

What the wills app does not cover



This is a list of some of the situations where you should not or cannot use the wills app. It does not list every situation where you should see a lawyer to do your will. **Talk to a lawyer** if you are not sure if you can use the app to do your will.

You live outside Nova Scotia

Laws about wills are different in other provinces and territories, so the wills app is not for you if you live in another province or territory or outside Canada. In Canada, you can get in touch with a **public legal education organization** where you live to find out options for making a will. Or, contact a lawyer in private practice who does wills in the place where you live.

It is not clear you have the capacity to make a will

You must be mentally competent to make a will. This is called having testamentary capacity. This basically means that at the time you sign your will, you must:

- know that you are making a will and understand what a will is
- know what property you own and have a general idea of what it is worth
- know how much money you owe; and
- be able to name the people in your family you should gift your estate (even if you do not intend to), and other people you wish to leave something.

You should make your will while you are in good health so that your capacity to make one is not questioned. Whether you are capable of making a will can be questioned:

- If your ability to think clearly is affected by illness (including dementia or Alzheimer's) or pain;
- If you are taking drugs (prescribed or otherwise);

- If you feel pressured to write a will because someone is insisting that you do one. A will must be made without pressure or influence by anyone, including people you might rely on to help you financially, for housing, or for personal needs and health care.
- This is not a complete list. But it gives you a sense of the challenges that are often made to the validity of a will. And, more than one of those things may apply to a situation.

Even if you have some trouble understanding information or lack some decision-making ability, you might still be able to meet the legal standards to make a will. A health problem that affects your thinking matters, but it is not the only thing that matters. For example, someone in the early stages of Alzheimer's who has a bit of trouble with thinking and reasoning might still be capable of making a will. Whether you are capable of making a will is a legal question, not a medical one. However, if that is your situation you should **get help from a lawyer** who does estate planning and who has experience working with people who have some decision-making, reasoning, or memory problems. You might still be able to do a will under the right circumstances and with the information explained in a way that you are able to understand.

If you don't have testamentary capacity, or you are pressured or influenced by anyone else, you should **not** make a will. If you do make one, someone could challenge your will in court, and your will would probably not be valid. In that case, you would be considered to have died without a will.

You have status under the Indian Act and live in a First Nation community (reserve)

If you have status under the *Indian Act* and live in a First Nation community (on 'reserve'), provincial laws about wills do not apply to you, so the wills app may not be right for you. The federal *Indian Act* has rules for making wills that apply to persons registered under the *Indian Act* who usually live in a First Nation community (reserve).

You can get information about making your will from the **Confederacy of Mainland Mi'kmaq**. Go to **cmmns.com/program/wills-estates**.

Indigenous Services Canada also has information online at: **www.canada.ca/en/indigenousservices-canada.html**, under 'Treaty annuities, estates and trusts', then '**Estate Services for First Nations**'.

You could also contact a lawyer who does wills and estates law, and who knows about Aboriginal law and the rules that apply to wills for persons registered under the *Indian Act* who usually live on reserve.

You want to name a guardian for minor children in your will instead of in a separate child guardian document

If you have children younger than 19 years old you should name a legal guardian who you want to care for them if you become unable to care for them for any reason while you are alive, or you die. It is important to name a guardian to help make sure your children have continuous care with people they know and who you trust.

The wills app does not let you name a guardian for your children in your will because it is better to make a separate child guardianship document. That way it can be used if it is needed while you are alive, and your will stays private until you die.

You can still use the wills app if you have children, including minor children. The app makes sure you include your children in your will. But after you make your will, [see a lawyer](#) to make your child guardianship document. Or, you can use the free, basic Child Guardian Appointment form from the Legal Information Society's website to name a guardian(s) for your minor child or children.

[Here is more information about child guardianship.](#)

You have a blended family

It is best to see a lawyer if you have a “blended” family; that is, if you have children from a previous relationship, and/or your spouse or partner does.

You have a legal document that may affect your will

Before you make your will you should have a lawyer read any legal document that may affect your will or your estate plan in general. Make sure you follow your legal obligations under those documents when you make your will. Examples of legal documents you should have a lawyer review with you are:

- a prenuptial agreement ('prenup')
- a cohabitation agreement
- a marriage contract
- a separation agreement
- a shareholder agreement
- a court order
- any deed where you own land jointly with anyone other than your spouse.



Tip: Check with a lawyer or a trusted financial advisor to make sure you know how any joint assets and assets with a named beneficiary (eg. registered savings accounts and life insurance policies) are set up and who will benefit when you die.

You are separated from your spouse but want to leave your spouse something in your will

If you are separated from your married spouse, common-law spouse, or registered domestic partnership, you cannot benefit that person in your will using the app. [See a lawyer](#) if you want to do that.

We always recommend that you see a lawyer if you are separated. A lawyer can help you make sure your will follows what the law expects when couples separate, including following the terms of any signed written agreement or court order between you and your spouse.

You are separated, and you have a new common-law spouse

Making a will is the only way to make sure your common-law spouse benefits from your estate when you die. But if you have not already dealt with the separation from your legally married spouse or registered domestic partner, and particularly matrimonial property and pension division by written separation agreement or court order, and you now have a common-law spouse, things can get very complicated. You need advice from a lawyer about both family law and making a will, and should not use the app.

We always recommend that you see a lawyer if you are separated. A lawyer can help you make sure your will follows what the law expects when couples separate, including following the terms of any signed written agreement or court order between you and your spouse.

You have family law problems

If you're in the middle of a family law dispute like a separation or divorce from your spouse or partner and you have not sorted out parenting arrangements or divided assets and debts, you need to work out those issues. You need legal advice. You need both family law advice and estate planning advice. These are two different areas of law that you need to deal with at the same time.

A lawyer can help you make sure your will respects what the law expects when couples separate, including following the terms of any written agreement or court order between you and your spouse or partner.

You want to leave a dependant out of your will

If you have a married spouse, common-law spouse, or registered domestic partner and you and that person are together, you cannot leave that person out of your will using the app.

If you have children, you cannot leave them out of your will using the app.

In Nova Scotia the law expects you to include your family in your will, and cutting them out is complicated. If you don't want your spouse or child(ren) to get any of your property, or you only want them to get a small part of it, your will could be challenged in court, and you need advice from a lawyer.

You want to list more than 10 specific gifts in your will

The wills app lets you list up to 10 specific gifts, such as an amount of money or a special item, for beneficiaries. See a lawyer if you want to list more than 10 specific gifts in your will.

You want to name beneficiaries for life insurance or registered plans such as RRSPs, RRIFs, TFSAs, or pension funds, in your will

A person can name a beneficiary for life insurance, registered plans (including tax-free savings accounts), and pension funds:

by signing a beneficiary designation in a stand-alone document (usually a document provided by the relevant financial institution or pension administrator), or in their will.

The wills app doesn't allow you to make or change beneficiary designations for life insurance, registered plans or pension funds in your will. See a lawyer if you want to do that.

You have an RESP for someone, and want them to benefit from that money after you die

If you have a **Registered Education Savings Plan** (RESP) for someone and still want them to benefit from that money after you die, you need a lawyer to add specific paragraphs to your will. Otherwise, the RESP will become part of your general estate, and your estate will have to pay back the Canada Education Savings Grants as well as taxes and penalties.

You want to plan for loved ones who have disabilities and who depend on you for financial support

If you have loved ones who have disabilities or special needs who depend on you for financial support, and you want to name them as beneficiaries in your will, you must set up a special type of trust in your will. It is called a discretionary trust or “Henson Trust”. It is a type of trust that is designed to protect the assets of a person living with a disability and to make sure they keep their right to get government benefits and entitlements. You need to **contact a lawyer** to help you do this properly.

You want to set up a trust with special conditions

For example, you want to say *how* funds should be used for a beneficiary who is under 19. Or you might have a beneficiary who should not inherit a lot of money all at once, and you want to name a trustee to manage that beneficiary’s share and put conditions on it. Or you want to set up a trust with funds to provide for the ongoing care of your pets. You need to contact a lawyer if you want to do those types of things.

You want to donate to charity

Donations to charity can be complicated. One reason is that you must identify the organization properly. You should talk to somebody at the organization about it (usually the Fund Developer), or check their website. You may also want to make sure that your estate gets a charitable tax receipt to reduce the taxes your estate must pay. Not all organizations can give tax receipts. Talk to a lawyer or accountant for more information.

You will owe taxes outside Canada when you die

You will owe income tax in another country when you die. A lawyer or accountant can explain the consequences of this for your estate.

You have land in a Land Titles Initiative Community and do not have a clear title to it

The **Land Titles Initiative (LTI)** helps residents in the communities of North Preston, East Preston, Cherry Brook/Lake Loon, Lincolnville and Sunnyville get clear title to their land at no cost. There are Community Navigators to help all applicants involved in the Land Titles Initiative. Their role is to work directly with residents to help them through the land claims process. There are different ways to get a clear land title. The Community Navigators will help you get on the right path and will track the progress of your case. They can also help connect you with other services you may need.

You can call a Community Navigator to ask questions about the status of the title to a parcel within the LTI communities. You do not need to have a land titles claim registered with the LTI. If the title is unclear, you may submit an intake application to determine your eligibility for the LTI.

To speak with a Community Navigator or schedule a meeting call toll-free: 1-833-424-6100 or email: communitynavigator@novascotia.ca

You might still be able to use the wills app, but it would be best to get legal advice first to make sure.

You own property with someone else as tenants in common

You own property (a house, condo, land) with others as a tenant-in-common. This is different from owning a house or land as a joint tenant with the right of survivorship. There may be complications with handing down your share of the property, or when your executor tries to sell it. You should get **legal advice** before writing your will.

You jointly own land or other assets with someone other than your spouse

You jointly own (joint tenants) property—a house, condo, land—or have other assets like a bank account or investments with someone other than your spouse. There may be complications with handing down your share of the property, or when your executor tries to sell it. You should get legal advice before writing your will.

You own recreational property

You own recreational property, such as a cottage. Because this property isn't where you usually live (it is not your "**principal residence**"), your estate will likely have to pay a capital gains tax when you die. You should get legal or tax advice before writing your will.

You own real estate in Nova Scotia but live outside Nova Scotia

If you own real estate in Nova Scotia but don't live here full-time, get **legal advice** before you make your will.

You own real estate outside Nova Scotia

A will made in Nova Scotia does not cover real estate outside the province unless a court where the real estate is located approves your will. It's simpler to make a will just for that real estate according to the laws of the area where it is located. Note that making a will using the online wills app would cancel any wills you've made outside of Nova Scotia. Get legal advice before writing your will if you have or need will(s) for different jurisdictions.

You want someone who is not your executor to manage funds for a beneficiary who is younger than 19 years old

The wills app only lets you name your executor as the person who will manage funds for a beneficiary who is under 19. Contact a lawyer if you want to make different arrangements.

You want to make a special type of executor appointments

The wills app allows you to name one or two people as your primary executors, with a way for co-executors to try to resolve any disputes. It also lets you name one person as a backup (alternate) executor. You must see a lawyer if you want to do something else, like:

- You want to name an organization such as your bank or a trust company as your executor.
- You want to name three or more co-executors to act together at the same time to carry out your wishes.
- You want to name an executor who does not live in Canada.
- You want to name more than one backup executor.

You own a business or you own shares of a business

Your wishes for the business must be properly expressed in your will. The lawyer would also need to review any shareholder agreement. Get help from an accountant or lawyer.

You want your executor to get extra compensation for their work

Nova Scotia's Probate Act allows executors to be paid a fee of up to 5% of the estate for their work—the fee has tax consequences for your executor. If you are giving your executor a gift of cash or something valuable in your will as extra compensation in the form of the executor's fee, you should **see a lawyer**.

You made a loan to a beneficiary and want that loan deducted from what they get in the will

Before you die, you loan money to someone receiving a gift in the will, and you want the executor to deduct the loan from their share of the inheritance. If you don't say anything about this, your executor must figure out whether to collect or forgive the debt based on the type of loan, whether there was anything about it in writing, the length of time since it was made, the amount already collected, and so on. Get help from a lawyer to deal with that in your will.

This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services.

LEGAL INFO
NOVA SCOTIA

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