

Wills and Estates On Reserve

table of contents

- ▶ Introductions
- ▶ Disclaimer
- ▶ T of C (3)
- ▶ What 3 laws Wills Estates

Wills

- ▶ Will maker must be (3)
- ▶ Will Maker must do (3)
- ▶ Valid Will requirements (5)
- ▶ Sample 3 Will Pages
- ▶ Need a Will? (4)
- ▶ Do you need a lawyer? (5)
- ▶ Who inherits if no Will

- ▶ Things can't do in Will pass outside (4)
- ▶ Changing/New
- ▶ Voiding (3-6)
- ▶ Where? (4)

Estates

- ▶ What is an Estate
- ▶ Will or no Will
- ▶ What needs to happen (4)
- ▶ Debts
- ▶ Family Property Act (2 pp)

Wills and Estates

On Reserve

The background features abstract green geometric shapes. A light green triangle is in the top-left corner, and a darker green triangle is in the top-right corner. A diagonal line separates these from a large white central area. In the bottom-right, there is a green trapezoidal shape.

Anne Fletcher

Legal Advocate

Bella Coola Legal Advocacy Program

I am not a
lawyer.

This presentation is for information and referral purposes only. I cannot give legal advice, but I am happy to get you to a lawyer who will!

This PowerPoint borrows heavily from Indigenous Services Canada but has been edited for this presentation.

Presentation Contents

- ▶ Wills, On Reserve
- ▶ Estates, On Reserve
- ▶ Resources

What are the laws that can apply to Wills and Estates on reserve?

- ▶ The *Indian Act* sets the rules for Wills and Estates on Reserve
- ▶ The *Family Home on Reserve and Matrimonial Interests or Rights Act* might also apply to Estates on Reserve
- ▶ The *Wills and Estates Succession Act* (WESA), a BC Provincial law, sets the rules for Wills and Estates for people who live off reserve (whether Indigenous or not)

If you have any questions or thoughts as
we go along, please ask 😊

Wills

on Reserve

The person writing the Will must be:

- ▶ “ordinarily resident” on reserve (includes people who are living away from reserve temporarily ex. for school or medical, including care homes)
- ▶ “Status” under the *Indian Act*, or entitled to be registered.
- ▶ 16 or older

A Will Maker must:

- ▶ be able to understand what s/he is doing when writing a Will (mental capacity) and
- ▶ be free from any undue pressure or influence by someone wanting to benefit from the Will
- ▶ leave clear instructions in the Will or, for example, gift could “fail”

To be valid, a Will must be:

- ▶ In writing: audio/video Wills or oral instructions are not ok
- ▶ Signed and dated by the Will maker
- ▶ Have 2 adult witnesses: not beneficiaries or their spouses
- ▶ Give away something the will maker owns
- ▶ Be intended to take effect upon death

LAST WILL

This will is made by me, _____ . My Membership
(Full Legal Name)

Number is _ _ _ _ _ and I am of the _____
(Band Membership Number) (Name of Band or Nation)

My home address is _____
(Address)

in the Province of British Columbia.

This is my final will. I cancel all former wills and any codicils.

Appointment of Executor

I appoint _____ who currently lives at _____
(Full Legal Name)

_____ to be the executor and trustee of my estate.
(Address)

If he/she does not want to act for any reason or dies before me, or dies within 30 days of my death, then I appoint _____ o f _ _ _ _ _
(Full Legal Name)

_____ to be executor and trustee of my estate.
(Address)

Appointment of Guardian(s)

I appoint _____ of _ _ _ _ _
(Full Legal Name)

_____ as Guardian(s) of my minor children.
(Address)

Funeral Instructions

I want to be _____ and my remains _____
(Buried or Cremated) (Instructions)

Personal Information



Appoint Executor
and Alternate



Appoint Guardian if child



Funeral Wishes



Executor Duties*



What you want to leave and to whom



(You may also leave more detailed instructions in a letter to your Executor)

Who you would give everything else**



I would like my executor and family to arrange a traditional memorial ceremony for me.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

Gifts of Specific Items

I distribute my assets as follows:

Remainder

I give the remainder of my estate as follows:

Alternate person for
the remainder of estate



If _____ dies before me, then I give the
remainder of my estate to _____

Date and place Will
signed and witnessed



Signed by the will-maker on _____ at _____
(Date) (Location, Province) in the presence of each of us
and all of us together at the same time signing as witnesses to this will.

Witness sign,
print name
and address



Witness Signature

Print Witness Name

Witness Address

Will maker Signature

Print will maker Name

Will Maker sign
and print name



2nd Witness sign,
print name
and address



Witness Signature

Print Witness Name

Witness Address

So, do you need a Will?

Having a Will:

- ▶ makes clear what you want to have happen with your things, as opposed to the *Indian Act* deciding for you
- ▶ minimizes stress or conflict for family

Some examples of when a Will can make a difference:

- ▶ You are separated but not divorced *
- ▶ You have children from more than one relationship
- ▶ You have a friend, step-children or custom adopted children who you want to leave something to
- ▶ You have a home on reserve*

Do you need a lawyer when you do your Will?

A lawyer is not required to help you write your Will, but you may wish to seek legal advice if:

- ▶ You have minor children and custody arrangements
- ▶ You own home on Reserve and person to inherit not Band member or is a distant relation
- ▶ You have off reserve property
- ▶ You own a business (on or off reserve)
- ▶ You have possessions of significant value

Where can I get legal advice?

When there is no Will, Who Inherits?

The *Indian Act* “Intestacy” rules apply

Spouse

(Legal, Traditional, Common Law, Same Sex)

Spouse inherits everything if the deceased had no children. If there are children, spouse inherits the first \$75,000 and shares the remainder with the children. *

Children

If no spouse, then the children inherit everything, equally. If a child passes first, leaving children of their own, these children share between them the portion of the estate that their parent would otherwise have received

If no spouse or children, then Parents, then siblings

- Be aware of home on Reserve intestacy rules under *Indian Act*

Things that “pass outside of your Will”

Some things do not need to be put in your Will because they “automatically” pass (or are able to pass) when one person dies, to another person.

This is called the “right of survivorship.”

- ▶ When the deceased owns assets (home or car) jointly with someone else

The item automatically passes to the surviving owner with the right paperwork filled out *

- ▶ Joint bank accounts* - ask bank about policies when one dies.
- ▶ Life Insurance - must notify company of the death
- ▶ Entitlements from Spouse’s Retirement Pensions - spouse needs apply
- ▶ Land and any buildings owned by your Band such as rentals, CMHC homes, custom allotments and traditional land holdings (will follow Band rules)

Although a Will can help direct the family or Band.

Making a new Will

- ▶ You should make a new Will if there has been a major change in your life, so your most recent wishes are documented.

Examples: change in spouse, children, assets

- ▶ The most recent, valid Will applies
- ▶ You can make changes to an existing Will (a Codicil) but this should be done by lawyer or notary

Reasons for “voiding” of the Will

Attempts to try to void a will are not common, but potential reasons:

- ▶ Under duress
- ▶ Lacked capacity

Or if:

- ▶ The terms of the Will would impose hardship on persons for whom the Will Maker had a responsibility to provide *

The person wanting the Will voided must provide the proof

Where should you keep your Will?

The Will Maker is responsible for the safe storage of the Will. Only the original Will has any power. You can keep your Will:

- ▶ in a safety deposit box at a bank -
- ▶ in a fireproof box at home or at the Band Office if permitted
- ▶ with a trusted family member or friend

Remember to tell your Executor or someone you trust where you stored your original Will!

Estates

on Reserve

What is an Estate?

An **Estate** is everything you leave when you die.

- ▶ This includes everything you **own**:
possibly a house, car, bank account, boat, artwork, guns etc.
- ▶ And this includes everything you **owe**:
any debts: taxes, credit cards, utility bills etc.

The First Question: Is there a Will?

If there is a Will

- ▶ Send the original Will and Death Certificate to ISC Estates
- ▶ When it is approved ISC will send you back the Will certified with a stamp
- ▶ This Will, along with a copy of the Death Certificate, is what empowers you to do the work of the Estate as the Executor.

If there is no Will

- ▶ Send the Death Certificate to ISC Estates
- ▶ Send the Estates person names and addresses of all legal heirs
- ▶ The Estates person will then send letters to all heirs asking who should be appointed Administrator of the Estate
- ▶ Once decided, ISC will send a Letter of Administration to empower the person to do the work of the Estate

What needs to happen and who does it?

The Executor or Administrator must:

- ▶ Notify all creditors generally by posting a “Notice” at Band Office, Post Office and ISC
- ▶ Notify all creditors you are aware of directly with a letter *
- ▶ Notify banks, pensions, EI etc to stop any payments to account
- ▶ File the last years taxes and request a CRA Clearance letter.

See the Resources section for a step-by-step guide:

Administering an Estate on Reserve

and “Templates package”

Notes about Debts

The person who looks after the estate is not personally liable for the debts of the deceased. Neither is the family.

If there is no money in the Estate, the creditors don't get paid.

However, the Executor does have the responsibility to notify creditors and get the CRA Clearance Certificate to fully avoid liability.

- ▶ Once the debts are paid: then, and only then, distribute Gifts

The Family Home on Reserve If Your Spouse Passes Away:

- ▶ When people live off reserve and one spouse passes away, BC Provincial law gives the surviving spouse rights regarding the family home. These provincial laws do not apply to people living on reserve.
- ▶ The *Family Homes on Reserve and Matrimonial Rights or Interests Act* was put in place in 2013 to give people living on reserve comparable rights regarding the family home as those living off reserve

The Family Home on Reserve If Your Spouse Passes Away:

The *Family Homes and Matrimonial Interests or Rights Act* (FHRMPIRA) may apply if Will Maker had “Matrimonial Property”

Whether or not you're First Nation, Band member or “Status,” if your spouse dies:

- ▶ You can stay in the family home for 180 days *
- ▶ If you get an exclusive occupation order, you may be able to stay in the family home for a longer period, especially if you have children or have lived there a long time
- ▶ If you aren't a Band member, property can't be transferred to you, but you may get a share in the value of your matrimonial real property. Need apply within 10 months from the day your spouse died

Resources

‘Plain language’ resources

- ▶ Writing Your Own Will A Guide for First Nations People Living on Reserve in BC

<https://afoabc.org/wp-content/uploads/2021/03/AFOA-BC-Wills-and-Estates-Booklet-2019.pdf>

- ▶ Estate Administration on Reserve

<https://pubsdb.lss.bc.ca/pdfs/pubs/Estate-Administration-on-Reserve-eng.pdf>

- ▶ Estate Administration On Reserve: Templates Package

<https://pubsdb.lss.bc.ca/pdfs/pubs/Estate-Administration-on-Reserve-Templates-package-eng.pdf>

- ▶ Family Home on Reserve, when spouse passes

<https://nalma.ca/wp-content/uploads/2021/03/Understanding-Estates-Management-Booklet.pdf>

<https://pubsdb.lss.bc.ca/pdfs/pubs/Who-Can-Stay-in-the-Family-Home-on-Reserve-eng.pdf>

Where can you go for help?

- ▶ **Indigenous Community Legal Clinic**

Phone: 604-822-5421 or Email: iclc@allard.ubc.ca

- ▶ **Legal Aid BC Indigenous Services**

Website: www.aboriginal.legalaid.bc.ca

- ▶ **Indigenous Services Canada Estates Unit**

Phone: 1-888-917-9977 or Email: BCEstates@sac-isc.gc.ca

- ▶ **Seniors First BC**

Phone: 1-866-437-1940 or Website: www.seniorsfirstbc.ca

- ▶ **Peoples Law School** <https://www.peopleslawschool.ca/category/wills-estates/> for off reserve legal information



Thank you

Any Further Thoughts?