

Deceased person with a will

IMPORTANT: The general legal information in this sheet is intended to indicate what happens when a person dies with a will. **It is not intended to provide legal advice or to replace legal advice given by a lawyer.**

WILL CONCEPT

A **will** is a legal document in which a person sets out how their property will be distributed after their death. When a person dies, their property is distributed, when applicable, according to the instructions set out in their will, after funeral expenses and other debts of the deceased have been paid.

In Ontario, it is **not mandatory** to have a will but having one allows a person to designate beneficiaries and facilitates the administration of the estate.

A **will** may specify the wishes of the deceased person, including to whom their property will be distributed, how their funeral should be conducted and their remains handled, who will have custody or guardianship of their children, who will serve as the estate trustee (formerly called the executor), whether they wish to donate their organs, whether they wish to make charitable donations, and any other information they consider relevant.

ESTATE

Distribution of property

Generally, property is distributed in accordance with the instructions in the will. However, in certain cases, property may be distributed according to rules set out in law:

Scenarios	Distribution of property
Deceased was married or had a dependent	Property is given to that person first, before being distributed to other beneficiaries

Beneficiary: the person who inherits the assets of the estate.

Deceased: a person who has died.

Estate: all property belonging to a person (e.g., house, insurance policies, personal property, investments, pension plan) that will be distributed among the beneficiaries after their death.

Estate trustee: a person designated by the testator in his or her will or by the court, who ensures the proper management and distribution of the assets of the estate.

Deceased jointly property or had a designated beneficiary (e.g., insurance, joint account)	Property is transferred if that was the intended gift
Deceased married after January 1, 2022, with a will already drafted	Marriage after 2022 does not revoke the will; the will must be updated if the spouse is to be included
Will drafted before marriage and before January 1, 2022	Before January 1, 2022, marriage revoked the will
Deceased separated for at least 3 years, or with a separation agreement or court order before January 1, 2022	Before 2022, separation did not cancel gifts to a spouse in the will
Separation occurred before January 1, 2022	In the case of separation before 2022, the will remains valid and the former spouse may claim a share of the estate
Separation occurred after January 1, 2022	Since January 1, 2022, separation is equivalent to divorce, so the former spouse has no rights to the estate
Divorced after drafting the will	Divorce revokes gifts to the former spouse; they may no longer claim a share of the estate unless the will or a contract expressly provides otherwise
A beneficiary named in the will has died	Their share may be redistributed to other beneficiaries, assigned to their heirs, or revert to the estate, depending on the will or the law

Who is responsible for distributing the estate's property?

The **estate trustee** is the person named in the will who is responsible for carrying out the deceased's last wishes. If the person refuse to act as the estate trustee, they can renounce by signing [Form 74 G: Renunciation and Consent](#) and another person can file an application with the court to be appointed as an estate trustee in their place.

APPLICATION TO THE COURT

CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE

Before acting, the trustee named in the will must, in most cases, obtain a **certificate of appointment of estate trustee with a will**. This is a document issued by the court after filing an application proving that this person has the authority to administer the deceased's property. Obtaining this certificate depends on certain circumstances and the nature of the assets of the estate.

The application to the court is called the "**Application for a Certificate of Appointment of Estate Trustee with a Will**". It is not always necessary to present this Application to the court.

It is generally necessary to apply for a certificate of appointment in the following cases:

- the value of the estate is significant;
- the beneficiaries are **under 18 years** of age;
- the estate includes real property (e.g., house, condominium, or cottage);
- a bank or financial institution requires the certificate (e.g., the amounts to be transferred exceed **\$10,000**);
- an insurance company requires the certificate because the death benefit is payable to the estate.

For estates valued at **\$150,000 or less**, follow the procedure of [probate of a small estate](#) to obtain the certificate. And for estates worth **more than \$150,000**, [apply for probate of an estate](#).

Who can file the application?

With a will, the application is generally filed by the person named as estate trustee. If multiple estate trustees are named, they may act together, or some may renounce by signing a renunciation (**Form 74G: Renunciation and Consent**).

If the designated person refuses or is unable to act, the other estate trustees take over, or, failing that, a beneficiary may ask the court to be appointed as estate trustee.

What happens after the certificate is issued?

Once the Certificate of Appointment is issued, the estate trustee can administer the estate, including settling debts, filing the deceased's income tax return, distributing assets according to the wishes set out in the will, and preparing a final report, etc.

The beneficiaries do not have an automatic right to immediate distribution; the estate trustee must comply with legal and tax timelines.

CONTESTED WILL

PROCEDURE AND IMPACTS OF A CONTESTED WILL

Some individuals may wish to contest a will, for example, by claiming that the deceased lacked mental capacity when it was made, that the signature is invalid, that the testator was unduly influenced, or that a more recent will exists, etc.

In such cases, the court may suspend the administration of the estate until the dispute is resolved, and the probate process is suspended. During this process, the court may order the preservation of the estate's assets and, if necessary, appoint a temporary estate trustee. Until the dispute is resolved, the distribution of the assets is generally delayed, and final decisions will be made in accordance with the court's judgment.

The **Legal Information Centre of Ontario** offers free confidential legal information and referral services in English and French to anyone with a legal problem who is located in Ontario. **Book an appointment [online](#) or call us at 1 (844) 343-7462** (toll-free) for a 30-minute legal information meeting.



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