

Making a will

There are generally two types of wills: handwritten (called a “holograph” will) and typewritten. Each province has its own different requirements for what makes a will valid. The requirements for Ontario are described below.

1. Handwritten Will

For a handwritten will to be valid, it must be entirely in your own handwriting, signed by you and dated. No witnesses are necessary.

If you choose to hand-write your own will, have a lawyer review it. What you think are clear directions may not be to someone else, and your will could be contested or misinterpreted or have consequences that you did not contemplate.

2. Typewritten will

A typewritten will is usually prepared by a lawyer. It must be signed by you and witnessed by two individuals who are both there when you sign it. These individuals cannot be beneficiaries or spouses of beneficiaries under your will.

2. Typewritten will

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If a typewritten will is not properly witnessed, it is invalid and provincial estate laws will apply unless you have an earlier, valid will.

NOTICE

For the duration of the COVID-19 state of emergency, Ontario is allowing virtual witnessing, by way of “audio-visual communication technology” provided that one of the two witnesses is licensed by the Law Society of Ontario as either a lawyer or paralegal. Audio-visual communication technology is any electronic means of communication in which all participants can see, hear, and communicate with each other in real time.

Your mental capacity when making your will

It is largely a question of fact as to whether a person has the necessary cognitive abilities to execute a valid will.

The person must understand and appreciate:

the nature of the act of making a will and its effects

what are one's assets and liabilities (i.e. the extent of the property being disposed of) and

An appreciation of the claims of persons who would normally expect to benefit under the will.

You want to avoid situations where someone challenges the validity of your will on the basis that you lacked the necessary capacity.

KEY POINTS

1. Handwritten (called a “holograph” will)
2. Typewritten (usually prepared by a lawyer)