
Wills & Estates

Overview

Wills and Estates law covers legal information about advanced life and estate planning. It includes:

- Making a will
- What happens if you do not have a will
- Powers of attorney
- Health care treatment and consent
- Elder Abuse
- Dealing with an estate.

Objectives

To understand the basics of wills and estates law, including the difference between a will, personal directive, power of attorney and legal requirements.

Agenda

Welcome and group discussion, questions on previous topics.

Presentation on: Wills and Estate Law

- Personal Directives, Power of Attorney, Adult Capacity
- Making a Will, Dying without one
- Probate basics.

Activities: How would you answer

Together or individually, research the questions below and explain your answer.

1. What happens if I don't have a personal directive?
2. Where can I find an Affidavit of Execution?
3. What are the basic legal requirements for making a valid will in NS?
4. When is probate required?
5. Can I get a copy of the will?

Wills

Powers of Attorney

Personal Directives

Key Resources

- Powerpoint presentation on Wills & Estates
- [Courts.ns.ca](https://courts.ns.ca) - Probate Court
- Checklists for [Grant of Probate](#) or [Administration](#)
- Information, instructions & sample Personal Directive form novascotia.ca/just/pda/
- It's In Your Hands: Legal Information for Seniors and their Families (legalinfo.org)
- NS Elder abuse info & referral ns.211.ca
- Mi'kmaw Wills and Estates series cmmns.com
- Public Trustee NS novascotia.ca/just/pto/
- Wills and Estates (legalinfo.org)
- [Wills app \(legalinfo.org\)](#)
- [Service Nova Scotia - Vital Statistics](#)

Activities: How would you answer?

6. My sister is misusing the power of attorney mum gave her.
7. Am I responsible for my father's debts after he dies?
8. Can I leave one of my children out of my will?
9. What happens if I die without a will?
10. My brother has advanced dementia. I need power of attorney so I can deal with his finances. How do I do that?

Case example:

My mother who lives in Nova Scotia and is 83 was given a capacity exam right after she realized that she wasn't taking her pills correctly. She did not pass.

My sister is her Power of Attorney and has removed all firearms from her house, installed a lock box and proceeds to interfere with her life. Mom pays all her own bills and functions fine. She used to drive to wherever she needed to go (eg. hairdresser, doctor's appointments, grocery shopping, church, seniors group, etc.) Can she legally challenge and change who she wants as POA despite not passing her capacity tests? Mom lives in an isolated area but has a cleaning lady to do chores that she feels she cannot do. She doesn't want to leave her home and move into a seniors residence. Can POA force her to move? Does POA have the right to remove things from the house while Mom is still living there?

Key Laws

- [Adult Capacity and Decision-making Act](#)
- [Adult Protection Act](#)
- [Hospitals Act](#)
- [Intestate Succession Act](#)
- [Involuntary Psychiatric Treatment Act](#)
- [Personal Directives Act](#)
- [Powers of Attorney Act](#)
- [Probate Act](#)
- [Protection for Persons in Care Act](#)
- [Testators' Family Maintenance Act](#)
- [Wills Act](#)

Legal Question	Where would you start?
What happens if I don't have a personal directive?	Personal Directives Act Hospitals Act/Involuntary Psychiatric Treatment Act Health Care Treatment and Consent List of statutory decision-makers: novascotia.ca/just/pda/_docs/PersonalDirective_Booklet.pdf
Where can I find an Affidavit of Execution?	Courts.ns.ca, Probate Court Forms courts.ns.ca/Probate_Court/nspbc_forms.htm
What are the basic legal requirements for making a valid will in NS?	Legalinfo.org Making a will legalinfo.org/wills-and-estates-law/seniors-making-a-will
When is probate required?	Lawyer Probate court: common questions - legalinfo.org/wills-and-estates-law/probate
Can I get a copy of the will?	Probate court, if Grant of Probate, courts.ns.ca (Probate Court locations) Probate regulations
My sister is misusing the power of attorney mum gave her	Power of Attorney – legalinfo.org – What can I do if PoA being misused
Am I responsible for my father's debts after he dies?	See legalinfo.org – Debt question legalinfo.org/wills-and-estates-law/new-relationships-will-i-be-responsible-for-my-partner-s-debts
Can I leave one of my children out of my will?	Testators' Family Maintenance Act, dependent s. 2 Legalinfo.org 'can I choose who' legalinfo.org/wills-and-estates-law/seniors-making-a-will
What happens if I die without a will?	Intestate Succession Act Dying without a will, legalinfo.org/wills-and-estates-law/seniors-making-a-will
My brother has advanced dementia. I need power of attorney so I can deal with his finances. How do I do that?	Must have capacity to do a PoA. Lawyer Referral/Legal Aid Adult Capacity and Decision-making – Guide for Representative - legalinfo.org/legal-information-topics/representative-decisionmaking

For discussion

All adults are presumed to have capacity and can revoke a poa if choose, unless there is evidence they do not (eg. capacity assessment).

Did not pass capacity assessment - likelihood is that she is now unable to revoke poa, assuming it is an enduring poa, unless there is new information. Person could speak with health care providers about concerns (but remember, it is a one-way conversation - the health professional cannot share confidential personal health information with this person).

Mother could see a lawyer, preferably one who does elder law and is familiar with appropriate capacity protocols, to discuss her options, including possible new capacity assessment (we do not know when the last one was done).

The enduring poa terms would determine scope of what attorney can do. May also give authority under Personal Directives Act (delegate) for health and personal care decisions - but again, that depends on the document terms - and if so then there may be decision-making around admission to a senior's residence. Can certainly remain in home if safe and all needs are met. Attorney must always act in best interests of the donor/delegate.

Items being removed - if it is a safety issue (eg. firearm, and that might be on health professional's advice), but otherwise not usually unless authorized under poa.

Would a family meeting help? Mediation?

