

**Advocacy North for Elders & Seniors**  
Sudbury Community Legal Clinic  
272-40 Elm Street  
Sudbury, Ontario

# Building a Basic Will while Living on a Reserve

## Will Kit

This Will Kit provides some basic information on building your own Will. This kit is designed specifically for Indigenous people who ordinarily reside on a reserve.

Writing a Will can be easy and save your family a lot of stress. This Will Kit will help you draft a Will in **10 EASY STEPS**.

## *THIS IS NOT LEGAL ADVICE*

*This booklet was prepared to provide legal information only and is not legal advice for specific situations. Any examples provided in this booklet should not be relied upon without seeking out legal advice specific to your circumstances.*

*The information provided in this booklet refers only to Wills pursuant to the Indian Act, R.S.C., 1985, c. I-5. As a First Nation can opt out of sections of the Indian Act and develop its own Land Code, you should first check with your Band whether the Indian act still applies to your estate.*

*This booklet is only recommended for individuals who have a simple estate. What does that mean?*

- *You only own property in Canada;*
- *You do not own a business, or shares in a corporation;*
- *Your estate is modest or under \$150,000.*

*This booklet cannot account for every circumstance and so it is recommended that you seek out legal advice when preparing your Will.*

*Advocacy North for Elders & Seniors and its representatives are not responsible for administering your Will, nor for ensuring proper use or completion of your Will.*

*It is the sole responsibility of the user to seek legal advice when preparing their Will.*

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**Advocacy North for Elders & Seniors** is a collaborative effort of the 11 northern community legal clinics. This program provides legal services to low-income Elders and seniors over the age of 60 in the areas of law that affect them most:

- Power of Attorney
- Consent and Capacity
- Retirement and Long-term Care Homes
- Elder Abuse and Scams
- Consumer Protection
- Wills & Estates

For more information about this program, or for legal assistance, contact your local community legal clinic or Advocacy North at [reception@sclc.clcj.ca](mailto:reception@sclc.clcj.ca) or 1-800-697-8719.

### **Advocacy North for Elders & Seniors, April 2024**

This booklet provides general legal information only.  
Seek legal advice from a lawyer for your specific circumstances.



## Table of Contents

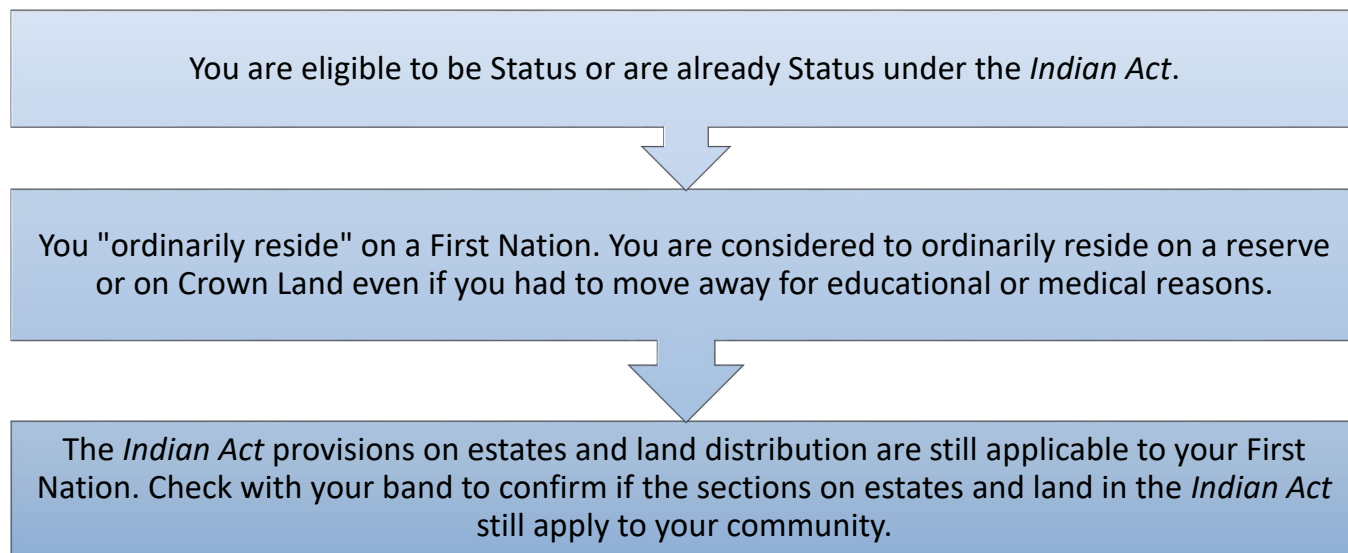
<b>Wills for Indigenous Persons living on Reserves .....</b>	<b>4</b>
What is an Estate? .....	5
What is a Will? .....	5
The Role of Indigenous Services Canada .....	6
Land on Reserves .....	6
Matrimonial Real Property .....	7
Class Action Settlements for Indigenous People.....	8
Settlement Applications made before your Death .....	8
Settlement Applications made after your Death .....	8
Common-Law Partners .....	9
<b>What goes in your Estate?.....</b>	<b>9</b>
Joint Property, Registered Plans, or Property with Beneficiaries .....	9
Debts and Loans.....	11
Dependents.....	11
<b>What happens if I do not have a Will? .....</b>	<b>11</b>
Examples of Intestate Distribution .....	13
<b>Building a Basic Will .....</b>	<b>14</b>
1. Must be in Writing .....	14
2. Include your name and address .....	14
3. Revoke any previous Wills .....	15
4. Pick your Executor .....	15
Who is your Executor? .....	15
Who should be your Executor?.....	16
Responsibilities of your Executor .....	16
Who would you name as your Executor? .....	16
5. Pay your Debts, taxes, and funeral costs.....	17
6. Specific Gifts / Pets .....	17

7. Trusts and Minor Children .....	17
8. Distribute your Residue .....	18
9. Sign and Date .....	20
10. Storage .....	20
<b>Tips for Drafting your Will .....</b>	<b>21</b>
What happens if the Minister declares a Will to be void? .....	21
<b>Sample Will.....</b>	<b>22</b>
<b>Quick Reference: Difference on or off Reserve.....</b>	<b>27</b>

## Wills for Indigenous Persons living on Reserves

There are different laws and procedures for Wills under the *Indian Act* and Wills under provincial legislation. It is important to be aware of those laws when drafting your Will. The good news is that there are fewer restrictions for drafting and signing a Will under the *Indian Act*. The bad news is that you should be aware of the differences in case you ever move away from a First Nation community.

### The Indian Act applies to your Estate if:



If you do not normally reside on a reserve, or your reserve is no longer subject to the estate provisions of the *Indian Act*, then someone in your family must apply to the provincial court to be appointed as administrator of your estate. This Will Kit does not cover that process. This

information may be found at [www.ontario.ca/page/apply-probate-estate](http://www.ontario.ca/page/apply-probate-estate). You should obtain legal advice from a lawyer about estate administration under provincial legislation.

## What is an Estate?

Before we start discussing Wills, we need to understand estates. Your **estate** is all the property that you own when you pass away. That includes your land, bank accounts, vehicles, clothes, furniture, household goods, income, etc. When you pass away, your estate will be distributed to others in one of two ways:

1. Divided according to the instructions in your Will; or
2. Divided according to the rules of the *Indian Act*.

Someone must be in charge of handling your estate. If you have a Will, you get to pick this person and they are called your **Executor**. If you do not have a Will, then **Indigenous Services Canada** will take over your estate and assign an **Administrator** to handle your property.

## What is a Will?

### What is a Will and why should I make one?

- Your Will is a set of written instructions for how you want to distribute your property – your *estate* – to your family, friends, charities, etc. It lets you pick an Executor (the person who manages your Will), and beneficiaries (the people who will receive your property).

### Can anyone make a Will?

- You must be at least 18 years old, sign voluntarily, and have testamentary capacity. This means that you are able to understand that you are signing a document which has instructions for after you pass away. If you were incapable or under undue pressure when you signed your Will, it may not be valid.

### Do I still need a Will if I don't own property?

- You absolutely have property. Do you have a bank account? Clothes? Furniture? Pets? A house? A vehicle? This all counts as property and your Will lets you decide what happens to it.

## The Role of Indigenous Services Canada

Indigenous Services Canada (ISC) assists with the management of estates of Indigenous persons. Your Executor or family should contact ISC upon your death to get the relevant forms and approval for your Executor to act.

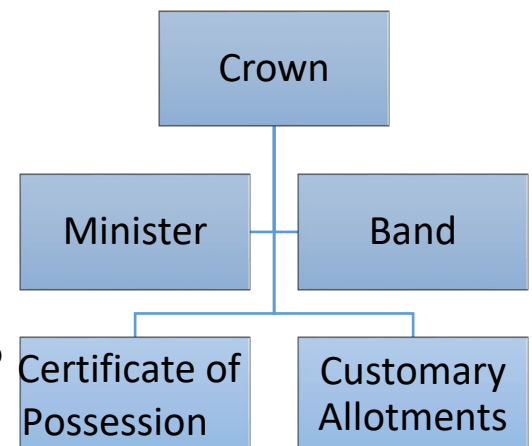
The Minister of Indigenous Services has certain powers under the *Indian Act* with regards to ensuring the proper administration of estates. These powers include:

- ▶ Approving Wills or finding them void pursuant to section 16 of the *Indian Act* (see pg 21);
- ▶ Appointing Executors or Administrators to handle the estate;
- ▶ Appointing substitute Executors if the first are unwilling or unable to complete their duties;
- ▶ Administering the estate;
- ▶ Approving the transfer of land on reserve.

**Indigenous Services  
Canada – Estate Services**  
Regional Office (Sudbury)  
Unit M-760 Notre Dame  
Ave, Sudbury ON P3A 2T4  
**Phone:** 705-522-6774  
**Email:** aadnc.estates-  
successions.aandc@canada  
.ca

## Land on Reserves

Only Band members of a First Nation can possess land on a reserve. But individuals do not own the land, as title is held by the Crown for the benefit of the Band. The Minister of Indigenous Services and your Band approves the allotment of land to individual Band members.



The right to use and occupy land allows a Band member to build a house on the land or live in an existing house. An individual's right to use and occupy land is called "lawful possession". An individual can obtain the right to use and occupy land under:

1. A traditional system of lot allotment; or
2. A document called **Certificate of Possession**.

## Can you gift land in your Will?

Gifting and transferring a right to possession in land can get complicated and there are a lot of rules! But the easiest rule to remember is that land on reserve can only be gifted or transferred to other members of your Band. If you leave land to a beneficiary who is not a Band member, then the land will be sold and your beneficiary will receive the money instead.

If you pass away without a Will, your land will only be transferred to either your spouse, children, or your siblings, as long as they are Band members. Otherwise, it is sold and the money becomes part of your estate.

## Matrimonial Real Property

Matrimonial real property is the land that you live on with your spouse or common-law partner. Simply put, it's your family home. Each spouse or partner has a right to **occupy** the family home, even if they are not Indigenous or a Band member. When you pass away, your spouse or partner is entitled to occupy the family home for **180 days**. Your spouse or partner can continue to occupy the family home for this period even if they do not have a formal right or interest in the home, or they can seek to occupy the land for a longer period of time with approval from the Minister.

There are special protections for spouses and common-law partners, which includes:

### Option #1

#### Inherit under the Will

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- The spouse or common-law partner can inherit according to the instructions in the Will or, if there isn't a Will, inherit according to the rules of intestacy.

### Option #2

#### Bring a court application within 10 months

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- Your spouse may instead bring a court application and claim 50% of the value of the family home. If they are a Band member, they may receive up to 50% of the value of the structures (ex. house, garage) and the land. If they are not a Band member, then the surviving spouse may only receive up to 50% of the value of the *structures*.
- This may happen if you cut your spouse out of your Will or leave them less than 50%.

These rules are pursuant to the *Family Homes on Reserves and Matrimonial Interests or Right Act*. Check with your Band to see if this Act still applies to your First Nation community or if they have their own policies on matrimonial homes. Spouses should seek independent legal advice about their rights.

## Class Action Settlements for Indigenous People

Each Settlement reached between a First Nation community and the Canadian Government is different. If you have submitted an application as part of a Class Action against the Canadian Government, such as the First Nations Drinking Water Settlement or the Federal Indian Day School Class Action, you may be eligible to receive a settlement. This money will become part of your estate. Your Executor or Administrator should contact ISC regarding any relevant settlements.

### Settlement Applications made before your Death

Unfortunately, it is possible that you may apply for a settlement and not receive it before your death. In that case, your Executor or Administrator will continue your application and disburse the settlement when it is received by your estate.

When picking your Executor, you may wish to consider if this person is aware you have applied for a settlement and whether they will be able to continue the process on your behalf.

### Settlement Applications made after your Death

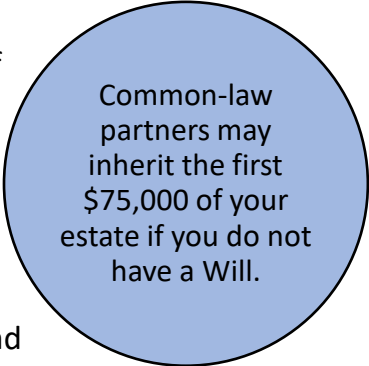
Members of your family may wish to join a Class Action and pursue a settlement on your behalf after your death. These funds can then make up part of your estate and benefit your beneficiaries. Only a person who is authorized to administer your estate may apply for a settlement on your behalf. This means either your Executor, or an Administrator appointed by Indigenous Services Canada must apply for a settlement.

To make a claim, the Executor will likely need to include a copy of the Will and Proof of Death. They may also need to open an estate bank account for you to deposit the settlement.



## Common-Law Partners

Under the *Indian Act*, common-law partners can inherit your estate if you do not have a Will! A common-law partner is a person who you have lived with in a conjugal relationship for at least one year. They are entitled to the first \$75,000 of your estate. This means that your common-law partner of one year could inherit ahead of your children.



Common-law partners may inherit the first \$75,000 of your estate if you do not have a Will.

Making a Will is an important step in protecting your interests and ensuring that your money goes to the people you want it to go to. If you do not normally reside on a reserve, then provincial law dictates that your married spouse can inherit your property without a Will. Under provincial law, your common-law partner does not receive anything from your estate if you pass away without a Will.

Common-law partners should seek legal advice about their rights to inherit an estate.

## What goes in your Estate?

Whether or not you make a Will, you still have an estate that will be distributed after your death. It's a good idea to take stock of what you own and figure out what goes in your estate, and what falls outside of it.

### Joint Property, Registered Plans, or Property with Beneficiaries

Your joint property is anything that you legally own with another person. This may be shared title on a home, shared furniture, or joint bank accounts. You may also have property that has named beneficiaries. That will include plans such as life insurance, registered plans, pensions, etc.

All of this property falls **outside** of your estate. This means that your Will does not handle this property. It is best to seek legal advice or financial advice from an accountant if you have any of this property.

Do you own any joint property or have accounts or plans with named beneficiaries? List that property here:

Your Will does not handle this property. You should seek legal advice for joint property and registered plans.

- Land jointly owned or with right of survivorship \_\_\_\_\_
- Pensions \_\_\_\_\_
- RRSP / RRIF \_\_\_\_\_
- TFSA \_\_\_\_\_
- Joint Bank Accounts \_\_\_\_\_
- Life Insurance \_\_\_\_\_
- Joint property with spouse \_\_\_\_\_

This property is NOT part of your Will 

Everything else you own makes up your Estate and is distributed through your Will!

- Land on/off Reserve \$ \_\_\_\_\_
- Vehicles / Boats / Trailers \$ \_\_\_\_\_
- Bank Accounts \$ \_\_\_\_\_
- Personal Effects (jewelry , furniture, clothing, etc) \$ \_\_\_\_\_
- Settlements \$ \_\_\_\_\_
- Earnings \$ \_\_\_\_\_
- Pets \$ \_\_\_\_\_
- Digital Assets \$ \_\_\_\_\_
- Other \$ \_\_\_\_\_
- TOTAL = \$ \_\_\_\_\_**



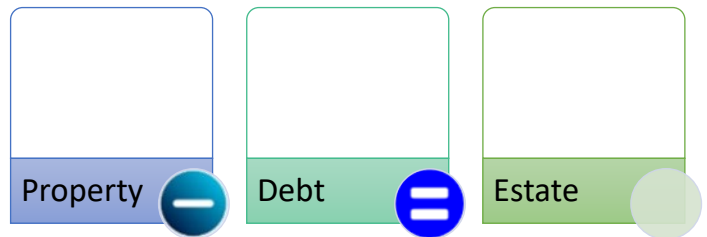
Not everything you own is going to have a monetary value, but it's still a good idea to take stock once in a while. For example, you may want your executor to sell your vehicle, but not your pet. Or you may wish to leave a personal item to a family member or friend.

## Debts and Loans

It's just as important to know what you **own** as it is to know what you **owe** when calculating what your estate is worth. When you pass away, your executor must pay your debts first. If you owe more money than your estate is worth, then your debts will be paid in part and your beneficiaries do not receive anything.

<input type="checkbox"/>	<b>Credit Cards</b>	\$ _____
<input type="checkbox"/>	<b>Loans</b>	\$ _____
<input type="checkbox"/>	<b>Mortgage</b>	\$ _____
<input type="checkbox"/>	<b>Vehicle payments</b>	\$ _____
<input type="checkbox"/>	<b>Unpaid bills</b>	\$ _____
<input type="checkbox"/>	<b>Insurance for mortgage, or credit cards</b>	\$ _____
<input type="checkbox"/>	<b>Other</b>	\$ _____
	<b>TOTAL =</b>	\$ _____

## What is your Estate worth?



## Dependents

The second thing to consider is whether you have any dependents. These are the people who depend on you financially, like your children.

- Spouse or common-law partner**
- Children (biological, adopted by provincial law or custom, or anyone you have a settled intent to treat as your child)**
- Grandchildren**
- Other**

If your Will does not provide for your dependents, the Minister may find your Will void.

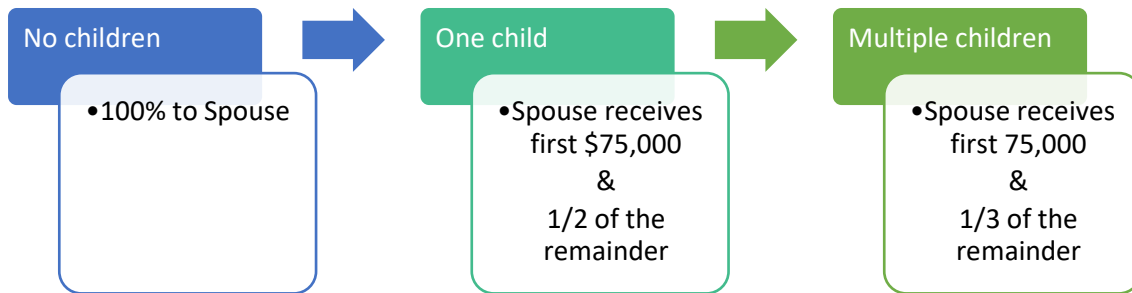
## What happens if I do not have a Will?

If you do not have a Will, your estate is divided based on the provisions of the *Indian Act*. This is called **intestacy**. Your debts must be paid first. Then your estate is distributed to your family based on a list of priority, starting with your spouse/partner and then your children.

## Intestate Distribution

### 1. Spouse or Common-law Spouse (one year living together)

- If your estate is under \$75,000, your spouse receives everything.
- If your estate is over \$75,000, then your spouse gets the first \$75,000 and the remainder is divided between your spouse and your children, as shown below.



### 2. Children: (biological and adopted by provincial law or band custom)

- If no spouse/partner, your estate is divided equally between your children. Should any of them pass away before you, their share goes to their children.
- If you have a spouse/partner, your children will only receive a portion of your estate if it is over \$75,000.

\* If the Minister determines that your children are not being adequately provided for, they may direct that funds for your spouse be given to your children instead.

### 3. Parents:

- If no spouse/partner, children, or grandchildren, your estate is divided equally between your parents, or goes entirely to the sole-survivor.

### 4. Brothers & Sisters:

- If no spouse/partner, issue, or parents, your estate is divided equally between your brothers and sisters.
- If any of your brothers or sisters have passed away and left children, their share goes to their children equally.

### 5. Next-of-Kin

- If you don't have any family listed above still living, your estate is divided up equally between your next-of-kin. It does not go to your Band or the Canadian government.

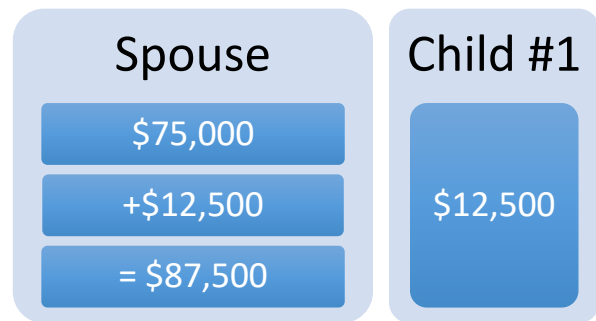
## Examples of Intestate Distribution

To understand how intestate distribution works, let's imagine that you have an estate worth \$100,000. As you can see below, the amount of money each person will receive changes based on your family circumstances.

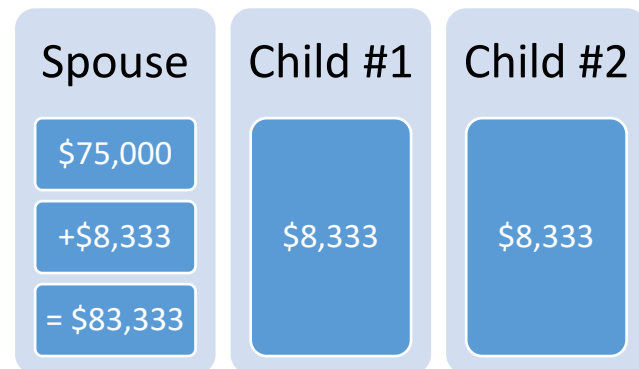
### 1. Spouse, no children



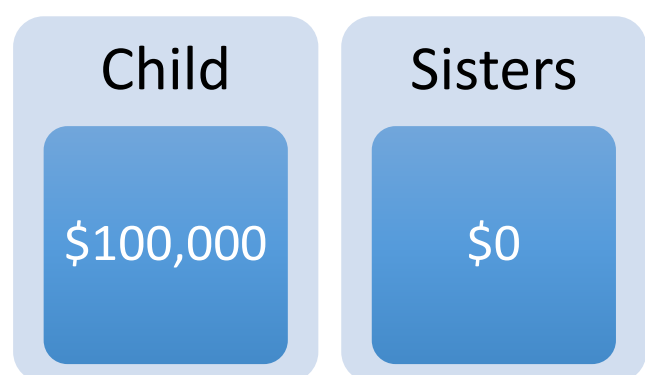
### 2. Spouse and one child:



### 3. Spouse and two children:

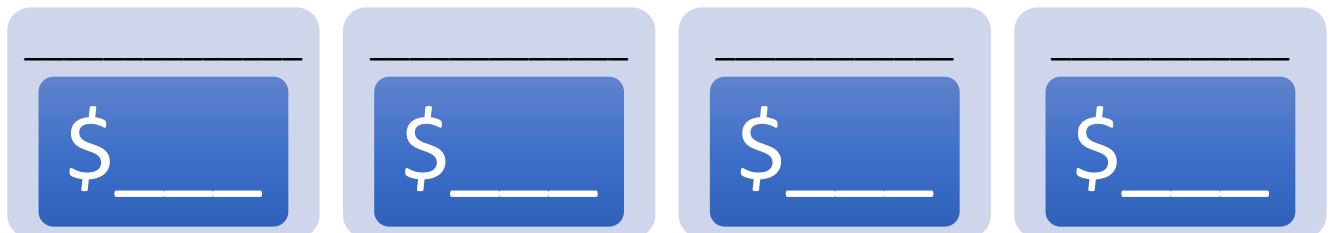


### 4. No spouse, one child, two sisters:



In the last example, your child would get your entire estate even though you have two sisters. The first person in the list of priority gets your estate, even if you have other family members still living.

## How would your estate be divided without a Will?



## Building a Basic Will

Now that you know how much your estate is worth, and who you have an obligation to care for, let's start building your Will!

### 1. Must be in Writing

Pursuant to section 45(2) of the *Indian Act*, “the Minister may accept as a will **any written instrument** signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property on his death.”

- ▶ Your Will must be written down and signed in ink. Making a video or telling your family your wishes is not the same as making a Will and is not legally binding.
- ▶ Your Will is not valid until the Minister of Indigenous Services approves it.



No one says that you need to use complicated legal language in your Will. The goal is to be clear so that your Executor can understand your wishes. For example, it is better to say:

***Everything I own will be given to my children in equal shares.***

Rather than...

***My Executor knows my instructions and shall distribute my property as I told them.***

In the second example, you haven't left any real instructions in your Will. *Telling* you Executor what you want it not legally binding. You must write down all your instructions or they can't be followed.

### 2. Include your name and address

***“This is the Last Will and Testament of \_\_\_\_\_(your name) of \_\_\_\_\_ (address).”***

- ▶ You need to identify that this document is a Will, and include your name and address so that everyone can be sure that it is your Will and not someone else's.
- ▶ Use your legal name. If you go by other names, put your legal name and then “also known as”, followed by the name you usually go by.

### 3. Revoke any previous Wills

No one can force you to make a Will. If you are pressured to sign a Will, you can make a new one which revokes the original.

***“I revoke all previous Wills, testamentary writings, made by me.”***

- ▶ Only the last made original Will is valid. If you have previously made a Will that dealt with all of your property, you should revoke it. Make sure to collect and destroy copies of old Wills.
- ▶ Revoking your last Will ensures that no one can rely on your past instructions.
- ▶ Some people use multiple Wills to deal with different property, but that gets complicated and is not always the best idea for small estates. For instance, what happens if one Will goes missing! One Will is usually simpler and safer than having multiple Wills. If you do make multiple Wills, you should make note of them in each Will, so your Executor knows which Wills are valid.

### 4. Pick your Executor

***“I APPOINT my brother, \_\_\_\_\_(name) of \_\_\_\_\_ (address) to be the Executor of my Will and Trustee of my Estate.***

***If my Executor is unwilling or unable to act for me, by reason of death, resignation, or incapacity, then I SUBSTITUTE my daughters, \_\_\_\_\_ (name) of \_\_\_\_\_ (address), and \_\_\_\_\_(name) of \_\_\_\_\_ (address), to act as my Executors, working together jointly.***

***I give all of my property, wherever located, to my Executor, to hold in trust and distribute as directed in this Will.”***

#### Who is your Executor?

The Executor is the person or people you name in your Will to take care of your affairs and divide your estate. Their job is to follow the instructions you left in your Will. Your Executor will work with ISC to collect and protect all your property, pay your debts, and distribute your estate.

## Who should be your Executor?

It's best to pick a person or people who you trust and feel will work well with each other. Your Executor is going to have a lot of responsibility, so pick someone you feel can manage the role and who is familiar with your estate.

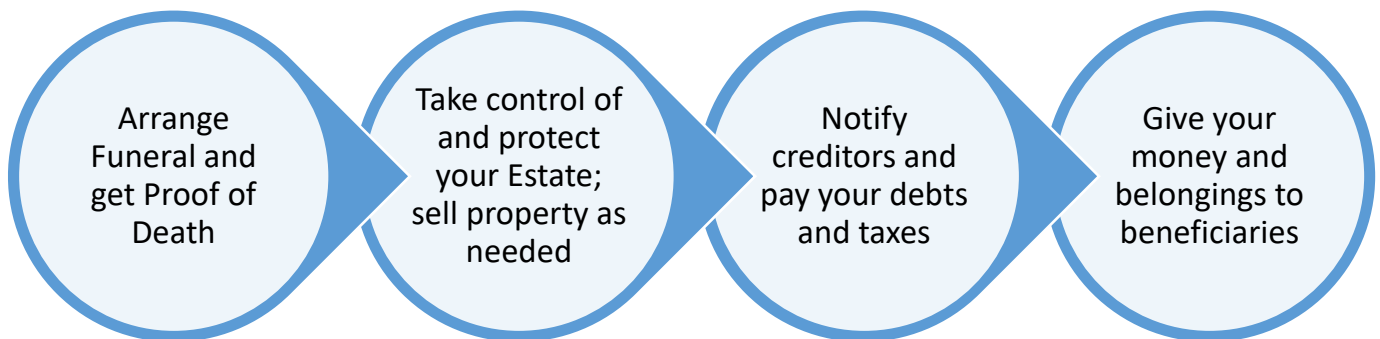
### Can I have more than one Executor?

- Absolutely. You can name multiple executors working together *jointly*. This means they make decisions and sign documents together. You should pick people who you believe will get along, as they will have to work together!

### What happens if my Executor passes away or resigns?

- You can list a substitute Executor in your Will in case this happens. This person is your back-up and will take over the job if your first person gets sick, refuses the job, or passes away. If you haven't named a substitute, then you need to make a new Will or someone needs to apply to ISC to administer your estate after your death.

## Responsibilities of your Executor





## 5. Pay your Debts, taxes, and funeral costs

***“I direct my Executor to pay all of my debts, taxes, and funeral costs as soon as practicable after my death...”***

- ▶ If you have any debts, your Executor needs to pay them first before they can distribute your property to your Beneficiaries.
- ▶ Your Executor may need to sell some of your property to pay your debts.

Does my Executor have to pay my debts themselves?

- No! Your Executor is not responsible for paying your debts out of their own pocket. However, they must use your money and property to pay your debts before distributing anything to the beneficiaries. Otherwise, they may have to pay the money back themselves.

## 6. Specific Gifts / Pets

***“I leave all of my fishing equipment to my granddaughter, \_\_\_\_\_(name)). I give my dog, Sparky, to my son, \_\_\_\_\_(name), as well as \$500 to take care of my dog. If my son cannot take my dog, or is unwilling, then my dog shall be given to my close friend, \_\_\_\_\_(name), along with the \$500 to care for my dog.”***

- ▶ If you have a specific item you wish to leave to someone, you should list it before the residue. This can be as simple as a list of items and who they are being gifted to.
- ▶ It is a good idea to use your Beneficiary’s name. You may have only one granddaughter when you write you Will, but you could have many granddaughters when you pass away.
- ▶ This is not the place to leave all of your property to someone. That part comes later!

## 7. Trusts and Minor Children

***“If anyone entitled to a share of my estate is under the age of majority (18), I direct my Executor to hold those funds for their benefit and make payments to them in their sole discretion or to anyone acting as a parent to them, until they are 18, at which time the funds can be released entirely to them.”***

- ▶ You can leave money in a *trust* rather than giving it to a person outright. Trusts are useful in several circumstances: if a beneficiary is a child, mentally incapable, or they are receiving Ontario Disability Support (ODSP). A trust allows you to leave money to your beneficiary, but have it managed by another person.
- ▶ To make a trust, you must pick a person to be the *Trustee*. This is the person who manages the trust and will make payments to your beneficiary. Your Trustee may be your Executor, or another person whom you name (ex. the parent of a child).
- ▶ Your Trustee will hold onto the money and manage it for your beneficiary until they can receive it fully or the money runs out.

You should seek legal and financial advice before making a trust!

## 8. Distribute your Residue

***“I direct my Executor to give the residue of my estate to my spouse, if they survive me by 30 days. Should my spouse not survive me, then I direct my residue to be divided between my children in equal shares per stirpes.***

What is your residue? It is everything left over after you have paid your debts and given any specific gifts. The people you give your estate to are called your *beneficiaries*. You can list as many beneficiaries as you would like.

It is a good practice to name your beneficiaries, their relationship to you, and where they live. For example: ***I am giving everything to my friend, \_\_\_\_\_, of \_\_\_\_\_ First Nation.***

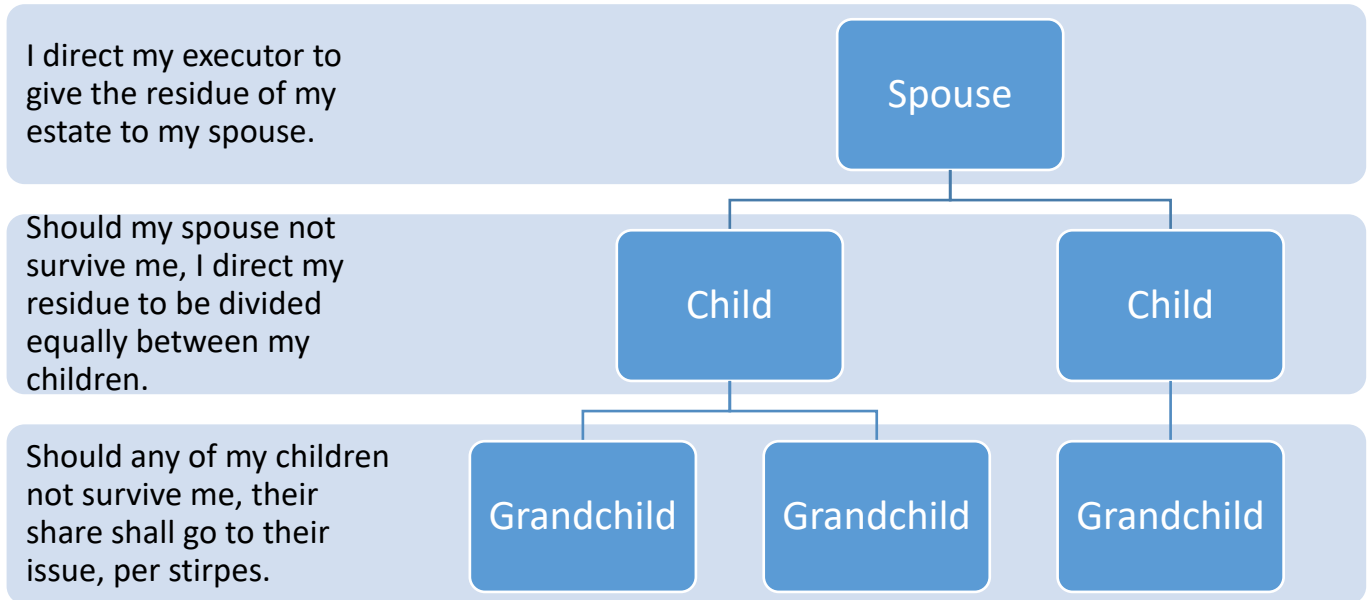
When you are drafting this section there are a few things to keep in mind!

Is there anyone you want to specifically exclude from your Will?

Are you leaving out or excluding someone who you need to provide for?

Where will your money go if your Beneficiary dies before you?

Here is an example of how your residue could be distributed:



### Issue? Per Stirpes?

These are legal words which allow for your estate to be distributed to your children and then to your grandchildren and their children, etc. You may recognize these words if a lawyer made your Will, but you do not need to use this language. If your goal is to give your estate to your descendants then you can state that using simple everyday language.

That's just one way of dividing up your estate. But it could be as simple as:

**Ex1. "I direct my Executor to divide my residue as follows: one half to my common-law spouse, one quarter to my daughter \_\_\_\_\_, and one quarter to my son \_\_\_\_\_."**

**Ex2. "I direct my Executor to divide my residue as follows: everything to be divided between my children equally. If any of my children pass away before me, then their share should go to their children equally. If I do not have any children or grandchildren still living, then everything to my friend \_\_\_\_\_."**

Most importantly, do your instructions make sense and are they possible?

Did you notice that all of the examples refer to **parts** or **percentages** of your estate? This was done for a specific reason. When you make your Will, you cannot know what your estate will be

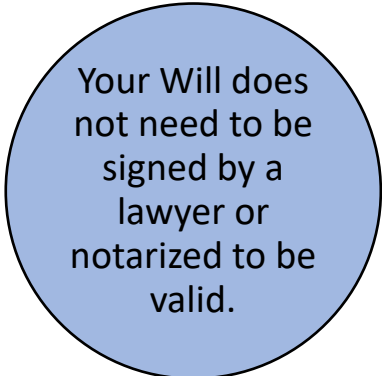
worth in the future. Your executor may have difficulty following your instructions if you have made a specific gift – whether an item or money – that cannot be followed.

This may happen if your estate is smaller than the gifts you have made in your Will! For example, what happens if you gift \$500 to a charity and the residue to your spouse, but you pass away with only \$400? In that case, the charity gets \$400 and your spouse receives nothing.

Using parts or percentages ensures that each of your beneficiaries will still receive a share of your estate, no matter what it's worth on the day of your death.

## 9. Sign and Date

Your Will is only valid if sign and date it! There are different rules about witnesses depending where you live. If you live **on** a First Nation, then you are the only person who needs to sign your Will. However, if you live **off** of a First Nation, you need two witnesses to sign your Will at the same time as you.



Your Will does not need to be signed by a lawyer or notarized to be valid.

It is a good idea to sign your Will with witnesses if you are able. Your witnesses must both be present at the same time that you sign your Will. Why should you use witnesses if they are not legally required?

- ▶ Your Will would also be valid under provincial law in case you ever move off reserve.
- ▶ Witnesses can attest to your mental capacity when you signed your Will.
- ▶ Your witnesses can verify that your Will was done by you and is not a fake.

If you decide to have witnesses to your Will, they must be 18 years or older and **cannot be**:

- ▶ Your spouse or common-law spouse;
- ▶ Your children or their spouses;
- ▶ Anyone named in the Will as executor, substitute executor, or beneficiary.

## 10. Storage

A Will is not helpful unless people can find it! You should store your Will in a safe place – like a lock box – that only you and your Executor can access. Always keep the original copy of your Will. Ask your Band Office if they provide safe storage for Wills.

## Tips for Drafting your Will

ISC **must** approve your Will before it can be used. Sometimes this can take a long time and cause delays for your estate. To avoid this, some people send their Will to ISC while they are alive so that it can be approved in advance. Speak to your Band or call ISC to see if this option is available to you.

If someone disagrees with your Will after you have died, they may ask ISC to review it and decide whether it should be used. If your Will is declared void, then it is as if you died without a Will and your property will be divided according to the rules of intestacy (see pg 12). Take a look at the list below and check if your Will has any of these problems:

You signed the Will under “duress or undue influence”

- This could mean that someone threatened or pressured you to sign a Will

You lacked *testamentary capacity* when you signed the Will.

- You must have capacity to sign a Will, meaning you understand what you are signing and the implications of the document. If there is evidence that you were incapable when you signed your Will, then the Minister may deem it invalid.

The terms of your Will impose hardship on your dependents

- You need to provide for your dependents, such as your spouse or your children. If you do not, the Minister may direct that payments are made to them and your Will is invalid.

You gift land on reserve, contrary to the interests of your Band

- You cannot give away land on reserve to someone who is not a Band member.

Parts of your Will are "vague, uncertain or capricious"

- You should leave clear, printed instructions in your Will. Your wishes cannot be respected if they are not easy to understand and make sense.

Parts of your Will are against the public interest

- This is a pretty vague reason for finding a Will invalid but it could mean that your Will leaves instructions that are illegal.

## Instructions for using the Sample Will

The next few pages contain a sample Will. This Will is designed to accompany the instructions in this Will Kit and provide you an example to help you understand what we have covered.

**THIS IS THE LAST WILL AND TESTAMENT** of YOUR FULL NAME,  
currently residing at YOUR CURRENT ADDRESS.

***Revocation:***

I **REVOKE** all previous Wills, testamentary writings, and codicils made by me.

***Executor:***

I **APPOINT** NAME OF YOUR EXECUTOR, RELATIONSHIP TO ME,  
of THEIR CURRENT ADDRESS OR THE FIRST NATION/TOWN/CITY  
THEY LIVE IN to be the Executor(s) of my Will and Trustee(s) of my Estate.

If my Executor named above is unwilling or unable to act for me, by reason of death, resignation, or incapacity, then I **SUBSTITUTE** NAME OF YOUR SUBSTITUTE EXECUTOR, RELATIONSHIP TO ME,  
of THEIR CURRENT ADDRESS OR THE FIRST NATION/TOWN/CITY  
THEY LIVE IN to act as my Executor.

If I have named more than one Executor, or substitute Executors, I direct them to work together jointly. I give all my property, wherever located, to my Executor, to hold in Trust and distribute

***TIP:***

If you are using multiple Wills, make sure you don't revoke them!

***TIP:***

You can help identify someone by simply adding "my brother", or "my friend" before or after their name.

as directed in this Will. Any reference to Executor or Trustee in this Will shall refer to any person or people acting as my Executor, whether original or substitute.

My Executor shall have all powers granted to them under legislation, or as necessary to safeguard, maintain, sell, or convert my property into funds for the benefit of my beneficiaries.

**Debts:**

I **DIRECT** my Executor to pay all my debts, taxes, and funeral costs as soon as practicable after my death.

**Pets:**

If I have any cats, dogs, or domestic animals on the date of my death (collectively known as “my pets”), my Executor shall **GIFT** my pets to NAME OF PERSON, RELATIONSHIP TO ME, if they are living on the date of my death, and they shall be deemed the New Owner of my pets.

If the person named above is not living at the date of my death, or is unable or unwilling to take my pets, then I **GIVE** my pets to NAME OF PERSON, RELATIONSHIP TO ME, as the New Owner.

If the people named above are not living at the date of my death, or for any reason are unable or unwilling to take my pets, my Executor shall first seek out family members, friends, or

**TIP:**

The responsibilities of your Executor are also outlined in legislation.

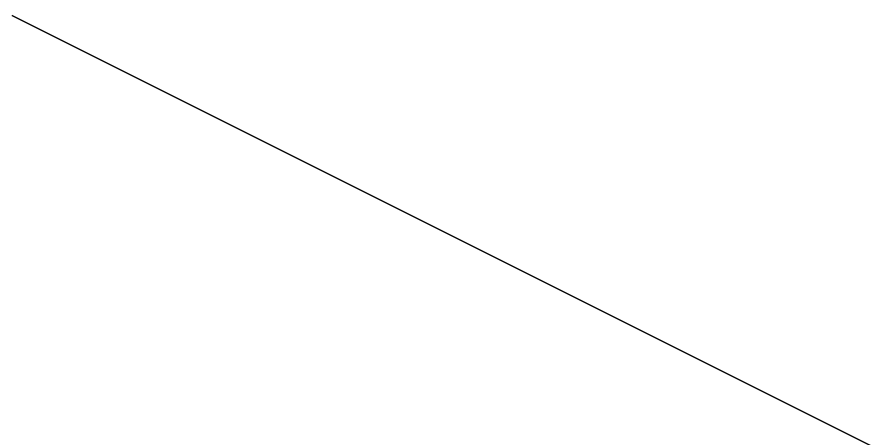
**TIP:**

A simple gift can get complicated quickly! You may not need all of these conditions, but having at least one back up plan is ideal.

neighbours, who are willing to become the New Owner to my pets. The person who accepts and provides a home to one or more of my pets for at least THIRTY DAYS shall be considered the New Owner of my pets. It is my preference that all my pets go to the same home, so that they may continue to live together, though I accept that this may not be possible. My Executor shall pay a total amount of TWO HUNDRED DOLLARS to the New Owner of my pets, to assist them and express my appreciation. Once this amount is paid by my Executor, my Executor is not responsible for monitoring the care of my pets, or for making further payments to the New Owner or to any New Owner after.

**Minor Beneficiaries:**

If anyone entitled to a share of my estate is under the age of majority (18), I direct my Executor to hold those funds in Trust for their benefit and make payments to them in their sole discretion or to anyone acting as a parent or guardian to them, until they are 18, at which time the funds can be released entirely to them.



**TIP:**

This paragraph prevents large sums of money from suddenly going to a child. Their share will be managed by an adult until they turn 18. You can pick whatever age you want!

**TIP:**

Cross out the blank spaces so no one can add anything without your knowledge.



**Gifts:**

I **DIRECT** my Executor to make the following gifts, if these items are still owned by me on the date of my death:

- a. DESCRIPTION OF GIFT to NAME OF BENEFICIARY, RELATIONSHIP TO ME.

If any of the named beneficiaries above do not survive me by 30 days, then their gift shall lapse and become part of my residue. If anyone entitled to a gift listed above is under the age of majority (18), I direct my Executor to hold and safeguard their gift until such a time as they may be deemed old enough to receive the gift, in the sole discretion of my Executor, or they have attained the age of majority, whichever comes first, at which time my Executor may transfer the gift to my beneficiary for their own use absolutely.

**Personal Articles and Motor Vehicles:**

Subject to the gifts above, my Executor shall DELIVER all my personal articles and motor vehicles to MY SPOUSE for their own use absolutely. Should my spouse not survive me for 30 days, then my personal articles and motor vehicles shall be divided equally between NAMES OF BENEFICIARIES, as to be agreed between them. Any disagreement regarding my personal articles shall be decided by my Executor.

**TIP:**

Remember to describe each gift so they can be identified. Writing “my favourite chair” may not be as useful as writing “my wooden rocking chair with the blue cushion”.

**TIP:**

This section may not matter if everything you own is going to one person, such as your spouse. But some people like to divide up their possessions between their children or family, separate from the gift section or residue of their estate. Be sure to define whatever term you use (ie. household possessions, personal items, etc) or you may accidentally give away something more valuable than clothes and dishware.

My personal articles shall be defined as any personal, household, or garden items which I own at the time of my death, including but not limited to books, furniture, artwork, and dishware.

**Residue:**

I **DIRECT** my Executor to give the residue of my estate as follows:

- a. Everything shall be given to my spouse, NAME OF SPOUSE, if they survive me for 30 days. If my spouse does not survive me for 30 days, then my residue shall be divided equally between my children, NAMES OF CHILDREN. If any of my children do not survive me by 30 days, then their share shall be given to their children, in equal shares, or returned to the residue if they do not have any children.

I **SIGN** this, my last Will and Testament, voluntarily and with the understanding that I am leaving written instructions for the distribution of my property upon my death.

Dated this 12<sup>TH</sup> DAY OF OCTOBER, 2030.

\_\_\_\_\_  
**Grantor's Signature**

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Address**

**TIP:**  
Make sure to include a back-up beneficiary in case any of your beneficiaries pass away before you, or specify if their share should return to the residue.

**TIP:**  
If you choose to use witnesses, they should print their names and include their addresses. They must both be present together and watch you sign your Will.

**TIP:**  
Remember, you're the Grantor and you need to sign AND date your Will.



## Quick Reference

### Differences between living on or off a Reserve

This chart quickly shows you the differences for your property, depending on whether you live on or off a reserve.

#### You don't have a Will

	Living <b>ON</b> Reserve	Living <b>OFF</b> Reserve
Common-law Spouse of one year	Your common-law partner gets the first \$75,000 of your estate. They would receive money before your children.	Your common-law partner is not entitled to receive any part of your estate unless you listed them in your Will.
Share for Spouses	Your spouse or common-law partner receives the first \$75,000 of your estate. Any extra money is divided between them and your children.	Your spouse (not your common-law partner) receives the first \$350,000 of your estate. Any extra money is divided between your spouse and children.
Land	Land on reserve will be transferred to your close family (spouse, children, parents, or siblings), but only if they are also Band Members. Otherwise, the land will be sold and the money given to your family.	Land off reserve can be left to family or friends, regardless of status or Band Membership.

#### You have a Will

	Living <b>ON</b> Reserve	Living <b>OFF</b> Reserve
Land	Land on reserve can only be gifted to someone who is also a Band Member. If your beneficiary is not a Band Member, the land will be sold and the money goes to your beneficiary.	Land can be gifted to anyone who can legally accept it.
Witness Signatures	You do not require witnesses to sign your Will, but it's still a good idea!	Your Will requires two witnesses to be valid.
Who decides my Will is valid?	Your Will <b>must</b> be approved by the Minister of ISC before it can be used.	Your will <b>may</b> need to be approved by the Court.

#### Advocacy North for Elders & Seniors, April 2024

This booklet provides general legal information only.  
Seek legal advice from a lawyer for your specific circumstances.



## NOTES

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