



# Wills, Estates + Trusts

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## Overview

Wills, estates, and trusts need to be dealt with skillfully to ensure assets are distributed the way an owner intends. It is essential to retain a knowledgeable lawyer that handles matters within their local region as laws may differ in each province or territory. Our Wills + Estates and Trusts Team has extensive experience working with legal estate and will matters in Alberta, Yellowknife, and Northwest Territories.

### Wills + Estate Planning

We can advise you on how to most effectively arrange your affairs to avoid unnecessary probate taxes or litigation and to ensure your loved ones, assets, and business interests are protected in the event of death or incapacity. Our team can work with you on drafting Wills, Enduring Powers of Attorney and Personal Directives.

### Estate Administration

Many people who are named as estate trustees or executors in a Will have no training or experience in the role. The process of estate administration may seem straightforward; however, technical requirements imposed by various pieces of legislation must be met. Consulting with a lawyer early in the estate administration will ensure that the administration proceeds timely and efficiently, eliminating liability, stress, and frustration.

### Trusts

Whether you are developing a business succession plan or want to protect your family's future, we recognize that estate planning does not happen in isolation. Our goal is to design customized strategies to best protect what matters most to you.

### Guardianship + Trusteeship

Guardianship is the authority to make decisions regarding property and finances or personal care on behalf of an incapacitated adult. Guardianship applications are lengthy, detailed and require having a plan in place to care for the assets of the incapable person and the management of the person. Guardianship is often sought in cases when the adult incapacitated person did not have a power of attorney for property. This is why it is so important to think about planning for incapacity when putting together your estate plan.

### Estate Litigation + Dispute Resolution

Estate litigation is governed by a separate set of procedural rules requiring detailed legal knowledge. Contentious issues often arise at emotionally difficult times and litigation is not always the best solution.

## Services

Societies, Not-For-Profit + Charities  
 Cross-Border Services  
 Wills + Estate Planning  
 Estate Administration  
 Trusts  
 Guardianship + Trusteeship  
 Estate + Trust Disputes

Our team has extensive experience working with executors, administrators, attorneys, agents, trustees and beneficiaries in the negotiation, mediation, arbitration and litigation of claims. We have the knowledge and experience to assist you with resolution of a wide range of disputes relating to wills, trusts, estate collection, and estate administration. We carefully consider and offer a range of dispute resolution and collaborative alternatives to the traditional litigation process.

### **Charities / Non-Profits**

The team regularly advises both local and national charities and private foundations on governance issues to ensure compliance with CRA's strict rules regarding the operation of such entities.

### **Cross-Border**

Many clients have family businesses with cross-border operational issues requiring sophisticated succession planning strategies to ensure the seamless transition of business ownership and assets between generations. Field Law's [Immigration lawyers](#) also regularly collaborate with the Wills, Estates + Trusts team to provide one-stop service to clients with international aspects to their estate.

Click [here](#) to sign up to receive invitations to seminars, webinars and events as well as online publications with the latest information from our Wills, Estates + Trusts team.

## **Experience**

Splett v Splett, 2017 ABQB 658

Graeff Estate v Huey, 2020 ABQB 330

Martin v Hunter, 2021 ABQB 153

Germerscheid v Germerscheid, 2023 BCSC 1431

Kmech v Dorosh, 2023 ABKB 457

McCarthy Estate (Re), 2021 ABCA 403

Malmberg v Boyd, 2020 ABQB 326

Splett v Splett, 2020 ABCA 61

Malmberg v Boyd, 2020 ABQB 80

Hood v South Calgary Community Church, 2019 ABCA 34

Estate of Alec Goodzeck, 2018 NWTSC 68

Moore Estate (Re), 2018 ABQB 614

Rodehuts Kors Estate (Re), 2018 ABQB 562

Birkenbach Estate (Re), 2018 ABQB 538

Edmunds Estate, 2017 ABQB 754

Lindsay Estate (Re), 2017 ABQB 452

Anderson Estate, 2017 ABQB 422

Anderson Estate (Re), 2016 ABQB 683

Nelson Estate (Re), 2014 ABQB 765

Nelson Estate (Re), 2014 ABQB 413

Brousseau v. Janz Estate, 2014 ABQB 136

Benefield v. Alberta (Public Trustee), 2001 ABQB 242

## People

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## News + Views + Events

January 2024

[Field Law Welcomes New Partners](#)

October 2023 - 2 min read

[Canada's Underused Housing Tax: Implications for Foreign + Canadian Property Owners](#)

August 2023

[The Best Lawyers™ in Canada 2024](#)

May 2023 - 3 min read

[Your Divorce Is Finally Complete, but What About Your Will?](#)

February 28, 2023

[Tips + Resources for Charities and Non-Profits as Estate Beneficiaries](#)

## FAQs

Question:

Should you have a Will?

Answer:

In Alberta, if you do not have a Will, your estate will be distributed pursuant to the intestacy provisions of the Wills and Succession Act. Other assets, such as property held jointly with another person or property which has a designated beneficiary (such as life insurance or

RRSPs) will pass directly to the surviving joint owner or the designated beneficiary if they survive you, and generally not form part of your estate. There may, however, be circumstances where assets are held in joint tenancy for administrative convenience but are intended to be distributed to someone other than the joint tenant.

**Question:**

What is an Enduring Power of Attorney (EPA)?

**Answer:**

An Enduring Power of Attorney (EPA) allows you to appoint someone (your Attorney) to manage your financial affairs. An EPA “endures” even if you lose your mental capacity, meaning that the person you appoint can manage your financial affairs in the event that you become mentally incapacitated.

**Question:**

What is a Personal Directive (PD)?

**Answer:**

A Personal Directive (PD) allows you to appoint someone (your Agent) to make decisions with respect to personal and healthcare-related matters in the event you are unable to make reasonable decisions concerning such matters (or unable to communicate such decisions). A Personal Directive is also sometimes referred to as a “living will.”

**Question:**

What Are The Steps to Preparing a Legally-Enforceable Will?

**Answer:**

The first step to preparing a Will, Enduring Power of Attorney and Personal Directive is a consultation with a lawyer. Your individual needs and wishes will be discussed and you may be asked to complete an Estate Planning Questionnaire prior to the meeting. Once the documents have been drafted, the drafts will be sent to you for your review and comment. Once it is confirmed that the documents properly reflect your wishes, a meeting will be scheduled with the lawyer to execute the documents.

**Question:**

How Long Does It Typically Take for a Will to be Drafted?

**Answer:**

A Will may be drafted quickly once final instructions are received. The process of finalizing a Will typically takes 4-6 weeks to complete (after the first meeting with an estate planning lawyer). However, we can typically prepare documents faster where such documents need to be executed on an urgent basis.

**Question:**

How Much Do You Charge to Prepare a Will?

**Answer:**

As every individual has unique and specific requests and circumstances, our fees for preparing a legally-enforceable Will, Enduring Power of Attorney and Personal Directive is determined on an individual basis. Please contact one of our lawyers for further information.

**Question:**

Will your spouse receive all of your Estate?

**Answer:**

The Wills and Succession Act prescribes that, after payment of debts, your spouse or "adult interdependent partner" will only receive the whole of your estate if all of your surviving ‘descendants’ are also the ‘descendants’ of your spouse or adult interdependent partner. ‘Descendants’ is given a broad definition under the Wills and Succession Act, and means more than just children. Therefore, if even one

of your children, grandchildren or great-grandchildren are not also the children, grandchildren or great-grandchildren of your surviving spouse or adult interdependent partner - he or she will not receive the entirety of your estate.

**Question:**

What happens when you leave some of your estate to minor children?

**Answer:**

As a general rule, all property (including money) in excess of \$5,000 which a minor (under 18 years of age) is entitled to receive must be delivered to the Public Trustee. If the surviving parent wishes to manage your child's property on his or her behalf, they will have to obtain a Court Order appointing them as trustee of the child's property. Of perhaps greater concern is that, without a properly drafted Will, the Public Trustee will be required to release all of your child's or grandchild's property to him or her when they reach the age of majority - irrespective of the value of the property or his or her ability to handle money. This situation can be avoided with a properly-drafted Will.

**Question:**

What is a guardian?

**Answer:**

The biological or adoptive parents of a child are presumptively the legal guardians of the child - however, you may have concerns about your child's other biological parent or want your spouse (who may be a custodial adult through second marriage but not your child's biological parent) to be the guardian of your child. If such concerns or wishes are not clearly expressed in a Will, they are unlikely to be honoured.

**Question:**

What about your other wishes?

**Answer:**

Do you want a particular child to receive all of your jewellery on your death? Is it your wish that the Guardian of your children not work outside the home? Do you want to be cremated? Do you want to designate the person who is to be the executor and Trustee of your estate? Do you want to leave a gift to a favourite charity? If so, you need a properly drafted Will. A Will is the only way to ensure that your choices regarding support and protection of your children, distribution of property, funeral instructions and any other testamentary wishes are communicated and legally enforceable.

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**Disclaimer:** The above information is intended to provide commentary on frequently asked questions in this area of law and should not be interpreted as providing legal advice. Please contact a group member before acting on any of the information.

## Helpful Links

The following links are additional resources that may be useful:

### Estate Planning Questionnaire

- Our Estate Planning Questionnaire assists with the estate planning process.
- The Questionnaire facilitates an efficient meeting, as it assists us in ensuring that we are aware of all relevant information, and promotes family discussion prior to the meeting. Fill in the Questionnaire and bring it in when meeting with us.
- We also look forward to meeting with you in person to discuss estate planning considerations, in order to create a customized estate plan that is appropriate to your circumstances.
- To book a meeting with one of our estate planning lawyers, please contact Cindy O'Hara at 403-260-8575 or by email at [cohara@fieldlaw.com](mailto:cohara@fieldlaw.com), or contact one of our lawyers directly (see the "People" tab for their contact information).

- *Please note, we suggest saving the above document to your computer prior to adding any information to the form*

## Featured News

October 2023 - 2 min read

[Canada's Underused Housing Tax: Implications for Foreign + Canadian Property Owners](#)