

# Will Week



**Not-So-Random Acts of Kindness**

## Disclaimer

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Thank you for attending a "Will Week – Estate Planning for Your Future" event. This presentation will provide an opportunity to inform and educate you as a member of the public concerning important issues involving wills and estates generally. The lawyers who are presenting are volunteers and represent a broad spectrum of lawyers and firms who practice in these areas.

The presentation is for informational purposes only. The lawyer will not be able to provide you with specific advice with respect to your estate plan, your will or any case in which you may be involved now or in the future. The presentation is not subject to solicitor-client confidentiality. As a result, the lawyer presenting or any lawyer in their firm is able to act on behalf of a client involved in a case in which you also may be involved.

If you require specific advice with respect to your situation, it is recommended that you retain a lawyer and seek advice from them.

## Estate planning for your future includes:

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- Powers of Attorney
- Health Care Directives
- Wills
- Estate Administration
- Closing Comments





## **Power of Attorney (POA)**

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## What is POA?

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- A legal document in which one person "donor" gives authority to another person "attorney" to make decisions regarding *some* or *all* of the donor's financial and legal affairs
- Only in effect during the lifetime of the donor – there is no authority after death



# Enduring POA Requirements

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- Donor must be mentally competent
- Must be in writing
- Must be signed and witnessed by one of the following:
  - Lawyer
  - Notary Public
  - RCMP or Municipal Police Officer
  - Physician
  - Judge, Justice of the Peace or Magistrate
  - Person authorized to solemnize marriages

## Reasons for making a POA

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- Allows you to choose who will manage your property and financial affairs for a specific or extended period
- Helps plan for a time when you may not be able to make decisions
- Provides peace of mind for yourself and those you care about to know your wishes
- Avoids time and expense of a Committeeship Application

## Considerations

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- Will you name one or more attorneys and/or name an alternate?
- Should the attorney be paid for acting?
- How broad or limited will the authority of the attorney be?
- Will you provide individual(s) with the authority to request and receive an accounting from the attorney by naming the individual(s) in the POA?



## Considerations (Continued)

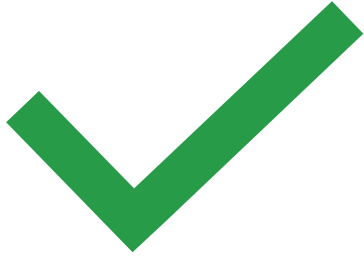
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Although a spouse or common law partner may be named as an attorney, he or she cannot act as the attorney with respect to the shared residence (often called a "Homestead") in which the donor and attorney both reside

Since a person cannot consent to the transfer of their spouse's or common law partner's interest in the Homestead, another person will have to be named as the attorney for the limited purpose of dealing with the Homestead

## Enduring POA's – Do's

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- **Do** consult with a lawyer
- **Do** give careful thought to the attorney(s) you choose
- **Do** talk to the proposed attorney(s) and anyone you name to receive accountings before signing the POA
- **Do** inform those who need to know (attorney, bank, family) once the POA is signed.

## Enduring POA's – Don'ts

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- **Don't** sign without getting legal advice
- **Don't** sign under pressure or if you are unsure
- **Don't** name someone you can't trust or isn't a good money manager
- **Don't** use a joint bank account instead of a POA



## **Health Care Directives (HCD)**

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## What is HCD?

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- Often referred to as "Living Wills"
- May name a person or "proxy" who can make health care decisions on your behalf
- May include your specific wishes regarding health care





## HCD Requirements

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- Recognized by Manitoba law, *The Health Care Directives Act*
- HCD **must** be in writing, signed and dated
- Maker **must** be over the age of 16
- Maker **must** be mentally capable of giving informed consent to treatment
- HCD **must** be brought to the attention of health care providers

## When is a HCD in effect?

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- Maker does not have capacity to make decisions with respect to a proposed treatment – this is usually decided by a medical doctor
- Maker is unable to communicate his or her wishes
- HCD will continue in effect for the duration of the incapacity or inability to communicate

## Considerations when naming a proxy

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- Proxy must be over 18 and mentally competent
- Proxy should consent to act in advance
- Proxy must know your wishes, values and beliefs

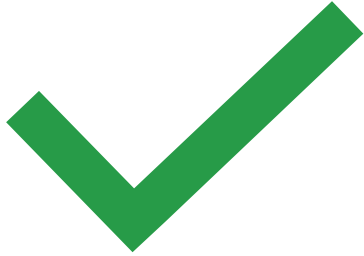
## How does a proxy make decisions?

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- Decisions must be made in accordance with the wishes set out in the HCD;
- If no specific wishes are expressed in the HCD then decisions must be in accordance with:
- Any verbal wishes expressed while the maker was still competent, and that the maker would still act upon;
- Recent decisions made while still competent;
- If no knowledge of wishes, then the decision must be in accordance with the maker's best interests.

## HCD – Do's

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- **Do** talk about your wishes – with your proxy and family
- **Do** give copies to your proxy, physician and family, if appropriate
- **Do** talk to your physician if you intend to include statements about treatment
- **Do** use clear and concise language when expressing your wishes



## HCD – Don'ts

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- **Don't** put the only copy in your safety deposit box, or anywhere that it cannot be found
- **Don't** keep it a secret
- **Don't** use "legalese" or "jargon" when expressing your wishes



## Wills

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# What is a Will?

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- A Will is a written document that controls the disposal of a person's property after death
- A Will takes effect or "speaks" at the moment of death
- Signing a Will does not prevent the disposal of assets during a person's lifetime



## Formal Will Requirements

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- Document must be in writing
- Maker of the Will must be over age 18, with some exceptions
- Will must be dated and signed in presence of two witnesses
- Maker of the Will must have testamentary capacity

# Requirements for signing a Formal Will

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- Will must be signed and dated
- Two witnesses must be present when the Will is signed
- Witnesses cannot be beneficiaries or the spouse or common-law partner of a beneficiary
- Witnesses must be competent



# What happens when there is no Will?

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- ***Intestate Succession Act***
- Sets out a statutory plan for disposition
- No provision for charitable bequests
- Statutory plan or formula is rigid

## Reasons for making a Will

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- Personal wishes and estate planning
- Costs related to not having one
- Property distribution
- Charitable bequests
- Trusts
- Wishes concerning guardianship of children
- Blended families
- Loved ones

## Is a lawyer needed to prepare a Will?

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A valid Will can be created without assistance from a lawyer  
(Holograph Will or Will Kit)

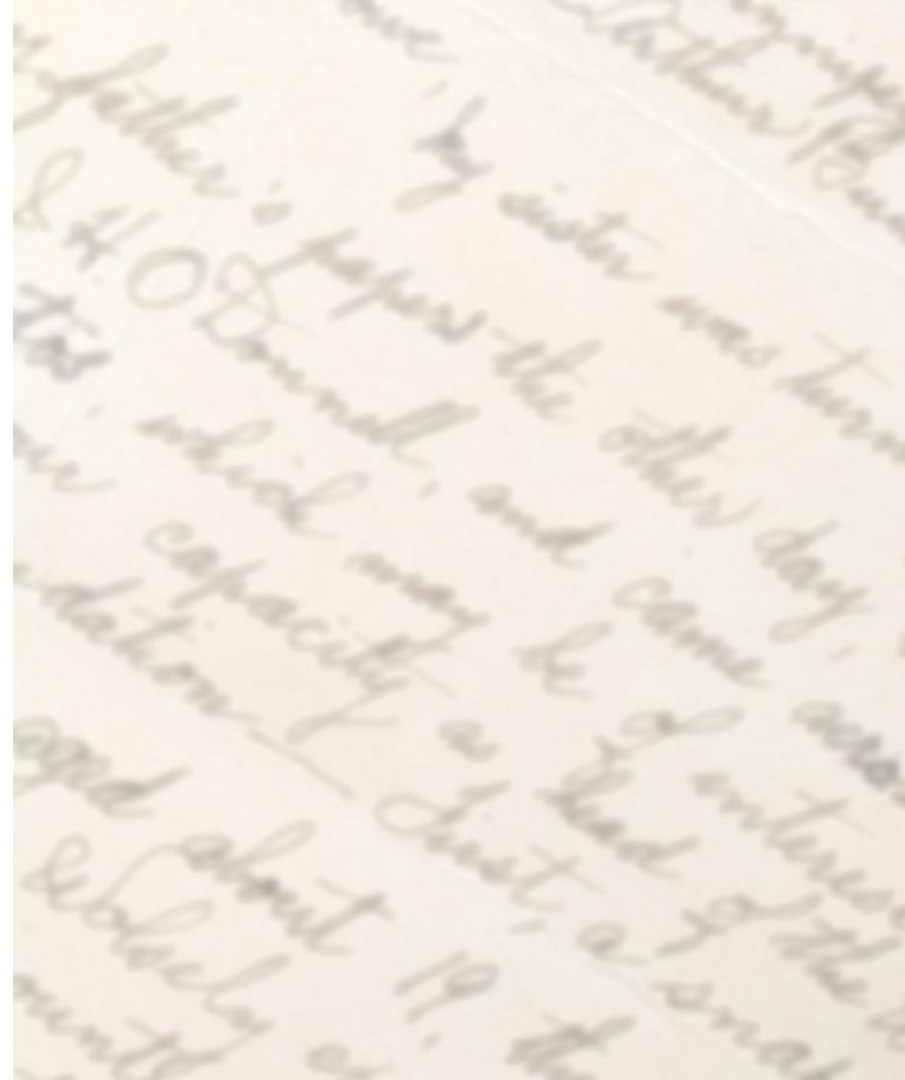
**However**, assistance from a lawyer is very beneficial and will help prevent problems relating to a person's estate after death

# What is a Holograph Will?

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A Holograph Will is a Will written entirely in the deceased person's handwriting

Holograph Wills have advantages and disadvantages



## What are Will Kits?

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Fill-in-the-blank Wills.

Wills prepared with the help of Will Kits may be valid but are often associated with various problems.



## Who should consult a lawyer?

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- People with large, complex estates
- People contemplating separation/divorce
- People who get married or enter into a common law relationship
- Seniors feeling family pressure
- People wishing to avoid problems relating to the distribution of their estates
- Everyone

## Prior to meeting a lawyer

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- List all family members and relationships of significance
- List all assets
- List all jointly owned assets
- Consider contents and executor/executrix
- Gather information on beneficiaries
- Discuss plans with your family
- Consider giving to a charity

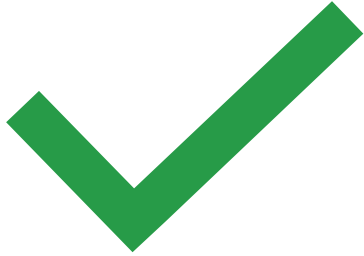
# When should someone review their Will?

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- Every few years
- Upon the existence of specific circumstances, including:
  - marriage,
  - separation and contemplation of divorce, and
  - the birth of a new child

## Wills – Do's

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- **Do** consult a lawyer
- **Do** review your Will on a regular basis
- **Do** keep your Will in a safe place – safety deposit box or in a vault at your lawyer's office
- **Do** let your executor know they have been chosen and where to find your Will
- **Do** be aware that legislation may affect and impact your testamentary wishes

## Wills – Don'ts

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- **Don't** wait until it is too late to plan your future
- **Don't** sit back and think everything will work itself out
- **Don't** forget about tax implications, especially if you have substantial assets in your estate
- **Don't** rely on Will kits as the means to distribute your estate



## **Estate Administration**

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## Personal Representative

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- The term “personal representative” is often used as a generic term for an executor or an administrator for the estate
- Probate is not always necessary
- Generally, the nature of the assets determines whether probate is required





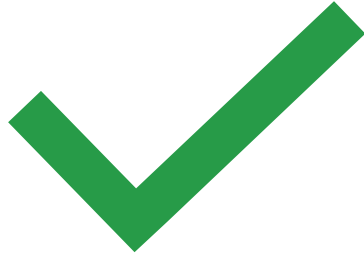
# Duties of Personal Representatives

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- Funeral arrangements/ expenses
- Dealing with assets and debts
- Dealing with taxes
- Sending out notices relating to the estate
- Addressing legal issues
- Settling the accounts and fees charged to administer the estate
- Distributing the estate

## Estate Administration – Do's

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- **DO** evaluate the potential down-side of acting as a personal representative before agreeing to act
- **Do** obtain legal advice before deciding whether to administer an estate
- **Do** hire a lawyer to assist with the procedures and legislation concerning estate issues that may arise over the course of the administration
- **Do** keep accurate, organized records with respect to all aspects of the administration of the estate

## Estate Administration – Don'ts

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- **Don't** agree to become administrator if you do not have the patience or abilities to carry out the duties involved
- **Don't** agree to be appointed personal representative if you are unable to reach agreements and resolve matters with other individuals appointed and/or beneficiaries
- **Don't** take your duties lightly



## **Closing Comments**

## Closing Comments concerning Estate planning

- Estate planning documents can be prepared by a lawyer for a reasonable price
- Planning your future should not wait until a specific stage in your life
- Planning your future ensures your wishes are followed saving your family extra expense and aggravation



## Resources

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- **Public Guardian and Trustee Guidebooks**  
available online at: [gov.mb.ca/publictrustee/pubs/index.html](http://gov.mb.ca/publictrustee/pubs/index.html)
- **Lawyer Referral Line:**  
204-943-3602 or toll-free 1-800-262-8800
- **Seniors Abuse Support Line:**  
1-888-896-7183 (24 hours a day)



## Contact details for more information

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### **Public Guardian & Trustee of Manitoba**

Phone: 204.945.2700

Website: [gov.mb.ca/publictrustee](https://gov.mb.ca/publictrustee)

### **The Winnipeg Foundation**

Phone: 204.944.9474

Website: [wpgfdn.org](https://wpgfdn.org)

