



THE IMPORTANCE OF HAVING A WILL

Having a will is important, because without one, it is the *Civil Code of Québec* that will determine who receives your property. You can read about the rules for the transmission of property when someone dies without a will on the Justice Québec website, in the section entitled “Successions”.¹

Perhaps you are in a couple and are worried that when your common law spouse dies, one of his relatives will claim property you both purchased together or, worse, will take possession of your own property, for which you have not kept any purchase receipts. Or perhaps you are single and have no children and, when you die, you would like to leave your possessions to your godchild or to someone else of whom you are particularly fond.

In all cases, it is advisable and even necessary, in order to avoid misunderstandings and ensure your relatives respect your last wishes, to draft your own will or ask a legal advisor—either a notary or a lawyer—to draft one for you.

There are three types of wills in Québec.

A holograph will is a will entirely in your own handwriting and signed by you. It is advisable to date it and ensure it is kept in a safe place. Contrary to popular belief, no witnesses are required for this type of will. If you do not feel comfortable drafting your own will, the other two types of wills may be more suited to your needs.

The second type of will is a will made in the presence of witnesses. It need not be entirely in your own handwriting; you can ask another person to write it for you, either by hand or on the computer. However, it must absolutely be signed by you, as well as by two witnesses who are at least 18 years old and who must sign it in your presence.

Finally, the third type of will is a notarial will that is drafted and read by your notary and signed by you before a witness. According to law, is an authentic document. Consequently, only notarial wills need not be homologated. Homologation is a procedure for probating wills in which the will is submitted to a court so the court can check its validity and the authenticity of the testator’s signature, allowing for copies of the will to be issued.

It should be noted that witnesses to a will made in the presence of witnesses or a notarial will cannot inherit under that will.

The type of will used by lawyers is the will made in the presence of two witnesses.

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.

¹ <http://www.justice.gouv.qc.ca/english/publications/generale/success-a.htm> - Under Publications / General information / Your business / Successions.



**THE IMPORTANCE OF HAVING A WILL
(Continued)**

In all cases, the will must accurately express your last wishes: principally, the people to whom you have chosen to leave your property when you die and the person you have appointed as liquidator, who will be responsible for faithfully carrying out your wishes, in particular, by distributing your property to your heirs after paying your debts.

What else should your will contain? In short, a will usually mentions the type of funeral arrangements you want. Do you want to be cremated? Do you wish to pick your burial plot yourself? Do you want a funeral service? All of these matters, and many others, can be dealt with in your will.

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