person attended a residential school, the executor should find out if they applied for a Common Experience Payment. If they were eligible for a payment and did not receive it, the executor can apply for it as part of the estate.

9.7 Other Responsibilities of the Executor

The executor does the following:

- Makes funeral and burial or cremation arrangements with family.
- Notifies everyone who needs to know about the death, such as employer, landlord, phone company, bank, government agencies, and so on.
- Contacts people named in the Will.
- Makes an inventory of property and debts.
- Pays debts such as funeral expenses, credit cards, loans and back taxes.
- Distributes the assets to people named in the Will.
- Does a final accounting.

10. Example Will - Spouse to Spouse

LAST WILL

This will is made by me, Ellen Josephson, also known as Ellen Joseph. My Membership Number is 01234 and I am of the Eagle Creek Nation. My home address is 6 Gosling Street, Eagle Creek in the Province of British Columbia.

This is my final will. I revoke all former wills and any codicils.

I appoint my spouse, Joseph Josephson, also known as Joe Joseph, who also lives at 6 Gosling Street, Eagle Creek, British Columbia to be the executor and trustee of my estate.

If he does not want to act for any reason or dies before me, then I appoint my sister, Judy Josephson, of Eagle Creek, British Columbia to be executor and trustee of my estate.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

I want to be cremated and my ashes scattered at the mouth of Eagle Creek. I would like my executor and family to arrange a traditional memorial ceremony for me.

Gifts of Specific Items

I give my interest in Lot 62, Eagle Creek Reserve ("my land") to my spouse, Joseph Josephson. If he predeceases me or fails to survive me by 30 days, then I give equal shares in my interest in my land to my children who are over the age of 19 and members of the Eagle Creek Band at the time of my death.

If any of my children who are entitled to share in my land predecease me or fail to survive me by 30 days, then that child's share in my land shall be given to any descendant of that child upon their reaching age 19 provided they are members of my band.

If there are no descendants, then that share in my land is to be divided equally among those of my children who survive me and are entitled to a share in my land.

If I leave any descendants who are not entitled to share in my land upon reaching the age of 19, then I give them a share in the remainder of my estate equivalent in value to the share in my land that they would have inherited.

Remainder

I give the remainder of my estate to my spouse, Joseph Josephson and if he fails to survive me, then in equal shares to my four children, Eleanor Josephson, of Eagle Creek, British Columbia, Samuel Josephson, of Eagle Creek, BC, Joseph Wolfman of Salmonberry, BC and William Samuel Wolfman Junior of Vancouver, BC.

If any of my children predecease me, then that share is to be divided equally among that child's children. If there are no descendants, then my deceased child's share is to be divided among the surviving brothers and sisters.

If I leave any descendants who are not entitled to share in that portion of my estate which is CP land upon reaching the age of 19, then I give them a share in the remainder of my estate equivalent in value to the share in my land that they would have inherited.

Signed by the will-maker, Ellen Josephson on _____ at _____, British Columbia in the presence of each of us and all of us together at the same time signing as witnesses to this will.

11. Example Will - Parent to Child

LAST WILL

This will is made by me, Ellen Josephson, also known as Ellen Joseph. My Membership Number is 01234 and I am of the Eagle Creek Nation. My home address is 6 Gosling Street, Eagle Creek in the Province of British Columbia.

This is my final will. I revoke all former wills and any codicils.

I appoint my sister, Judy Josephson who currently lives at 10 Salmon Drive, Eagle Creek, British Columbia to be the executor and trustee of my estate.

If she does not want to act for any reason or dies before me, then I appoint William Wolfman of the Salmonberry Band to be executor and trustee of my estate.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

I want to be buried in the Eagle Creek Cemetery. I would like my executor and family to arrange a traditional memorial ceremony for me.

[insert paragraph for Appointment of a Guardian if any children under 19]

Gifts of Specific Items

I distribute my assets as follows:

- To my daughter, Eleanor Josephson, my jewellry;
- To my son, Samuel Josephson, my carving tools; and
- To my sister, Judy Josephson, my car.

All of my children are to have first choice of my household goods and personal items, including my carvings, and anything left is to be given away or sold by my executor;

Remainder

I give the remainder of my estate to my four children, Eleanor Josephson, of Eagle Creek, British Columbia, Samuel Josephson, of Eagle Creek, BC, Joseph Wolfman of Salmonberry, BC and William Samuel Wolfman Junior of Vancouver, BC.

If any of my children predecease me, then that share is to be divided equally among that child's children. If there are no descendants, then my deceased child's share is to be divided among the surviving brothers and sisters.

If I leave any descendants who are not entitled to share in that portion of my estate which is CP land upon reaching the age of 19, then I give them a share in the remainder of my estate equivalent in value to the share in my land that they would have inherited.

Signed by the will-maker, Ellen Josephson on _____ at _____, British Columbia in the presence of each of us and all of us together at the same time signing as witnesses to this will.

12. Example Blank Will with Instructions

To write your own will, use the blank will form on page 29

EXAMPLE BLANK WILL

This will is made by me, _____ (1)

My Membership Number is _____ and I am of the _____ _____ (2). My home address is _____ (3) _____ in the Province of British Columbia.

This is my final will. I revoke all former wills and any codicils. (4)

I appoint _____ (5) _____ who currently lives at _____ to be the executor and trustee of my estate.

If he/she does not want to act for any reason or dies before me, or dies within 30 days of my death, then I appoint _____ (6) _____ of _____ to be executor and trustee of my estate.

I appoint _____ (7) _____ of _____ _____ as Guardian(s) of my minor children.

I want to be _____ and my remains _____ (8) _____.

I would like my executor and family to arrange a traditional memorial ceremony for me.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

WILL INSTRUCTIONS

1. Give the name that is on your Indian registration card. That name is your legal name. Also give the name or names that your family and friends use for you. Example: Robert Phillip Josephson (known as "Bob Joe")
2. Name of Band or Nation.
3. If you always go home between jobs or trips, then you have a home address. If you don't have a permanent home and stay with family on your reserve, then just give the name of your nation.
4. People often make new Wills when their lives change, for instance, when they marry or get divorced, their children grow up, or if they buy a home. You can make as many Wills as you want, so long as you make it clear which one is the one you want followed. If you don't "revoke" (which means cancel) any previous Wills, then there can be confusion. If this is your first Will, you can say: "This is my first and only Will."
5. Naming an executor: This is the person you name to take control of your property when you die. They pay your unpaid bills, and deal with all your unfinished business. Your executor carries out ("executes") the instructions you have given in your Will. It is a big job.
6. It is always wise to choose an alternate executor, in case the first person dies, or gets sick or cannot do the job.
7. If you have children under 19 years old, you can appoint somebody you would like to take care of them (a guardian). If there are problems with their other parent being the guardian, you can suggest who should replace you as the person responsible for taking care of the children.
8. Directions for funeral/burial/cremation: Example: "I wish to be cremated and my ashes scattered into the ocean." If there is any disagreement about this after you die, your executor has the final say.

   You don't have to include this paragraph in your Will. You can write these instructions separately as a letter to your executor. If you write these instructions separately you can change them at any time without changing your Will.

9. Usually items worth less than a thousand dollars (as second hand goods, not replacement value) are not important enough to list in your Will. You can write a list of small gifts in a letter to your executor. Then if the items change or you change your mind, the letter is easy to change and you do not have to change your Will.

   If you want to make gifts of cash, think about whether your property is worth enough after your funeral expenses and other debts are paid. Giving cash amounts is a way to compensate any non-band member relatives who are not able to inherit an interest in land on reserve.

10. This is where you gift all of your property left after payment of debts and specific gifts. If you didn't make any specific gifts, then you can just say "I give all my property to my spouse." or "I give all my property to my children", and then explain what happens if any of them die before you. List your children by name.

11 It is important to write the date on the Will when you sign it, so that it is easy to see that it is the most recent (or "last") Will you made.

12. Place, Province (e.g. Nakusp, British Columbia).

13. The Indian Act does not require that a Will be witnessed, but having two witnesses is a good idea. Witnesses do not read the Will. You must tell them they are witnessing a Will, but they do not need to know what is in it. Witnesses may not receive gifts in your Will. Your executor cannot be a witness.

    You must all be together and watch each other signing the Will. The will-maker signs first, then one witness and then the other.

14. If the Will is longer than one page, put your initials in the corner of each page. The witnesses should do this, too.

Gifts of Specific Items

I distribute my assets as follows: (9)

To write your own will, use the blank will form on the next page

I give the remainder of my estate as follows: (10)

If _____ dies before me, then I give the remainder of my estate to _____.

Signed by the will-maker on _____ (11) at _____ (12) in the presence of each of us and all of us together at the same time signing as witnesses to this will.

_____
Witness Signature

_____
Print Witness Name

_____
Witness Address

_____
Will maker Signature

_____
Print will maker Name

(13)

_____
Witness Signature

_____
Print Witness Name

_____
Witness Address

(14)

It is not a good idea to cross out words or write new words in spaces around what has already been written. If you need to make changes before the Will is signed, then it is much better to rewrite the whole Will. You don't want any confusion, or any questions to be asked about why changes were made.

Once the Will has been printed out and signed, you should not make any more changes. If you do make changes, it may be challenged and it may not be legal. If it's not legal, then it's like you died without a Will.

LAST WILL

This will is made by me, _____. My Membership
(Full Legal Name)

Number is _____ and I am of the _____.
(Band Membership Number) (Name of Band or Nation)

My home address is_____
(Address)

in the Province of British Columbia.

This is my final will. I cancel all former wills and any codicils.

Appointment of Executor

I appoint _____ who currently lives at _____
(Full Legal Name)

_____ to be the executor and trustee of my estate.
(Address)

If he/she does not want to act for any reason or dies before me, or dies within 30 days of my

death, then I appoint _____ of _____
(Full Legal Name)

_____ to be executor and trustee of my estate.
(Address)

Appointment of Guardian(s)

I appoint _____ of _____
(Full Legal Name)

_____ as Guardian(s) of my minor children.
(Address)

Funeral Instructions

I want to be _____ and my remains _____
(Buried or Cremated) (Instructions)

_____.

I would like my executor and family to arrange a traditional memorial ceremony for me.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

Gifts of Specific Items

I distribute my assets as follows:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Remainder

I give the remainder of my estate as follows:

_____

_____

_____

_____

_____

_____

_____

_____

If _____ dies before me, then I give the remainder of my estate to_____

_____

_____

_____

_____

Signed by the will-maker on _____ at
(Date)

_____ in the presence of each of us
(Location, Province)

and all of us together at the same time signing as witnesses to this will.

_____
Witness Signature

_____
Will maker Signature

_____
Print Witness Name

_____
Print will maker Name

_____
Witness Address

_____
Witness Signature

_____
Print Witness Name

_____
Witness Address

ESTATE PLANNING LIST of FAMILY and PROPERTY

(Use additional sheets of paper if you need more space)

Name: _____

Address: _____

Telephone: _____

Email: _____

Birth date and place of birth: _____

Citizenship: _____

Band Membership Number: _____

Marital Status: ___Married ___Common Law (living together one year or more)
___Single ___Widowed ___Divorced ___Separated

Spouse's Name: _____

Spouse's Date of birth: _____

If your spouse has a will, when did they make it? _____

Where is your spouse's will located?_____

Name and address of your previous spouse (married or common law):

_____

_____

PARENTS (biological or step) (if living) Name, address and date of birth:

_____

_____

CHILDREN (identify natural or step or custom-adopted): Names, home address/location, date of birth

_____

_____

_____

_____

Other close family and people named in my will: Names, home address/location

_____

_____

_____

PERSONAL PROPERTY (only list property worth at least $1,000)

Address of home or other land in your name on or off reserve: (is it jointly owned? If on reserve, identify Certificate of Possession)

_____

_____

Business or work equipment (e.g. store, fish boat, trap line, mechanic's tools):

_____

_____

Vehicles: _____

_____

Boats: _____

_____

Household goods: _____

_____

Other valuables): _____

_____

Bank accounts (Name of bank, branch location, type of account)

_____

_____

Insurance policies, pension funds, RRSP or other: (location/identifying number)(Is there a named beneficiary? Who?):

_____

_____

DEBTS

Mortgages and Loans: _____

_____

Credit Cards: _____

_____

Other Debts: _____

Location of your important documents (e.g. marriage certificate, bank and tax records, divorce papers, insurance or mortgage)

_____

14. Other documents to prepare at the same time you make a Will

14.1 Planning for Incapacity

When you make your Will, you may also wish to make other legal documents to plan for the future in case you become mentally unable to manage your own financial affairs or personal care.

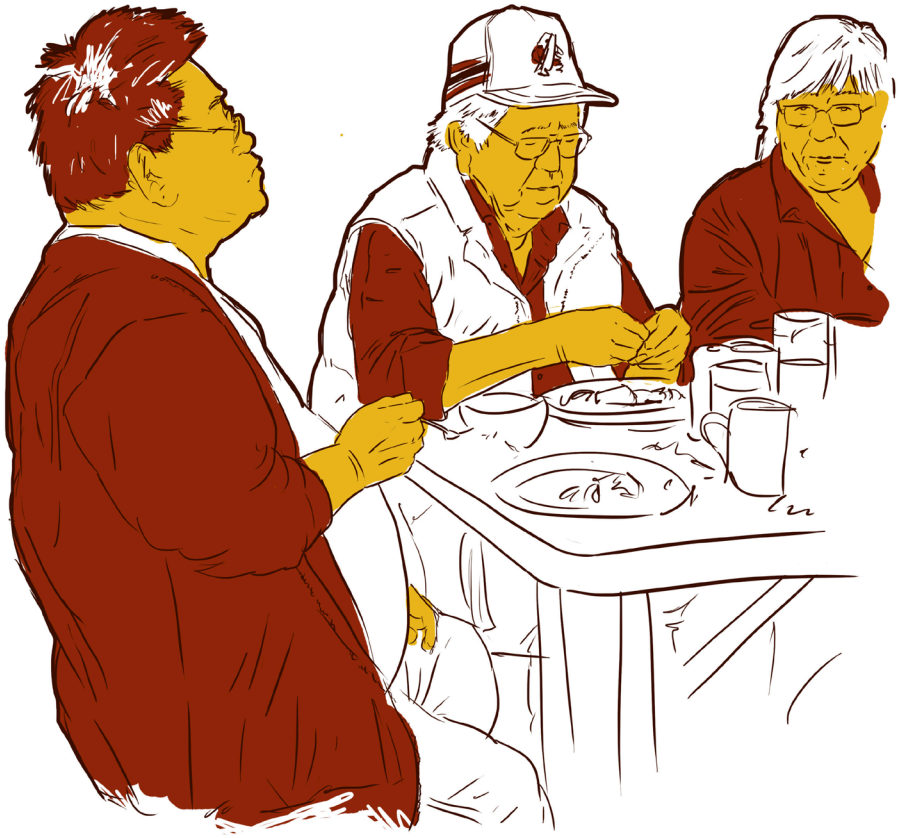
Planning ahead is particularly important if you don't have any close family, or if you don't get along with your family and would prefer to have a friend help you instead.

Planning documents include:

- Powers of Attorney
- Representation Agreements
- Advance Health Care Directives (Living Wills)

Instructions on how to make these documents are included in the booklet:

Planning for Incapacity - A Guide for First Nations People Living on Reserve



15. Where to go for more information or help

Aboriginal Affairs and Northern Development Canada

The website address given below is for the BC Region Estates Unit. They have useful information sheets and publications about wills, estates, minor children and mental incapability. General information is available online, and other publications specifically for people living on-reserve in BC can be requested by phone or email:

Aboriginal Affairs and Northern Development Canada, British Columbia Region
1138 Melville Street, Suite 600
Vancouver, BC V6E 4S3

Phone: (local) (604) 775-5100
Phone: (toll-free) 1-888-917-9977
Fax: (604) 775-7149

E-mail: BCestates@inac-ainc.gc.ca
Website: www.aadnc-aandc.gc.ca

The People's Law School

Publications (free):
- *Choosing an Executor—Being an Executor*
- *Writing Your Will*

These publications contain information for the general public. You can read them online or print them out from their website: www.publiclegaled.bc.ca.

Or order them from:

The People's Law School
150 – 900 Howe Street
Vancouver, BC V6Z 2M4
Telephone: (604) 331-5400

Self-Counsel Press

Publications:
- *Wills Guide for British Columbia*
- *Probate Guide for British Columbia*

The guides and kits published by Self-Counsel Press contain information intended for people writing a will or administering an estate in British Columbia. They are not intended to apply to registered Indians living on reserve, but may be of assistance if you own off-reserve land in BC (see sections 6.9 and 9.5). You can find these publications at bookstores and stationery stores, or order them online or from their office.

Website: www.self-counsel.com

Self-Counsel Press
1481 Charlotte Road
North Vancouver, BC V7J 1H1

Telephone: (604) 986-3366
Telephone: 1-800-663-3007 (toll free)
Fax: (604) 986-3947

Lawyer Referral Service

Telephone: (604) 687-3221
Telephone: 1-800-663-1919 (toll free)

This service is operated by the BC Branch of the Canadian Bar Association.

When you call, you are given the name of a lawyer in your area of British Columbia. You then call the lawyer to arrange for a half-hour consultation. This half hour meeting costs $25 plus tax.

Legal Information

A new on-line website, www.clicklaw.bc.ca, is operated by the Courthouse Libraries of BC. When you click on Wills and Estates under the heading "Your Family" or on Aboriginal under "Your Community", you will find all the legal publications and legal information resources available to the general public in BC, including those listed here.

Dial-A-Law

Telephone: 1-800-565-5297
Website: www.dialalaw.org

Free recorded information on a variety of legal topics, including wills and estates, available on the phone or on the Web. This service is operated by the BC branch of the Canadian Bar Association.

Legal Services Society/Legal Aid

Legal aid is not available for people needing help with wills and estates. However, the Legal Services Society does have a publication available on making a will and settling an estate for First Nations people, which you can download free from their website at www.lss.bc.ca.

Guide to Aboriginal Organizations and Services

http://www.gov.bc.ca/arr/services/down/guidetoservices_2011.pdf

The Guide is a list of 800 community-based services and organizations in BC, most of which are Aboriginal controlled and operate on a not-for-profit basis.

The Guide is used by community service organizations, government ministries and agencies to help non-Aboriginal citizens learn about Aboriginal services and organizations.

This is an example of a Will that a married person with young children might make. This sample will is for use at Estates Workshops led by INAC Estates Officers. The contents of this sample will, and the explanatory notes, are provided for information and discussion purposes only, and should not be construed as legal advice. Contact a lawyer for advice about your specific circumstances.

LAST WILL AND TESTAMENT

I am Mary Louise Joseph, No. 123(02)
Full Name *Membership No*

of the Eagle Creek First Nation, and I live at Eagle Creek I.R. No. 1
Name of First Nation *Place*

in the Province of British Columbia.

This is my Last Will and Testament.

Start by saying that this is your Will, and that it replaces any previous Wills you may have made. Consider naming an alternate executor in case your first choice is unable to do the job when the time comes. There are legal presumptions about who dies first if, for example, a husband and wife die at the same time in a car accident. To ensure that your estate passes in accordance with your Will and is not affected by these presumptions, you may wish to use wording such as the '30-day' provision below.

1. I cancel all my former wills and codicils.

2. I appoint my husband, Richard James Joseph
Name(s) of executor(s)
of Princeton, British Columbia to be the
Place
executor(s) and trustee(s) of this my will, but if she/he/they should refuse to act, die before me, or die within a period of 30 days following my death, then I appoint
my brother, Henry William Billy
Name(s) of alternate executor(s)
of Kamloops, British Columbia, as the executor(s)
Place
and trustee(s) of this my will.

3. I direct that all my just debts, funeral and testamentary expenses be paid by my executor as soon as possible after my death.

4. I appoint my husband, Richard James Joseph
Name(s)
of Princeton, British Columbia, as
Place *Province*
Guardian(s) of my minor children, but if she/he/they should refuse to act, die before me, or die within 30 days following my death, then I appoint
my sister, Serena Mary Jack of
Name(s)
Princeton, British Columbia, as
Place *Province*
Guardian(s) of my minor Children.

5. I appoint my husband, Richard James Joseph
Name(s)
of Princeton, British Columbia, as
Place *Province*
Guardian(s) of the estates of my minor children, but if she/he/they should refuse to act, die before me, or die within 30 days following my death, then I appoint
my brother, Henry William Billy of

#4 appoints a guardian to care for your children (that is, someone to have physical custody of them). You may also wish to appoint a "guardian of the estate" of your children, as in #5. This type of guardian is responsible for looking after any money or other property you leave to your children. If you're a separated parent and the surviving parent will be looking after your children, but you want a different trusted person to be the one who decides what funds your children need for educational or other necessary expenses, name a guardian of the children's estates.

M.J.

Kamloops, British Columbia, as
Place *Province*

Guardian(s) of the estates of my minor Children.

Section 50 of the Indian Act provides that land cannot be inherited by non-band members, and that if non-band members are in line to inherit land, their share of the land must be sold by the Superintendent. #8 gives an example of wording that avoids a possible s.50 sale because the testator specifies that her land can only pass to band members.

6. I request that my Guardians:

Raise my children in the Catholic religion.

7. I want my remains to be dealt with as follows:

I want my remains to be buried at the Eagle Creek Cemetary.

8. I make the following specific gifts:

I give my interest in Lot 12, Eagle Creek I.R. No. 1 ("my land") to my husband, Richard James Joseph, if he survives me for 30 days, but if he does not survive me for 30 days, then I give my land to be divided equally among such of my children as are living at my death, PROVIDED that if any child of mine should predecease me but leave child or children (hereinafter called "Issue") surviving him or her, then my deceased child's share shall be divided equally among such Issue as attain the age of 19 years, AND FURTHER PROVIDED that a person who is not a member of the Eagle Creek First Nation at my death shall not be entitled to inherit any portion of my land.

I give my beaded brooch to my best friend, Annie Fraser.

9. I give the residue of my estate as follows:

I give the remainder of my estate to my husband, Richard James Joseph, if he survives me for 30 days, but if he does not survive me for 30 days, the remainder of my estate shall be divided equally among such of my children as are living at my death, PROVIDED that if any child of mine should predecease me but leave child or children (hereinafter called "Issue") surviving him or her, then my deceased child's share shall be divided equally among such Issue as attain the age of Nineteen 19 years.

I have signed my name to this will on June 12, 2006 at Princeton
Date *Place*

British Columbia.

This page was signed, and the preceding page was initialled, by Mary Louise Joseph as his/her last will in the presence of us, both present together at the same time. We have signed our names as witnesses to this will at the request of Mary Louise Joseph in his /her presence and in the presence of each other.

Mary Joseph
Signature of testator

Name Brenda Smart, Band Manager

Address 123 Eagle Creek Rd., Princeton BC

Signature Brenda Smart

Name Frank Creston, Lands Manager

Address 456 Eagle Creek Rd., Princeton BC

Signature Frank Creston

Who to choose as witnesses? Adults who are:
1. Not the executor or anyone else named in your Will; and
2. Not the husband or wife of the executor or anyone else named in your Will.

You and your 2 witnesses must all be present together at the same time during the entire process of signing your Will. The witnesses do not need to be shown anything you have written in your Will, but you need to tell them that the document you are asking them to witness is your Will, so that they understand they are witnessing a Will.

With your two witnesses present with you:
1. Initial the bottom right-hand corner of all pages of your Will, except the last page (you will be signing that page, so you don't need to initial it).
2. Fill in the date and place you are signing your Will, and then sign the Will.
3. Have your two witnesses sign the Will and print their names and addresses.

LAST WILL AND TESTAMENT

I am _____, No. _____
Full Name *Membership No*
of the _____, and I live at _____
Name of First Nation *Place*
in the Province of British Columbia.

This is my Last Will and Testament.

1. I cancel all my former wills and codicils.

2. I appoint _____
Name(s) of executor(s)
of _____, British Columbia to be the
Place
executor(s) and trustee(s) of this my will, but if she/he/they should refuse to act, die before me, or die within a period of _____ days following my death, then I appoint

_____
Name(s) of alternate executor(s)
of _____, British Columbia, as the executor(s)
Place
and trustee(s) of this my will.

3. I direct that all my just debts, funeral and testamentary expenses be paid by my executor as soon as possible after my death.

4. I appoint _____
Name(s)
of _____, _____, as
Place *Province*
Guardian(s) of my minor children, but if she/he/they should refuse to act, die before me, or die within _____ days following my death, then I appoint

_____ of
Name(s)
_____, _____, as
Place *Province*
Guardian(s) of my minor Children.

5. I appoint _____
Name(s)
of _____, _____, as
Place *Province*
Guardian(s) of the estates of my minor children, but if she/he/they should refuse to act, die before me, or die within _____ days following my death, then I appoint

_____ of
Name(s)

_____, _____, as
Place *Province*
Guardian(s) of the estates of my minor Children.

6. I request that my Guardians:

_____

7. I want my remains to be dealt with as follows:

_____

8. I make the following specific gifts:

_____
_____
_____
_____
_____
_____

9. I give the residue of my estate as follows:

_____
_____
_____
_____
_____

I have signed my name to this will on _____ at_____
Date *Place*
British Columbia.

This page was signed, and the preceding page was)
initialled, by _____)
as his/her last will in the presence of us, both)
present together at the same time. We have)
signed our names as witnesses to this will at the)
request of _____ in his)
/her presence and in the presence of each other.)
)
Name _____)
Address _____)
)
Signature _____)
)
Name _____)
Address _____)
)
Signature _____)

_____
Signature of testator

LAST WILL

This will is made by me, _____. My Membership
(Full Legal Name)

Number is _____ and I am of the _____.
(Band Membership Number) (Name of Band or Nation)

My home address is_____
(Address)

in the Province of British Columbia.

This is my final will. I cancel all former wills and any codicils.

Appointment of Executor

I appoint _____ who currently lives at _____
(Full Legal Name)

_____ to be the executor and trustee of my estate.
(Address)

If he/she does not want to act for any reason or dies before me, or dies within 30 days of my

death, then I appoint _____ of _____
(Full Legal Name)

_____ to be executor and trustee of my estate.
(Address)

Appointment of Guardian(s)

I appoint _____ of _____
(Full Legal Name)

_____ as Guardian(s) of my minor children.
(Address)

Funeral Instructions

I want to be _____ and my remains _____
(Buried or Cremated) (Instructions)

_____.

I would like my executor and family to arrange a traditional memorial ceremony for me.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

Gifts of Specific Items

I distribute my assets as follows:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Remainder

I give the remainder of my estate as follows:

_____
_____
_____
_____
_____
_____
_____
_____

If _____ dies before me, then I give the remainder of my estate to_____

_____

_____

_____

_____

Signed by the will-maker on _____ at
(Date)

_____ in the presence of each of us
(Location, Province)

and all of us together at the same time signing as witnesses to this will.

_____
Witness Signature

_____
Will maker Signature

_____
Print Witness Name

_____
Print will maker Name

_____
Witness Address

_____
Witness Signature

_____
Print Witness Name

_____
Witness Address

SECTION 51 OF THE *INDIAN ACT:* ADMINISTRATION OF A MENTALLY INCAPABLE ADULT'S PROPERTY AND FINANCES

The Department's role with respect to First Nation adults on reserve who are unable to manage their own financial affairs

The information in this document is specific to BC Region and does not apply outside of British Columbia.

When a registered Indian adult who is ordinarily resident on reserve is found, under BC law, to be incapable of managing his or her own financial affairs by reason of mental incapacity, the Estates Unit at Indigenous Services Canada (**ISC**) becomes responsible for ensuring that the adult's property and financial affairs are managed for his or her benefit. Where it is in the adult's best interests to do so, Indigenous Services Canada may appoint a non-departmental administrator (a family member or friend) to manage some or all of the adult's property and financial affairs pursuant to section 51 of the *Indian Act*.

Indigenous Services Canada's authority with respect to mentally incapable adults is limited to financial and property management only (not health care decisions), and Indigenous Services may only become involved after a person has been found to be mentally incapable under BC law.

Indigenous Services Canada has no involvement in making the decision about whether or not an adult has become incapable of managing their own financial affairs. That decision is made under the laws of the Province of BC, not the *Indian Act*.

An administrator appointed pursuant to section 51 of the *Indian Act* cannot make health care or other non-financial decisions on behalf of the mentally incapable adult; these decisions can normally only be made by the adult, or (if the adult is incapable of doing so) a Committee of the Person or a Representative named in a Representation Agreement. Committees and Representatives are governed by BC law, not the *Indian Act*. Indigenous Services Canada does not have the authority to investigate claims of physical or financial abuse of a vulnerable adult, or to determine whether or not a person is mentally incapable.

If family or friends are concerned that a registered Indian adult living on reserve seems unable to care for themselves or make their own financial decisions, or if it appears that there may be physical or financial abuse or neglect of a vulnerable Elder or other adult, they should contact a "designated agency". In BC, the designated agencies are the five Regional Health Authorities, and Community Living BC. To find out the phone number to call in your area, call the Public Guardian and Trustee of British Columbia at 1-800-663-7867, or go to www.trustee.bc.ca, or send an email message to mail@trustee.bc.ca.

For more information:

Contact the Estates Unit in Vancouver by telephone at 604.775.5100 or 1.888.917.9977 (toll free), or email us at BCestates@canada.ca.

SECTIONS 52.1 – 52.5 OF THE *INDIAN ACT:* MINORS' INDIVIDUAL TRUST ACCOUNTS

The Department's role with per capita distributions and other funds held in trust for Children under age 19

The information in this document is specific to BC Region and does not apply outside of British Columbia.

When a First Nation makes a per capita distribution to its members, Indigenous Services Canada may be required to deposit the funds paid to a registered Indian child under the age of 19 into an interest-earning trust account for the child.

Certain other types of funds that may be paid to a registered Indian child may also be held by Indigenous Services in an interest-earning trust account for that child. Examples include funds inherited by a child who lives on reserve, and revenue from a registered lease of reserve land (where a child holds an interest in reserve land).

Payment before age 19

Parents and legal guardians are expected to provide for the ordinary maintenance of their children, without drawing on the child's own trust funds. In exceptional circumstances - where a parent or guardian is able to demonstrate that it is in the best interests of the child that a particular item or service be purchased, and also that the parent or guardian does not have the financial means to purchase the item or service - a portion of a minor's trust funds may be released prior to the child coming of age.

Payment at age 19

When a child turns 19, Indigenous Services Canada is normally required to pay out all the funds held in trust for that child in one lump sum: See section 52.3(1) of the *Indian Act*.

Payment in installments from age 19 to 22

Section 52.3(2) of the *Indian Act* allows Indigenous Services Canada to pay out a minor's trust funds in installments over a period of up to 3 years (beginning when the child turns 19) if the child's parent or other person responsible for the child's care and custody, or the band council, requests in writing that Indigenous Services Canada do so. **The written request must be made before the child turns 19**. In BC, these requests should be directed to the attention of the Manager of the Estates Unit for BC Region.

For more information:

Contact the Estates Unit in Vancouver by telephone at 604.775.5100 or 1.888.917.9977 (toll free), or email us at BCestates@canada.ca

Matrimonial Real Property Rights on Your Reserve

Matrimonial Real Property – What is it?

Matrimonial real property can include land held by one or both spouses or common-law partners and used by the family, i.e. houses, sheds, mobile homes or other structures on that land. It does not include things such as cars, money, clothing or televisions.

In the event of death, divorce or separation, people living off reserve have provincial law rights and protections regarding their family home. These provincial law rights and protections do not apply to those living on reserve.

To give people living on reserves comparable protections and rights as those living off reserve, a law was put in place on December 16, 2013, called the Family Homes on Reserves and Matrimonial Interests or Rights Act (the Act)

What Does the Act Do?

The Act gives First Nation communities the opportunity to either develop their own community matrimonial real property law or follow provisional federal rules. These rules, although intended to temporarily apply until a First Nation develops their own matrimonial real property law, can be followed for an indefinite period of time.

As of December 16, 2013, First Nation communities can make their own matrimonial real property laws under the Act. If a First Nation makes its own laws within one year (before December 16, 2014), the provisional federal rules will not apply to that community.

If a community develops its own laws, the content of the law has to be agreed upon by the First Nation and its members. All members of voting age, 18 years or older, regardless of whether or not they live on or off reserve, have the opportunity to vote on the proposed law. Community members have the right to learn about the law and to be made aware when a vote on the law is taking place.

Protections

As of December 16, 2014, once the provisional federal rules are in effect, the following are examples of the protections and rights that would apply, should a First Nation community not have enacted its own community law:

Emergency Protection Orders

- In cases of domestic violence, a victim can apply to the court to remove their abusive partner from the family home. This application can be made by the victim or by someone else, such as a nurse or a social worker on behalf of the victim, without the presence of the spouse or common-law partner.

Family Home

- Either spouse or common-law partner has the right to occupy the family home during the conjugal relationship.

- A family home cannot be mortgaged or sold without the consent of both people in the relationship.
- If a marriage or common-law relationship breaks down, a spouse or common-law partner can apply to the court to have time-limited exclusive occupation of the family home. That means that a court can order a spouse or common-law partner to leave the family home for a period of time.
- On the death of a partner who held the interest in the family home, the surviving partner may live in the family home for a period of 180 days.

Division of On-Reserve Matrimonial Interests or Rights

- In the event of separation, divorce or death, both partners are entitled to half the value of the family home.
- A court can enforce written agreements that set out the amounts that each spouse or common-law partner are entitled to receive in the event of separation or divorce.

Balancing Your Rights and the Rights Of Your First Nation Community

The provisional federal rules specify:

- First Nation councils are to be notified about applications for an order made under the Act, such as an application made to the court for exclusive occupation of the family home.
- First Nation councils will not be notified in cases of emergency protection orders and confidentiality orders arising from domestic violence situations.
- Before issuing exclusive occupation orders, courts are to consider the collective interests of the First Nation members and any representations by the First Nation council with respect to that First Nation's cultural, social and legal context, etc.

What the Act Does Not Do

- Allow non-Indians or non-members to gain permanent possession of a family home;
- Give non-members of a First Nation the ability to sell reserve land; nor
- Allow the Minister of Aboriginal Affairs and Northern Development to have any role in reviewing, cancelling, rejecting or altering First Nation laws.

Support Available for You and Your Community

Centre of Excellence for Matrimonial Real Property

A Centre of Excellence for Matrimonial Real Property, hosted by the National Aboriginal Lands Managers Association (NALMA), is now available to assist First Nation Communities.

Contact the centre today!

Centre of Excellence for Matrimonial Real Property
c/o National Aboriginal Lands Managers Association
1024 Mississauga Street, Curve Lake, ON K0L 1R0

Phone: 1-855-657-9992 or 705-657-9992
Fax: 705-657-2999
E-mail: info@coemrp.ca
Website : www.coemrp.ca

For more information, visit www.aadnc.gc.ca/MRP
contact mrp-bim@aadnc-aandc.gc.ca about the Act.

WILLS AND ESTATES
GLOSSARY OF COMMON TERMS

Administer (an estate): to determine what property the deceased owned when he died, what rights to property arose because of his death, what debts he had, collect the property, pay debts, decide who is entitled to receive the remaining property and arrange for the property to be distributed.

Administrator: a person appointed (by the Minister or a court) to administer an estate.

Administrator with will annexed: a person appointed to administer an estate where there is a valid will but there is no executor named in the will or the named executor is deceased or otherwise incapable or unwilling to act.

Affidavit: a voluntarily made written statement of facts which the person who makes the statement signs and swears is true in front of a commissioner of oaths (lawyers and some designated departmental officials are commissioners of oaths).

Assets (see also Liquid Assets): everything of value (for example, a car, land, cash, cheque, promissory note, account receivable).

Beneficiaries: persons named in a will, in an insurance policy or at provincial law to receive a gift or financial compensation generally when a person dies.

Child: section 2 of the Act says a child includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom.

Claim: a statement that a person has a right to something (in relation to the estate). For example, a person may claim that he has a right to estate assets to compensate for money owed to him by the deceased.

Codicil: a codicil is a supplement to a will. It is a separate document; it is a legal instrument made to modify an existing will, a document to be read as part of and with the will itself.

Consent (noun): agreement or permission that is freely given.

Court of competent jurisdiction: a court which has the authority under the law to handle a particular matter. In relation to the estates provisions of the Act, it means the court (in a province or territory) that has the power to decide the estate matters of individuals other than those falling under subsection 2(1) of the Act and who are not ordinarily resident on a reserve.

Creditor (see debtor): a person to whom money, goods or services are owed by the debtor.

Debtor (see creditor): a person who owes money, goods or services to another, the latter being referred to as the creditor.

Debt: an obligation to pay money or some other valuable thing.

Debts to the Crown: debts owing to federal or provincial governments (such as income taxes).

Devise or descent: subsection 20(5) of the Act speaks of those claiming possession of land by devise or descent. This means persons claiming possession of land because of a gift made in a Will ("by devise") or because the person became entitled to possession on intestacy because he was a relative of the deceased ("by descent").

Devisee: a person receiving land by a gift in a Will (see also "legatee").

Devolve (devolution): pass on (the passing on of) property on death.

Distribution (see also "pro rata" distribution): the division and sharing of the property of a deceased person.

Estate: section 2 of the Act defines estate to include real and personal property (of the deceased).

Executor: a person named in a will to administer the estate according to the wishes of the testator (author) as contained in the will.

Fair market value: the price that would be paid for something if it were sold on the open market.

Heir: a person related to the deceased by blood (or through adoption) and who is entitled to receive the property of the deceased where the deceased dies intestate (without leaving a will).

Incompetent: lacking the physical or mental ability necessary to do something. For example, a mental incompetent is a person incapable of handling his own affairs due to a mental disability. A child under the age of majority is considered legally incompetent to enter contracts.

Intestacy: where a person dies without a valid Will. A partial intestacy can also arise where part of a person's property is not given away by a valid Will. There is an intestacy with respect to the property that was not given away by the Will.

Intestate: **a** person who dies without making a will or whose will is declared void; also the state of dying without a valid Will (to die intestate).

Inventory: the description and valuation of the property owned by the deceased and by the estate and of the debts owing by the deceased and the estate.

Issue: children and grandchildren and all other person in a straight line in a straight line from a person.

Joint tenancy: **a** situation where a person shares a right to possess land or other asset in common with other owners. When a joint tenant of an interest in land dies, his interest passes automatically to surviving co-owners and does not become part of the

estate (and cannot, therefore, be the subject of a gift in a will). A person may own other assets (such as a bank account) in joint tenancy. The account proceeds go to surviving account holders on the death of one of the joint tenants.

Jurisdiction: the authority to do something. For example; the Minister has jurisdiction to administer the estates of deceased Indians who were ordinarily resident on a reserve. It may also be said that the administration of the estate of a deceased Indian who was ordinarily resident on a reserve "falls within the jurisdiction" of the Minister.

Liquid assets: cash on hand or in a bank, and other assets that can quickly be converted into cash.

Monetary assets: a form of liquid asset including cash or cheques.

Mortgage: the transfer of title to land to the mortgagee (lender) to ensure payment of a debt of the mortgagor (borrower).

Net assets: assets remaining after all debts have been paid.

Next-of-kin: relatives (blood or adopted).

Ordinarily resident: a person is "ordinarily resident" on a reserve when he habitually makes his home there. Even if the person had to leave the reserve to spend time in the hospital or a long term care facility, or if he leaves the reserve to obtain higher education or to go hunting, he may still be "ordinarily resident" if he intended to return to the reserve.

Partial distribution: a distribution of part of the estate assets.

Personal property: property that is movable (as opposed to real property, land and attached buildings or structures) Personal property (also called chattels) includes everything owned by the deceased that is not an interest in land or permanent improvement, for example, money, bonds, vehicles, equipment, furniture. In Quebec, personal property is called "immovables".

Per capita (see also per stirpes): individually or by the head. Property is distributed per capita if it is divided in equal shares among all persons entitled to it. For example, if the property of an intestate is distributed per capita among three children, each child receives an equal portion. It means according to the number of individuals. Where a division per capita occurs, an equal share is given to each person without reference to their stocks or the right of representation. Thus, in section 48(6) of the *Indian Act,* where nieces and nephews are alive, they share equally, regardless of whether one niece descended from one brother and ten descended from another.

Per stirpes: the property of an intestate is distributed equally among the branches of descent.

Possessory interest: the right to possess property. For example, a person might claim a possessory interest in land.

Post a bond: to give a written agreement that a penalty will be paid if something is not done.

Preferential share (of spouse): the amount that is paid to the spouse of an intestate after all debts have been paid. This amount is paid out before any sum is paid to other heirs. If the estate does not have enough assets to pay the spouse's preferential share, the other heirs receive nothing. Under subsection 48(2) of the Act, the preferential share of the widow is $75,000. Only if the estate is greater than $75,000 will the other heirs receive anything.

Priority (among creditors, or priority of debts or priority of payment): the right to be paid before others. For example, the claims of secured creditors have a priority over the claims of unsecured creditors. The claims of the unsecured creditors will be paid only if anything remains after paying the claims of the secured creditors. (see also "secured creditors" and "unsecured creditors".)

Pro rata distribution: If there are not enough estate assets to pay all creditors, each creditor will receive the same proportion of what is owed to his as the other creditors of the same class or rank. Pro rate means in "proportion".

Probate (of Will): the process of proving that a document is the last Will of the deceased. Probate is granted by a court however it is the same process as the approval of a Will by the Minister pursuant to s.45(3) of the Act.

Quasi-judicial: an act or decision that is essentially similar to the type of decision made by a judge. Quasi judicial decisions are subject to the rules of natural justice, i.e, individual must have the opportunity to make representations.

Quit claim: a statement signed by a person in which he gives up his right to claim an interest in a piece of land or other asset to someone else in exchange for money or other valuable consideration.

Real property: land and permanent impro vements (buildings or structures) erected on the land. In Quebec, real property is referred to as "immovables".

Registered interest: a charge (debt) that is registered in a registration system that provides for the priority of charges.

Release (noun): a signed statement in which a person gives up his right to sue someone or to make a legal claim for something. For example, a person injured in a car accident might receive money from an insurance company and then be required to sign a release preventing him from claiming more money from the company; (verb) the act of signing a release.

Relinquish: to forsake or give up a right or privilege (see also renounce, release, waive).

Renounce (office): to give up the right to perform the functions of that position (such as acting as personal representative of the estate).

Representation: taking the place of another. For example, if an heir predeceased an intestate, the heir's children may represent their parent so as to take the share their parent would have taken if alive.

Residue: the remainder or part left over. The residue of an estate is that part that has not been used to pay debts and that the deceased did not give away in his will. The

Representation: taking the place of another. For example, if an heir predeceased an intestate, the heir's children may represent their parent so as to take the share their parent would have taken if alive.

Residue: the remainder or part left over. The residue of an estate is that part that has not been used to pay debts and that the deceased did not give away in his will. The deceased may have forgotten to give something away, in which case it becomes part of the residue. Or, he may have stated explicitly in his will that everything he did not expressly give away in the body of the will was to fall into the residue. A residue clause is a clause in a will which directs the disposition of assets which are not the subject of gifts outlined elsewhere in the will.

Residuary beneficiaries: beneficiaries who are to receive a share of the deceased's property (including land) after all his debts are paid and after all gifts made in the will have been distributed. The residuary beneficiaries therefore share the residue of the estate.
Residuary beneficiaries can exist only where there is a will.

Secured asset: an asset that is the subject of a security agreement. For example, if a person pledges his car to guarantee that he will pay back a loan, it is said that the car is a secured asset.

Secured creditor (see unsecured creditor): a person who has a right to obtain what is owing to him before the claims of unsecured (ordinary) creditors. The right is guaranteed (secured) against, or may be realized from , a particular asset or class of assets in the event of death or default in payment of the loan.

Statutory declaration: a written statement of facts that the person making the statement signs and swears to be true before a commissioner of oaths (one formally appointed
-generally as a function of his office to take oaths and statutory declarations).

Succession: the passing of property on the death of a person.

Successors (to an estate): the heirs/beneficiaries who are entitled to the estate on the death of a person.

Tenancy in common (see also Joint tenancy): a type of ownership of land or other asset where two or more persons are entitled to the whole of the asset in common with others (as opposed to being entitled to exclusive possession of a defined part of the land). On the death of a tenant in common, the share of the deceased passes to his heirs or beneficiaries who then become tenants in common with the surviving co-owners. Land owned by
a person as a tenant in common is included in his estate. Land held as a joint tenant automatically passes to the surviving joint tenants and does not become part of the estate.

Testamentary: an expression that means "about a will". For example, a testamentary dispute is a dispute about some aspect of a will (such as its validity) or the way property is being distributed under the will).

Testate: to die with a valid will.

Testator: a person who makes a will.

Transfer of jurisdiction: the transfer under the Act of the Minister's power to oversee the administration of Indian estates. The power is transferred to a court that would normally handle the estate matters of non-Indians. Subsection 44(1) of the Act gives the Minister the authority to transfer jurisdiction.

Trust account: an account kept by a trustee (a person or an organization) for the benefit of a beneficiary (a person or an organization). An executor is the trustee of the deceased's estate. A bank account set up by the executor to manage estate assets would be considered a trust account.

Unsecured assets (see also "secured assets"): assets that are not the subject of a security agreement.

Unsecured creditor (see also "secured creditor"): a creditor (also known as an "ordinary creditor") who does not have a right to the assets of an estate ahead of other creditors.

Void: (to invalidate) invalid. A will may be voided in part or in whole.

Will: a written or typed document stating how a person wants his property to be administered and distributed after he dies.