Types of wills in Quebec and probating non-notarized wills

The law in Quebec recognizes three types of wills: notarized, holograph and before witnesses. Each type of will is subject to various conditions. Each person must have their own will. Couples are not permitted to have a joint will. The only exception is the testamentary provision in a marriage or civil union contract under which the spouses appoint each other as their respective heirs. This clause is fully valid and we will get back to this a little later on.

A **notarized will** is executed by a notary with one or sometimes, in particular cases, two witnesses. The notary always keeps the original will in his vault and gives the testator a certified copy of the original. Hence, if the copy is lost or destroyed, the testator can always obtain a new copy.

In addition, a notary is required to declare any will he receives in the Register of Testamentary Dispositions of the Chambre des notaires du Québec. No copies of the will are sent to the Chambre des notaires du Québec. Recording in the Register simply allows a person's last will to be easily found when the person dies.

A **holograph will** is entirely written and signed by the testator and must be in the testator handwriting and not typed. No witnesses are required.

A **witnessed will** may be written by the testator or by a third party, or typed, or by filling out a form. It requires the presence of two witnesses who also sign the will. When the will is written by a third party or typed, the testator and the witnesses must initial or sign each page that does not bear their signature. A will prepared by a lawyer is a witnessed will.

It is advisable to notify a trusted person of the existence of a holograph will or witnessed will along with its location to make sure it can be found when the testator dies.

Note that, just like notarized wills, holograph and witnessed wills can be declared in the Register of Testamentary Dispositions of the Chambre des notaires du Québec. However, the declaration in the Register must be done by a notary, who will file the will in his minutes as an act of deposit and keep it in his vault.

A lawyer may also keep the will in his offices if the client so wishes. In such a case, the will must be registered in the Register of Testamentary Dispositions of the Quebec Bar. No copies of the will are sent to the Quebec Bar.

This makes wills registered in the Register of Testamentary Dispositions of the Chambre des notaires du Québec, or Quebec Bar, easier to locate when the testator dies.

As mentioned earlier, spouses can use a marriage or a civil union contract to make dispositions after they die, but only to the other spouse or their children. Clauses are different from one marriage or civil union contract to another. The most common testamentary clause is the "surviving spouse" clause or "conventional appointment." In legal terms, this clause is equivalent to a notarized will. It consists of a provision that stipulates that the surviving spouse, by marriage or civil union, will inherit all the deceased spouse's assets. A conventional appointment is published in the Register of Personal and Movable Real Rights as well as in the Register of Testamentary Dispositions of the Chambre des notaires du Québec. With respect to a conventional appointment, since the spouse is the sole heir, he/she thereby becomes the estate liquidator. The testamentary clause can be revocable or irrevocable. If the disposition is revocable, the spouse can amend it as he/she wishes by subsequently drawing up a will. However, if the disposition is irrevocable, the spouse who subsequently wishes to draw up a will first has to obtain the other spouse's consent. Note that a marriage or civil union contract must be notarized.

The "surviving spouse" clause is a simple testamentary disposition. As soon as the spouses' situation becomes more complicated, it is strongly recommended that each spouse draw up a will. A will is usually much more complete, covers more possibilities, and includes dispositions which the testamentary clause in the marriage or civil union contract simply does not provide. An example of this would be transferring assets to

other family members, appointing a liquidator other than the spouse, naming a tutor for minor children, or clauses that will ensure control of assets bequeathed to minors after the testator's death. In this last example, a will stating the creation of testamentary trusts or another type of administration may be more appropriate.

In Quebec, only a notarized will does not need to be probated when the testator dies. A holograph or witnessed will must be probated by a notary or in court before the estate settlement process can begin, even if the will was drawn up by a lawyer.

This probating process causes additional delays in the settlement of the estate as well as costs for the estate. The procedure could take several months and result in about $100 in court costs, with lawyer's or notary's fees generally ranging from $1,000 to $2,500, depending on the notary or lawyer and the time spent on the file. It is only after obtaining a judgment from the court or the notary's probate minutes that the estate liquidator can continue with the liquidation of the estate.

It should be pointed out that if a person makes changes themselves on the copy of their notarized will, then the will must be probated. If the testator wishes to make changes to a notarized will, it is recommended that they go back to a notary, who will draw up a codicil if the changes are minor, or draw up another notarized will, if the changes are significant.

The probate procedure is intended to ensure that the will is valid, but does not prevent the will from being subsequently contested. The procedure is used to confirm the testator is in fact deceased, and that the will has been drawn up in proper legal form and true certified copies of the original have been provided.

The choice of will depends on various factors. Legal, financial, family and tax-related factors can determine whether one type of will rather than another is used. Similarly, the testator's objectives and needs, along with his knowledge of legal and tax rules, should be taken into account.

To conclude, the preparation of a will is the ideal opportunity for reviewing one's personal finances and ensure that heirs will be provided for after the testator dies. In addition, it is usually recommended to review testamentary dispositions every five years or even before, if major changes occur in the testator's life. Hence, for instance, the birth of a child or grandchild, the separation of the spouses, the death of an heir, and the incorporation or sale of a business are all reasons to review one's will to ensure that loves ones and assets are adequately protected.

CI Investments

2 Queen Street East, Twentieth Floor, Toronto, Ontario M5C 3G7 I **www.ci.com**

Head Office / Toronto	Calgary	Montreal	Vancouver	Client Services
416-364-1145	403-205-4396	514-875-0090	604-681-3346	1-800-792-9355
1-800-268-9374	1-800-776-9027	1-800-268-1602	1-800-665-6994	

FSC FPO

1708-1570_E (08/17)