

Checklist For Making A Will

Steps To Help You Prepare

1. Gather and review all the documents related to your estate.
2. List key documents such as:
 - Birth, death, marriage & divorce certificates;
 - Deeds & mortgages;
 - Bank account numbers;
 - Investment portfolio account numbers;
 - Insurance policy numbers;
 - Funeral plans and burial lot information.
3. List your advisors such as your banker, lawyer, accountant, investment dealer, and insurance agent. Include their company names and addresses.
4. Make sure you family and executor(s) know where this information is located. Some of it may be needed right after your death. Don't keep it with your will.

What To Consider When Making Your Will

1. Who will you select as executor and, if you wish, co-executor? Consider naming an alternate executor in case the executor is not able to act. Speak to these people to be sure they will agree to act.
2. Do you want to leave bequests? Bequests are specific items of personal property (such as a car, jewelry, china, silver, art, furs, etc.) or a sum of money that you wish to leave to a specific person.
3. To whom do you wish to leave the remainder of your estate? Spouse? Children? Charities? Is it to go directly or through a trust? If it is being left to children, are they to receive it immediately or at some future time?
Note: If the children are minors, you might want to specify a certain age.

5. If one of your children has died, do you want his or her children to receive that share, or do you want it to go to your other children?
6. Who will you name as a guardian for dependant children or disabled adult children? Make sure the guardian agrees to act!
7. If you are in a second marriage and both of you have children from previous marriages you may wish to consider the available options. For example, the remainder of your estate can go to:
 - (a) your spouse absolutely;
 - (b) your children absolutely;
 - (c) your spouse for his or her use while alive, and then, after your spouse dies, to your children;
 - (d) your children and the children of your spouse.

It is very important that you and your spouse discuss the various options and agree upon your plans.

8. In the event that a minor (child, grandchild, niece or nephew) inherits a share of your estate, who do you want to receive their share?
9. If one of your beneficiaries is dead, who do you want to receive their share?
10. Are you going to have a Power of Attorney prepared at the same time you make your will? If so, consider the following:
 - (a) Who do you want to act on your behalf (this person is called your attorney)?
 - (b) Will the attorney's power be limited and specific or broad?
 - (c) Do you want the attorney to have power to act if you should become incompetent?
 - (d) Do you want to name somebody in your Power of Attorney to make decisions about your personal care if you become incompetent?
 - (e) If you include a Power of Attorney for Personal Care, will you name the same person that is handling your financial affairs?

THIS IS THE LAST WILL AND TESTAMENT of me, _____, of the _____
Indian Reserve, Registration # _____, in the Province/Territory of _____.

REVOCATION

1. **I REVOKE** all former Wills and Codicils made by me.

APPOINTMENT OF EXECUTOR/EXECUTRIX

2. **I APPOINT** _____, of _____, in the Province/Territory of _____, to be the Executor/Executrix and Trustee of my Will. **IN THE EVENT** that _____ should predecease me or is unable to act as my Executor/Executrix and Trustee then I appoint _____ of _____, in the Province/Territory of _____, to be the Executor/Executrix and Trustee of this my Will. I hereinafter refer to my Executor/Executrix and Trustee for the time being as "my trustee". **IN THIS WILL**, the expression "Trustee" shall mean and include the Executor/Executrix or the plural thereof whether original or substituted.

DISPOSITION OF PROPERTY

3. **I GIVE** all my assets and property of every nature and kind wheresoever situate, including any property over which I may have a general power of appointment, to my Trustee upon the following trusts:
- a. Except as otherwise expressly provided in this Will, to use his/her discretion in the realization of my estate, with the power to my Trustee to sell, call in and convert into money the assets and property comprising my estate at the time of my death in such a manner and upon such terms, and either for cash or for credit, or for part cash or part credit, as my Trustee may in his/her uncontrolled discretion consider advisable, or to postpone in whole or in such part realization and conversion (whether or not there is a liability attached to particular asset or property) until my Trustee in his/her uncontrolled discretion decides that an advantageous conversion be obtainable;
 - b. To pay out and charge to the capital of my general estate my just debts, funeral and testamentary expenses and all estate, inheritance and succession duties or taxes, whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever, that may be payable in connection with any property passing (or deemed so to pass by any governing law) on my death or in connection with any insurance on my life or any gift or benefit given or conferred by me either during my lifetime or by survivorship or by this my Will or any Codicil thereto, and whether such duties or taxes be payable with respect to estates or interests which fall into possession at my death or at any subsequent time; and I hereby authorize my Trustee to commute or prepay any such taxes or duties. This discretion shall not extend to or include any such taxes which may be payable by the purchaser or transferee upon or after my death pursuant to any agreement with respect to such property;
 - c. To make the following gifts;

Initials _____

d. To give the residue of my estate to:

GIFTS TO MINORS

4. IF ANY PERSON should become entitled to any share of my estate before attaining the age of ____ years, the share of such person and any income derived therefrom shall be held and kept invested by Trustee and the income and capital, or so much thereof as my Trustee in his/her uncontrolled discretion considers necessary or advisable, shall be used for the benefit, care maintenance, health and welfare, education (including university or other higher education) or general advancement in life of such person until he/she attains the age of ____ years, at which time such share, or the amount remaining, shall be paid or transferred to him/her absolutely.

PAYMENT TO GUARDIANS OF MINORS

5. I AUTHORIZE my Trustee to make any payment for any person under the age of majority or otherwise under disability to a parent or guardian of such person, or any other individual or legal entity as my Trustee shall consider advisable, whose receipt shall be sufficient discharge to my Trustee.

GUARDIANSHIP

6. IN THE EVENT that my spouse predeceases me, I APPOINT _____ to be the guardian of the persons and estates of any children of mine who have not yet attained the age of majority.

FUNERAL ARRANGEMENTS

7. I wish for the following funeral and burial arrangements:

IN TESTIMONY WHEREOF I have hereunto set my hand at the _____ Indian Reserve, Registration # _____, in the province of Manitoba, this ____ day of _____, 20____.

SIGNED, PUBLISHED AND DECLARED

By the above-named _____,
As for his/her Last Will and Testament, in the
presence of us, both present at the same time
who, at his/her request, in his/her presence and
in the Presence of each other, have hereunto
subscribed our names as witnesses.

(SIGNATURE HERE)

WITNESS SIGNATURE

Print Name

Address: _____

WITNESS SIGNATURE

Print Name

Address: _____

Initials _____

A WILL FOR FIRST NATIONS

SWAMPY CREE TRIBAL COUNCIL INC.



ACKNOWLEDGMENTS AND THANK YOU

The revision and completion of A WILL FOR FIRST NATIONS could not be accomplished without the support of our membership, staff, funder, legal, editor and printing representatives.

We appreciate and thank all the people involved in this project: Swampy Cree Tribal Council Staff & Board of Directors. Indigenous Service Canada (ISC).

Special thanks to the SCTC membership who were interviewed and attended our Wills & Estates workshop. The feedback we received was important with our publication. SCTC First Nations: Opaskwayak Cree Nation, Chemawawin Cree Nation, Mathias Colomb Cree Nation, Misipawistik Cree Nation, Mosakahiken Cree Nation, Sapotaweyak Cree Nation, Wuskwi Sipiik First Nation, Marcel Colomb First Nation.

© 2022 Swampy Cree Tribal Council Inc. Box 150 The Pas, MB. R9A 1K3. www.swampycree.com

This publication may not be revised without the written permission of Swampy Cree Tribal Council Inc.

This Will Book includes a guide on how to complete a Will and administer an Estate; with the records and Last Will and Testament form.

It is intended to provide general information and not specific legal advice. If you are not sure about a specific problem area with a Will or an Estate, seek the legal advice from a lawyer.

This Will Book publication is current to the date of publication and does not reflect changes in the law or legislation after that date.



Indigenous Services
Canada

Services aux
Autochtones Canada

TABLE OF CONTENTS

INTRODUCTION	4
BACKGROUND	4
MAKING A WILL	5
What is a Will	5
Why should I have a Will.....	5
What happens if I do not have a Will	5
What is in a Will.....	5
What is an Estate.....	5
What happens to my Children.....	5
What is an Executor.....	5
What is a Beneficiary	5
What is a Heir	5
What is the role of ISC.....	5
ISC LEGAL REQUIREMENTS OF A VALID WILL.....	6
WHAT SHOULD BE IN A WILL.....	6
Revoking a prior Will	6
Appointing an Executor.....	6
Appointing a Guardian	7
Distribution of Property	8
Back up Provisions	11
Residue.....	11
REVIEW YOUR WILL.....	12
TRUSTEE POWERS.....	12
STORAGE OF YOUR WILL AND FUNERAL ARRANGEMENTS	12
FAMILY LAW ISSUES	12
FORM-INVENTORY OF RECORDS	13-26
FORM-LAST WILL AND TESTAMENT.....	27-30
ADMINISTERING AN ESTATE	31-35
GLOSSARY AND TERMS	36

INTRODUCTION

A Will for First Nations provides general information to assist you on how to write a Will also to administer an Estate for status Indigenous people who were living on a First Nation when they passed away.

Indigenous Services Canada (ISC) are designated to administer Indigenous people's Estates on First Nations.

As a status Indigenous person living on a First Nation the Indian Act has rules that affect your assets: your property and personal possessions once you have passed on.

A status Indigenous person who writes a Will must have it approved by ISC. Once validated your Last Will and Testament is normally carried out as instructed. A Will avoids questions and/or delays from ISC rules and regulations and will ease the pressures on loved ones.

If you are at all unsure of any matters in dealing with your Will, or whether the provisions under the Indian Act apply to you, please seek the assistance of a lawyer.

BACKGROUND-THE INDIAN ACT

Canada's history has placed Indigenous people under federal jurisdiction in most aspects of their lives. In the first Constitution of 1867, the federal government reserved jurisdictions over "Indians and lands reserved for Indians." Various statutes were consolidated into the Indian Act, which has been revised over the years. The Indian Act has sections and regulations dealing with the administration of Indigenous people with a Will and without a Will.

These federal law rules are found at sections 2(1), 4(3) and 42-50.1 of the Indian Act: The Minister may accept as a Will any written instrument signed by an Indigenous person on a First Nation in which they indicate their wishes or intentions with respect to the disposition of their property upon their death. The Indian Act gives the Minister of ISC the authority to appoint an administrator, to approve a Will, or to declare a Will to be void in whole or in part.

Living On or Off a First Nation: The Indian Act provisions for Wills and Estates apply only to status Indigenous people who are ordinarily resident on a First Nation/Crown Land. Ordinarily resident means their primary place of living is on a First Nation.

"Status Indigenous persons" or "Status Indians" include people who have status under 6(1) and 6(2) of the Indian Act. Status Indians do not include members of First Nations not recognized by ISC as status, or who are non-status children of status parents. It does not include Metis, Inuit, or non-status people.

Where the Indian Act provisions do not apply then the laws of each Province applies. Each Province will have its own legislation governing Wills and Estates.

Provincial Law on a First Nation: Despite Federal jurisdiction, Provincial laws apply to Indigenous people living on a First Nation and some may affect Wills or Estates. These include laws which govern child support, alimony/spousal support or marital property on a breakup of a relationship. This can apply even for a status Indigenous person on a First Nation, whose Will and Estate would normally be under the Indian Act.

If there are land interests off a First Nation or other kinds of property located off a First Nation, then sometimes Provincial law can apply to this as well. If you think that any of these laws - marital property, alimony, spousal support, child support or real estates - may apply or have an impact on your Will or your Estate, then you should ask a lawyer.

MAKING A WILL

- a) **What is a Will?** A Will is a legal document that states your instructions for what you want done with your Estate.
- b) **Why should I have a Will?** A Will allows you to make your own decisions. You do not need a lawyer but it is often useful to consult one especially with complicated Estates. You can write your own Will but it must meet ISC requirements. You can change your Will at any time.
- c) **What happens if you do not have a Will?** If a person dies without a Will, that is called intestate or without a testament. They are voiceless, and their wishes, if they expressed any, may not be considered. Indigenous Service Canada will determine what happens to your Estate based on the Indian Act and Indian Estate Regulations.
- d) **What is in a Will?** A Will should set out who you want to be your Executor, who you want your property to go to, and who you would like to be a guardian of your children.
- e) **What is an Estate?** Your Estate consists of all the assets/property that you own at the time of your death. This property can include personal possessions, clothing, souvenirs, photographs, camping equipment, guns, boats, cars, televisions, or computers. Money, bank accounts or savings accounts, RRSP's, insurance policies, Pension, Guaranteed Investment Certificates, Stocks. Interests or Rights in First Nation land, ownership of provincial land, leases, houses and buildings. Contracts, Licenses, Rights, including things owed to you, and things you owed: any bills, accounts, debts, charges, taxes, monies.
- f) **What happens to my Children?** In your Will, you can state your wishes for the guardianship of your children. Custody and guardianship fall within the powers of the court, however. While the intentions in your Will are not binding on the Court, they will be considered respectfully.
- g) **What is an Executor?** An Executor is the person appointed in your Will to administer your Estate and distribute the Estate to your Beneficiaries. They are obliged to carry out your Last Will and Testament. Here are some things to consider for an Executor:
- * It should be someone that you know, trust and have faith that they can carry out your instructions.
 - * It can be a person or two persons as co-executors, or it can be an organization.
 - * Always talk to them first; they should agree to be Executor.
 - * They must be of legal age, but should be younger than you, as you don't want your Executor to pass away first.
 - * They should be from your community or close by.
 - * Have an alternate Executor in case your Executor is unwilling or unable.
- h) **What is a Beneficiary?** A person or persons you named in your Will who can receive assets from your Estate. They can be your husband or wife, your children, your parents, your brothers and sisters, your relatives, your friend, or any other person(s) or organization you want. Being a Beneficiary is not automatic: they must be fully named in your Will and have their relationship to you indicated.
- i) **What is an Heir?** A family member who is legally entitled to inherit from an Estate when the deceased did not have a Will.
- j) **What is the role of Indigenous Service Canada (ISC)?** Under the powers of the Indian Act and Indian Estate Regulations, ISC has jurisdiction over the Estates of Indigenous people living on First Nations. The Minister of ISC may declare a Will to be valid or void.

ISC LEGAL REQUIREMENTS OF A VALID WILL _____

ISC has a policy that sets out the legal requirements for status Indigenous people living on First Nations which are used to determine if a Will is valid (approved) or invalid (not approved). They are as follows:

1. **A Will must be in writing.** This can be in handwriting, or typed on paper on a typewriter, or typed on a word processor and printed out. It can be written by you personally, or by someone else acting on your words or instructions. It must be on paper;
2. **The Will must be signed** by you as the person making the Will. It should be dated. If there is more than one page, it is a good idea to place your signature or initials on each of the unsigned pages;
3. **The Will must contain your instructions** or indicate your intentions for the property in your Estate; and
4. **The Will must be intended to take effect after your death.**

These are the minimum requirements that ISC will accept for a Will. To prevent a voided Will or fraud, confusion, or delays, ensure these requirements are all met.

ISC may declare a Will or part of a Will to be not approved and invalid:

1. If you were not in your right mind;
2. If you were under the age of 18;
3. If someone wrongly influenced you to write down what they wanted, instead of your wishes;
4. If a Will imposes hardship on persons that you had a responsibility to provide for;
5. If a Will attempts to transfer interest in or on Reserve land that is not allowed;
6. If the Will violates the provisions of the Indian Act;
7. If the Will is unclear or vague so that people cannot tell what your true intentions were; and
8. If the terms of the Will are against the public interest or violate rights and freedoms of the Beneficiaries.

If a Will, or a part of a Will is declared to be void and invalid; the rules of the Indian Act or the Indian Estates Regulations governing Estates without Wills apply.

WHAT SHOULD BE INCLUDED IN A WILL _____

1. Revoke to cancel any prior Will.

You can change your Will at any time, and you can write as many Wills as you like. However, always be careful to cancel any prior Will or there may be confusion as to which Will is in effect. Always include wording to ensure that your Will cancels or revokes any prior Wills. "I hereby revoke any and all previous Wills and codicils" is sufficient.

2. Appoint an Executor.

An Executor is the person you appoint in your Will to administer and distribute the Estate to your Beneficiaries. They are responsible to carry out your Last Will and Testament.

3. **Appoint a Guardian for Children.**

A child under the age of eighteen (18) is a minor, and they do not have legal rights to take property or to look after themselves. If you have children under the age of eighteen (18) or are planning on having children, appoint a Guardian on behalf of those minor children. Before you name a Guardian in the Will, ask the person you want as a Guardian, in advance and make sure they agree. The appointment of a Guardian in a Will is not final, although it indicates your approval; they must apply to the courts to approve the appointment. A court usually tries to respect your instructions for a Guardian but must make its final decision based on what it believes is in the "best interest" of the child. Section 52 of the Indian Act provides that ISC can administer, or appoint Guardians to administer, any property left to a status Indigenous child under eighteen (18).

In your Will, say who should take care of your Children. If your children are under the age of eighteen (18), then you can specify in your Will who you want to look after them and leave money or instructions for their care. If you do this, then Courts and others will put a great deal of weight on it and follow your instructions. However, a Court still needs to review and approve any appointments of guardianship for children. A court is not bound by a Will. People who are not named as guardians in the Will can apply for custody.

The most important thing for the Court is that the best interests of the children come first. Is this guardian and these plans the best interests of your children? Is it a stable home where all their needs will be met? Have you considered everything so the Court will not disregard your instructions in deciding what's best for your children? They need to make sure that the place you wanted them to go is safe and adequate, and that the persons you named as Guardians are willing and able to look after your children.

Your Will's instructions can be overruled when it comes to children. If the place you wanted them to go to is unsafe or the people you chose are unable to look after your children, then Courts can choose to disregard your Will, and give custody to a closer relative or former spouse, or to another relative, or even to Child and Family Services (CFS). A court will overrule your plan for the Children, if the person you are choosing has a record of violence or abuse in the home or against children, or if they have drug or alcohol problems, or if the person is homeless or unstable or unwilling.

Generally, CFS or a Social Worker will assess the home to see if it is safe and in the best interests of the children. Your wishes for your children can be overruled in disputed situations. So for instance, if you are separated or divorced, your former spouse might be able to go to Court to get custody, even if that is against your Will. If you wanted your children to go to your brother's family, for instance, but your former spouse wants the children and can look after them and meet their needs, the Court will usually give them to the spouse. Even if your wishes for your children can be overruled, you should always make provisions for them just in case.

When deciding what to do about children in your Will, do the following:

- * Consider their future until they turn eighteen (18): How best to look after them? Where will they go to school? What will be needed to ensure they grow up right? What is the plan for them? Do they have any special needs?
- * Who do you trust or have faith in to look after your children? Is it a brother, sister, or relative? Is it a member of the community?
- * Remember that they must be of good character, that they must have a stable home, and that they must be able to look after your children for as many years as it takes for the children to turn eighteen (18).
- * If you are considering who should look after your children, always speak to the people that you have chosen, and get their agreement to look after your children.
- * You should always keep in mind that circumstances change, that people can die, get divorced, get sick, lose their jobs and so forth, and that a person who you chose to look after your children, might not be able or willing to do so at the time of your death. Identify other people as back up, and get their agreement, to look after your children, if the first choice is unable.

Can I give my property to my under-age Children? No. Children under the age of eighteen (18) cannot hold property. You cannot give directly to them. If your children are under the age of eighteen (18), then your Will must state that the property you want to give them is to be held in trust until they turn eighteen (18) at least. You can have property held in trust for them for longer periods or until a later age, like twenty-one (21). When you are giving property to be held in trust, you are giving it to someone to hold for the child until they are of age, and then who must turn it over to them.

The person who holds property for your children until they are of age can be a Bank, a lawyer, the Executor for your Will, or a person that you trust. The person is under a legal obligation not to keep the property for themselves, but to hold it and care for it, until your children turn of age. They can be held legally liable if they misuse the money held for your children. Sometimes, particularly if you specify, then the person who holds property for you can use it on behalf of and for your children before they turn eighteen (18). But in that case, specify what and how they can use it - for education, for sports, for health or treatment, or culture. Normally, the person who looks after your children should be doing it out of their own pockets first.

4. Distribution of Property:

- a. **Specific Gifts of Money.** If you wish to give a specific gift of money to a friend, family member or charity you may do so in your Will. A person who receives a gift in your Will is called a Beneficiary, make sure to use their full legal name to avoid confusion. You can name a specific amount in your Will, but if you do, ensure that your Estate or the money in your Estate has enough to pay out.
- b. **Personal Treasures and Heirlooms.** If you have items of personal property that have no commercial value but are sentimental or valuable to you or your family, you should indicate these gifts in your Will. Personal treasures may include mother's watch, dress, father's guitar, headdress, hat collection, grandfather's antique gun. You don't want them thrown out, or people to fight over them, be clear and specific. Property without resale value includes clothes, dishes and cutlery, old books and magazines, furniture. You don't need to put this in your Will. Generally, part of the job of your Executor or your family is to get rid of it, either by dividing it up, giving it away, donating it to a charity store, or simply throwing it out.
- c. **Rights or Interests in Reserve Land.** Reserve land is land held by or for the First Nation; you cannot give it in your Will. You don't own Reserve land; it is held for the First Nation as a whole. You can only give the specific rights or interests in the land that you may have. It is possible to have a right or interest in Reserve land that is less than full ownership of the land, such as a lease, traditional occupation, allocation of Chief and Council, grant or assignment by Chief and Council, or a Certificate of Possession.

If you have an interest like this, it may be possible to include it in your Will and Estate and pass it on to your Beneficiary. If you feel that you have such an interest in the Reserve land in some way, you should speak to your First Nation's Chief and Council, your Administration, or your Lands department to see exactly what your interest is, what your rights are, and what you can do with them. If you do this, make sure that whatever you are told is put in writing, so that you, and your Executors, Administrators or Beneficiaries can rely on it. Remember that after you pass away, you cannot testify to what you were told or what promises were made to you. So, get it in writing, and keep a copy.

The general rule is that interests in Reserve lands can only be left in a Will to another Indigenous person of the First Nation. There may be some First Nations under Land Codes which allow for leases or subleases that can be occupied by persons or businesses that are not Indigenous people of the First Nation. But if you believe that is the case, then check with your First Nation's land management to be sure and get it in writing.

Some arrangements with respect to land allocation may not always be clear. There are cases where Indigenous persons have believed that land was allocated to them, or where they believed that they had validly purchased a land allocation from another Indigenous person and were later contradicted by the First Nation.

- d. **Rights to Houses and Housing.** Houses and Homes are very difficult. Some people on Reserve land own their own homes and are free to sell them. They can include it in their Will and Estate. However, you should always be careful: sometimes ownership is confusing or misleading, and a person who believes that they own a house on Reserve land may not actually own it. If you believe that a house is privately owned, always get, and keep, proof of ownership, and verify that ownership with the First Nation. If a First Nation does not accept a claim of private ownership, that will cause problems.

Many people on Reserve land live in Houses that are owned by the First Nation and allocated to the people living there. Some First Nations will treat this allocation as a property right. In that case, they usually honour a Will and respect the wishes of the departed and will transfer the House as the Will or as the departed's instructions direct. But not all First Nations do this, and some First Nations maintain the right to reallocate or transfer the House to or where or whoever they think will be for the best. In this case, the First Nation may ignore the departed's wishes and the families' claims, even where there is a Will.

If you believe that you have ownership, or an interest or a right to a House or Land on Reserve, that you wish to deal with in your Will, we strongly recommend that you contact and discuss your interest and your rights with the First Nation, and with its Lands and/or its Housing department so that you are clear on what you can and cannot do. Make sure that they understand what your intentions are, and that those intentions are clear in your Will.

You may even provide them with a copy of your Will for their files. This is to ensure that your arrangements will be honoured.

- e. **Rights or Interests in Off-Reserve Land.** If you own lands off Reserve, or an interest in lands off Reserve, such as a lease, then consult a lawyer when considering how to deal with it in your Will. In some Provinces and Territories, the Land Titles offices will accept and recognize a Will or Estate under the Indian Act. If that is the case, then this is probably fine.

However, if a Province or Territory does not recognize or accept a Will or Estate under the Indian Act, then they may decide that there is no Will that has legal jurisdiction over that land. If this happens, then the Provincial laws which govern Estates where there is no Will may apply, and the property may be disposed or dealt according to the rules set out in those laws. You may be required to go through a separate process for off-Reserve lands.

- f. **Commercial Fishing Licenses, Trapping Licenses and Similar Rights.** Normally, certain kinds of rights and licenses, like commercial fishing or trap-line licenses or quotas are not considered property, but are simply issued and withdrawn by the government.

However, in many provinces, the Provincial or Federal Government will treat a commercial fishing and trapping license or quotas like a property right. They will allow Fishermen and Trappers to sell or buy licenses or quotas. Or to put it another way, they will recognize arrangements made by Fishermen and Trappers to sell their licenses or quotas and honour those agreements by transferring licenses or quotas.

Usually, if the Province allows or supports parties being allowed to sell or transfer their license or quota rights, then the Province will not buy or sell licenses or quotas directly. They will usually honour the wishes or directions of license or quota holders regarding transfer and will not be involved in any transaction. They will not charge a significant fee or take a percentage of the sale.

There is a risk, especially if you die without a Will, that a province will simply terminate your license and issue it to someone else either against your or your family's interests, or without any compensation to your family or Estate.

How do you make sure that your License or quota is passed on according to your family, or in accordance with your wishes? You can not guarantee this, but you can clearly indicate your wishes in your Will, with the details of the commercial right, license, or assignment that you hold; or if you hold several, specify each of them. Say clearly what your intent is in the Will - whether you want your interests to be sold, or to be passed on to a specific person, or held for your family.

Your Will should include a very clear instruction that your Executor must notify the Government Agency or Department which administers your licenses, and advise them of your death, and of your Will and what it says about licenses, and your intentions for the licenses. The Executor must specifically request that the Government abide by and respect your intentions. It is not automatic that the Government will do this. The Government Agency or Department is not legally bound to abide by your intentions in your Will.

However, if the Will contains specific provisions, and the Agency or Department are properly notified, then there is a chance that they will do so. Your Executor or Administrator should be prepared to go the extra mile, to notify the Government, to provide a copy of the Will to them, to request and insist on transfer, and to demand that they respect your Will.

Sometimes, there may be a situation where the person you have named in your Will is not eligible to hold the licenses, quotas or rights. If that is the case, then the Government Agency or Department should notify you or your Executor. You or your Executor should request the right to sell the licenses or the rights, with the proceeds to go to your Estate.

- g. Treaty and Traditional Rights.** In general, Treaty and Aboriginal rights are automatic to Indigenous people. Such things as hunting rights are a birthright and you do not have to put them in a Will or inherit them.

There may be certain kinds of Treaty or Aboriginal rights that are either specific to your First Nation, or specific to your family or person, such as hereditary leadership that may pass from one generation to the next. Generally, hereditary or passing of Treaty or Aboriginal Rights like these will be done according to the custom of your First Nation. But in some cases, it may be something you put into a Will. Seek advice from the Elders of your First Nation.

Because Treaty and Aboriginal Rights are inherent birthrights, your children will not lose them when you pass. But there are two ways these rights can be lost or suppressed. If certain rights are particular to a First Nation and you or your children transfer to another First Nation, then these rights may not follow or transfer. If you are under 6(2) of the Indian Act, your children may not be recognized under the Act and your Treaty and Aboriginal Rights may not be recognized for your children.

- h. Life Insurance Policies and Financial Savings Plans.** Sometimes a life insurance policy payout will be part of your Estate, and sometimes it won't be. A life insurance policy will usually provide for a designated Beneficiary - that is, the policy will allow you to name who gets the payout when you die.

You will also find similar provisions in RRSP's and in other financial savings plans. When there is a specific person named as a Beneficiary in the policy, then the payouts will go directly to that person, it will not go to the Estate. It will not be part of the money in the Estate and will not be covered in your Will.

If there is no specific person named as a Beneficiary, or if the Estate is named as the Beneficiary, then it goes into the Estate, and will be governed by your Will. When you are planning your Will, always check any insurance policies and financial savings plans to see if they provide for a Beneficiary, and double check whether you have named a Beneficiary. This is so you know, or can decide, what is and is not going to be part of your Estate. It can also help you decide who to make provision for in your Will, or how much provision to make. If you know your spouse is getting your life insurance payout, then you might want to make more arrangements for your children, for instance.

You can change the Beneficiaries on your insurance policies or other financial savings plans at any time. **DO NOT USE YOUR WILL TO CHANGE YOUR INSURANCE BENEFICIARIES.** Your insurance policy also takes effect when you die, so anything you put in your Will to change your insurance policy beneficiary will be too late. This will cause problems and conflicts. If you change your insurance or financial plan beneficiaries, do it in your insurance policy or financial plan first. You can reflect these decisions in your will. But it should always be done in the policies first.

- i. **Other Insurance.** Finance companies offer life insurance as a service on many kinds of financing, such as for home loans and mortgages, car loans or financing, or credit cards. Usually where there are monthly payments and a large balance, they will offer to provide insurance for a small additional fee to the monthly payments.

Usually, this insurance is to cover the cost of the property you are financing. So, if you are paying off a car loan and you have insurance, that means that if you pass away, the insurance will pay off the car, and it will be free and clear to the Estate. Otherwise, the Estate would be responsible for car payments, or if the payments stopped, the car could be repossessed, and any value lost.

The same sort of insurance is available for houses or mortgages so that if you die, the house is paid for, and your Estate and Beneficiaries get the house free and clear without having to make payments or worry about foreclosure. It is also available for credit card debts, wiping them out after death. In some circumstances there can even be a cash payment.

It may be important to consider whether to try to obtain this sort of insurance. It may not result in cash to the Estate directly, but if you have been making payments on a house or a car, there is a risk. If you pass away without insurance, then your Estate or Beneficiaries may have to keep paying or risk the equity or money you already put into foreclosure or repossession. They may not be in a position to keep on paying and could lose out.

If you are making payments on any kind of long-term financing, it may be wise to see if insurance is included in the financing, or if it is available, and decide what is right for you. This can have a large impact on your Estate, and can affect what you want to do, or are able to do in your Will.

- j. **Back-up Provisions.** When you are making a Will, think about what could go wrong. For example: When a married or common law couple make Wills, they leave their Estates to each other. So, if a husband dies, he leaves everything to his wife: and if a wife dies, she leaves everything to the husband.

But what if they both die? Or if one dies, but the other, who was Beneficiary, is already dead? Or in the case of other Beneficiaries, what happens if a Beneficiary dies before the departed does? Technically, if this happens, then things would go into the Estate of the deceased Beneficiary. Or if the Estate is already closed, the Will might be void.

Make a back-up arrangement in case one or more of the Beneficiaries that you leave your Estate to dies before you. Where you are naming a Beneficiary who you know is older than you, or is in poor condition, then always make a back-up arrangement. These usually read "If my wife/husband/parent/child dies before I do, then I wish for my Estate to go to..."

- k. **Residue.** Residue is the technical term for whatever is left over in your Estate, after all the specific gifts of money, land, personal property are given. The Residue can be divided into as many shares as you decide. If you do not make any specific provision for the Residue of your Estate, then the Residue, will not be covered under your Will, and it will be distributed in accordance with the Indian Estate Regulations. Your Will should include a provision like "I direct any Residue left in my Estate to go to..."

5. Review the Will from Time to Time:

Over time, things can change.

People who agreed to be Executors may have died, moved, or may no longer be able or willing to do it. Children under eighteen (18) that you made special provisions for may have grown up and no longer require these provisions. You may no longer own specific property that you intended to give away. Or persons you have named as Beneficiaries may have passed away, or you may no longer wish to include them.

If your marital situation has changed, you may need to change your Will. For instance, if you were legally married, but the marriage broke up and you took up with a common-law partner afterwards, there may be complications that could cause trouble. So you should make sure to deal with that in your Will or replace your old Will with a new one to deal with changed circumstances. You may wish to make provision in your Will for new spouses, new children, or other friends.

A Will that is out of date is still valid and takes effect after you pass away, unless you change or revoke it. An out-of-date Will can cause problems and conflicts for your family and your survivors. So, from time to time, it is a good idea to review your Will and make sure that it is up to date and still reflects your wishes and intentions.

6. Trustee Powers:

Normally, Executors are limited to those powers contained in the Indian Act. These are the basic powers of the Executor, to pay the debts of the Estate; to gather all the property of the Estate; to sell assets of the Estate to convert the Estate to cash; to distribute the Estate's property and cash to the Beneficiaries.

However, the Will can give additional powers or duties to the Executor, such as to hold money in trust for children until they turn eighteen (18), or to hold a license or property, or to manage or run a business for a period, etc.

7. Storage of Will and Funeral Arrangements:

Keep your Will in a safe place where it can't be stolen or damaged and tell someone where it is. For example, a home safe. Always tell your Executor where it is located or give them a copy so that the administration of your Estate can be done easily as possible.

If you provide funeral instruction, or to provide for the donation of organs or body in your Will, make sure you let your family and Executor know of your instructions and wishes before you die, as the Will is usually read after the burial and it might be too late by then.

8. Family Law Issues:

Provincial laws of general application apply to Indigenous people living on First Nation reserve lands. When creating a Will in Manitoba, for instance consider The Marital Property Act (MB) and The Dependents Relief Act (MB). Each Province has different laws which can have an impact on Estates. While the Indian Act and Indian Estate Regulations will take priority, wherever there is an issue not dealt with under those laws, the Provincial laws will apply. Lands and interests in lands located off a First Nation may be affected by those laws.

As examples: The Marital Property Act (MB) provides that a spouse may have legal interest in the assets of the deceased and may be entitled to these assets even after a separation or divorce; The Dependents Relief Act (MB) provides that where it appears that inadequate provisions have been made for a spouse, or child or other dependent, a court can order reasonable provisions to be made. While the Indian Act has similar provisions, the Provincial law can fill in the blanks in the Federal legislation if they don't conflict. Other provinces may have similar legislation which can have an effect on provisions in Wills or in Estates.

10. FORMS – RECORDS AND INVENTORY. While much of the information you record here will not form a part of your Last Will and Testament, it is necessary to collect it all in one place. Some of this information will be needed by your Executor in administering your Estate.

A. PERSONAL INFORMATION:

Name: _____
First Middle Last

Mailing Address

First Nation/Town/City

Province Postal Code Country

Date of Birth Place of Birth

First Nation Name First Nation Band Number and Treaty Number

Social Insurance Number

Occupation

Employer

Marital Status: ☐ Married ☐ Single ☐ Common Law ☐ Separated ☐ Divorced ☐ Widow/er

Name of Spouse: _____

B. LOCATION OF IMPORTANT DOCUMENTS:

Birth Certificate _____

Marriage Certificate _____

Certificates of Possession, Deeds & Titles _____

Mortgages & Notes _____

Income Tax Records _____

Other Documents _____

C. PEOPLE TO REMEMBER: This section helps with who you may want to remember in your Will.
This list is different from the Beneficiary list in section J.

1. Full legal name of your Spouse or Partner

First Name

Middle Name

Last Name

Date of Birth

Phone Number

Address

2. Full legal names and birthdates of ALL your Children (if any):

1. _____

First Name

Middle Name

Last Name

Date of Birth

Phone Number

Address

2. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

3. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

4. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

5. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

6. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

3. Full legal names and birthdates of your Grandchildren (if any):

1. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

2. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

3. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

4. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

5. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

6. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

7. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

8. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

9. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

10. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

4. Full legal names and birthdates of your Parents, if still alive:

1. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

2. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

5. Full legal names and birthdates of your Brothers and Sisters (if any):

1. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

2. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

3. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

4. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

5. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

6. _____
First Name Middle Name Last Name

Date of Birth Phone Number

Address

6. Full legal names and birthdates of your Grandparents, if still alive:

1.	_____	_____	_____
	First Name	Middle Name	Last Name

	Date of Birth	Phone Number	

	Address		

2.	_____	_____	_____
	First Name	Middle Name	Last Name

	Date of Birth	Phone Number	

	Address		

7. Full legal names and birthdates of your Friends:

1.	_____	_____	_____
	First Name	Middle Name	Last Name

	Date of Birth	Phone Number	

	Address		

2.	_____	_____	_____
	First Name	Middle Name	Last Name

	Date of Birth	Phone Number	

	Address		

D. SPECIAL ITEMS: The more information you can provide about any special items the better you can deal with them in your Will and make the job easier for your Executor. Be specific, this could be jewellery, pictures, tools, coat and where can they be found.

1.	Item	Description	Location
2.	Item	Description	Location
3.	Item	Description	Location
4.	Item	Description	Location
5.	Item	Description	Location
6.	Item	Description	Location
7.	Item	Description	Location
8.	Item	Description	Location
9.	Item	Description	Location
10.	Item	Description	Location
11.	Item	Description	Location
12.	Item	Description	Location

- E. HOUSE:** The more information you can provide about your house the better you can deal with it in your Will and make the job easier for your Executor.

Address: _____

Band Owned House: _____

I Own My House: _____

- F. LAND:** The more information you can provide about any land you own or have interest in the better you can deal with it in your Will and make the job easier for your Executor.

Do you have legal interest to land on or off the First Nation? ☐ YES ☐ NO.

Address and nature of interest (lease, permit, private ownership, etc.):

- G. VEHICLES:** The more information you can provide about vehicles you own the better you can deal with them in your Will and make the job easier for your Executor.

Trucks: Make, model, year, VIN#, colour: _____

Cars or SUVs: Make, model, year, VIN#, colour: _____

Boats: Make, model, year, VIN#, colour: _____

All-Terrain Vehicles and/or Motorcycle: Make, model, year, VIN#, colour: _____

Other Vehicles: Make, model, year, VIN#, colour: _____

H. DOCUMENTS & PERSONAL PAPERS: This information is important for your Executor in the administration of your Estate and will need to be included in your Will. While you need to be careful in protecting this information, it may be necessary to include it in your Will if you have a great deal of financial information which will be divided among several Beneficiaries.

Bank Accounts:

1. Name of Bank: _____
Type of Account: _____
Account number: _____

2. Name of Bank: _____
Type of Account: _____
Account number: _____

3. Name of Bank: _____
Type of Account: _____
Account number: _____

Safe Deposit Box:

Location: _____
Location of key for above _____

Savings Plans:

- 1: _____
Financial Institution: _____
Telephone #: _____

- 2: _____
Financial Institution: _____
Telephone #: _____

Pension, Life Insurance or Bonds:

Credit Cards or Accounts:

Cardholder Name: _____

Account Type: _____

Account Number: _____

Cardholder Name: _____

Account Type: _____

Account Number: _____

Outstanding Court Claims and/or Lawsuits: It is important to know if your Estate may have any liabilities which may have to be addressed even after you have passed.

- I. **FOR YOUR WILL:** After completing your records and inventory you can start making decisions on how your Will is structured. Most importantly, you need to identify an Executor, Alternate Executor. If you have children, appoint a Guardian and Alternate Guardian.

Who will be your Executor?

_____	_____	_____
First Name	Middle Name	Last Name

Date of Birth	Phone Number	

Address		

Do you have an alternate Executor?

_____	_____	_____
First Name	Middle Name	Last Name

Date of Birth	Phone Number	

Address		

Who will take care of your minor children, who is your Guardian?

_____	_____	_____
First Name	Middle Name	Last Name

Date of Birth	Phone Number	

Address		

Do you have an Alternate Guardian?

First Name	Middle Name	Last Name
Date of Birth	Phone Number	
Address		

J. BENEFICIARIES (WHO GETS WHAT):

Now you need to decide who you want to receive what part of your Estate. There is no formula-sometimes there is one Beneficiary that gets everything and other times there are several who each get an equal share or only receive certain gifts.

Item & Description:

Name and addresses:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

11. FORM: MY LAST WILL AND TESTAMENT

Full Name, First Nation, Band Number and Treaty Number, Address:

THIS IS THE LAST WILL AND TESTAMENT (Print your Name):

_____ of the First Nation _____ ;
Band & Treaty# _____ ; Address _____ ;
in the Province of _____ .

Section 1: Revocation: Is a statement that any previous Wills or additions made by you will be cancelled once your new Will is signed and witnessed.

REVOCATION

1. I **REVOKE** all former Wills and Additions made by me.

Section 2: Appointment of Executor: Print the name of your Executor with their address. You will also need an Alternate Executor with their address.

APPOINTMENT OF EXECUTOR

2. I **APPOINT** _____
from _____ ,
Address: _____ .
Phone#: _____ . In the Province of _____ ,
to be the Executor of this my Will.

IN THE EVENT that _____
should predecease me or is unable or unwilling to act as my Executor,

THEN I APPOINT _____
from _____ ,
Address: _____ .
Phone#: _____ . In the Province _____ ,
to be the Executor of this my Will.

My Initials _____
My Witness Initials: _____ My Executors Initials: _____

Section 3: This is where you indicate who you want to leave your possessions to.

DISPOSITION OF PROPERTY

3. **I GIVE** all my assets and property of every nature and kind wherever it is located, including any property over which I may have a general power of appointment, to my Executor upon the following trusts:

Subsection A- Gives your Executor the ability to manage and dispose of your property.

(A) Except as otherwise expressly provided in this Will, to use his or her discretion in the realization of my Estate, with the power to sell, call in and convert into money the assets and property comprising my Estate at the time of my death, in such manner and upon such terms, and either for cash or for credit, or for part cash and part credit, as my Executor may in their discretion consider advisable: or to postpone in whole or in part such realization and conversion (whether or not there is a liability attached to any particular asset or property) until my Executor in his or her discretion decides that an advantageous conversion can be obtainable;

Subsection B- Gives your Executor the ability to pay any debts you owe including funeral expenses, and taxes out of your Estate.

(B) To pay out of and charge to the capital of my general Estate my just debts, funeral and testamentary expenses and all Estate, inheritance and succession duties or taxes, whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever, that may be payable in connection with any property passing (or deemed so to pass by any governing law) on my death or in connection with any insurance on my life or any gift or benefit given or conferred by me either during my lifetime or by survivorship or by this my Will or any Codicil thereto, and whether such duties or taxes be payable with respect to Estates or interests which fall into possession at my death or at any subsequent time; and I hereby authorize my Executor to commute or prepay any such taxes or duties. This direction shall not extend to or include any such taxes which may be payable by a purchaser or transferee upon or after my death pursuant to any agreement with respect to such property.

Subsection C- Indicates any gifts including money or specific property to specific Beneficiaries you want to give.

(C) To make the following gifts:

My Initials _____

My Witness Initials: _____

My Executors Initials: _____

Subsection D- Indicates who the remainder of your Estate will go to.

(D) To give the residue of my estate to:

Section 4: This is where you indicate what should be done with any gifts to be given to children or other persons under the age of 18 years. You will need to indicate an age of at least 18 years or older, as no one younger can legally receive a gift or bequest.

GIFTS TO MINORS

4. **IF ANY PERSON** should become entitled to any share of my Estate before attaining the age of _____ years, the share of such person and any income derived therefrom shall be held or remain invested by my Executor; and the income and capital, or so much thereof as my Executor in his or her uncontrolled discretion considers necessary or advisable, shall be used for the benefit, care maintenance, health and welfare, education (including university or other higher education) or general advancement in life of such person until he or she attains the age of _____ years, at which time such share, or the amount remaining, shall be paid or transferred to him or her absolutely.

Section 5: This allows the Executor to make payments to the parents or guardians of anyone entitled to a gift who is below the age set out in Section 4.

PAYMENT TO GUARDIANS OF MINORS

5. **I AUTHORIZE** my Executor to make any payment for any person under the age of majority or otherwise under disability to a parent or guardian of such person, or any other individual or legal entity as my Executor shall consider advisable, whose receipt shall be a sufficient discharge to my Executor.

Section 6: This is where you indicate the name of the person who you appoint as a Guardian of any underage children you have. Please note, the courts have jurisdiction over the Guardianship of children, the Courts are not bound to your Will.

GUARDIANSHIP

6. **IN THE EVENT** that my spouse predeceases me, I **APPOINT**

to be the Guardian of the persons and Estates of any children of mine who have not yet attained the age of majority.

My Initials _____

My Witness Initials: _____

My Executors Initials: _____

Section 7: This is where you indicate what funeral and burial arrangements you would like. It can be helpful to your Executor and family to know what your wishes are.

FUNERAL ARRANGEMENTS

7. I WISH FOR the following funeral and burial arrangements:

Date and place of signing: Make sure you indicate the First Nation and Band and Treaty number as well as the day, month and year below. This is very important.

IN TESTIMONY WHEREOF I have hereunto set my hand at the First Nation of

my Band and Treaty number _____

in the Province of _____,

this _____ day of _____, 20_____.

SIGNED, PUBLISHED AND DECLARED by the above-named (print name)

as and for his or her Last Will and Testament, in the presence of us, both present at the same time who, at his or her request, in his or her presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Your Signature Here

Witness Signature

Print Name

Address:

Phone# _____

Executor Signature

Print Name

Address:

Phone# _____

My Initials _____

My Witness Initials: _____

My Executors Initials: _____

AFTER DEATH – DEALING WITH ESTATES

1. Notice of Death

The first step is that a Notice of Death must be filed with the Estates Unit of the regional office of Indigenous Services Canada (ISC). A Notice of Death is a form provided by ISC. This is usually filed by the people who are closest to the departed.

An Estates Officer in a regional ISC office will require proof of death in the form of a Certificate of Death issued by the Provincial or Territorial Government. This is usually issued by the Province's Vital Statistics Department. They will also accept a funeral director's Certificate.

Upon receiving the Notice of Death, the Estates officer will determine if the Estate of the departed is under the Indian Act. If the departed was not status, or did not ordinarily reside on Reserve, the answer will be "No" and the Provincial or Territorial laws concerning Estates will apply. On the other hand, if the answer is "Yes," then ISC will take jurisdiction and the provisions of the Indian Act and the Indian Estates Regulations will apply.

Once ISC has determined that the Estate is under the Indian Act, they may appoint an Administrator or approve a Will and Executor. They will contact the departed's family and inform them who the Executor or Administrator is. At that point the family will be asked whether they agree with the named Executor or Administrator. If the family agrees, the involvement of ISC ceases.

ISC policy is to have minimal involvement in the Estates of departed persons. With the exception of attempting to immediately preserve the assets of an Estate, ISC prefers that either a named Executor or Administrator or family member administer an Estate, and leaves it to them.

ISC may become involved again should there be a complaint made by a Beneficiary or family member over the administration of the Estate.

2. Statement of Inventory

A Statement of Inventory should be completed as soon as possible. It can be submitted to ISC with the Notice of Death, or after the Notice of Death. The Statement of Inventory is a form provided by ISC which is a list all of the property of the departed, including cash on hand, money in bank accounts, possessions such as guns, boats, cars, furniture, jewelry, etc., land, including houses on land, or leases of land, and must include a value for each item, even if the value needs to be guessed.

The Statement of Inventory also has to include all of the debts and claims against the Estate which are known at that time. Examples include credit card bills, electrical and telephone bills and other monies owing or bills received.

The Statement of Inventory will have to indicate whether the departed left a Will. If there is a Will, then it must give the names of all the Beneficiaries listed in the Will. Other information ISC may need can also be found in the Statement of Inventory.

If there has not been an Administrator or Executor appointed yet, then on receiving the Statement of Inventory, ISC will either appoint an Executor under the Will, or seek someone to act as the Administrator of the Estate.

3. The Job of the Executor or Administrator

Where a person is appointed as Administrator, or the Will names an Executor, then that person has the following powers and responsibilities:

1. Fill out and submit the Notice of Death Form to ISC.
2. Prepare and fill out the Statement of Inventory form.
3. Give required notices to creditors, Beneficiaries, etc.
4. Pay out claims (example: credit card or phone bills) against the Estate, from money in the Estate.
5. In the case of doubtful claims against the departed or the Estate, request guidance from ISC.
6. The Administrator or Executor is not required to pay out debts of the Estate from their own money, only from the money of the Estate.
7. Make sure to obtain receipts for the payment of any claims.
8. Be a party to any legal proceedings regarding a claim against the Estate.
9. Make partial distributions to expedite administration of an Estate – this means to give money or property to Beneficiaries early, as directed by the Will, so long as it does not conflict with other duties such as paying bills.
10. Where money or cash of the Estate is held by the Receiver General, provide the Receiver General with written instructions to pay bills or distributions to Beneficiaries.
11. Sell interests in land or property for cash and pay the cash to the Receiver-General for credit to the Estate.
12. Request financial institutions to transfer any money to the Receiver-General or deliver any bonds or certificates - bonds and certificates may be redeemed and distributed.
13. Direct life insurance policies payable to the Estate to be paid to the Receiver-General.
14. If a life insurance policy is payable to a person designated in the policy, and not the Estate, then it goes directly to the person named in the policy and is never part of the Estate.
15. Obtain any and all certificates or releases required under Federal or Provincial laws.
16. Exercise any and all of the powers of an Administrator or an Executor.
17. Lease or renew any lease on any land held by the departed.
18. Fulfill any contract or agreement entered into by the departed, if possible; otherwise resolve or cancel it.
19. File an Income Tax Return for the departed, for the last year of their life, up to the date of their death.
20. File an Income Tax Return for the Estate of the departed, as part of closing the Estate.
21. Exercise other powers as are required to carry out their duties, and carry out any order or directions and abide by any findings made by ISC.
22. Be accountable to ISC for administration.

The Administrator or Executor must also take possession of any cheques or money orders which were not cashed and received by the departed as part of a pension, gratuity or allowance. These uncashed cheques must be returned to the sender with a request to re-issue them in the name of the Receiver-General for credit to the Estate.

Where there are Heirs or Beneficiaries to an Estate who are absent or missing, and all notices have been given, any share of the Estate which the heir or Beneficiary is entitled to must be held in a special account without interest for a period of seven (7) years, unless evidence of their death is filed with ISC. Upon the expiration of the seven (7) years or sooner if evidence of death is provided, the amount held in the special account shall be distributed to the remaining Heirs or Beneficiaries.

4. Dealing With Bills and Property In an Estate

In dealing with an Estate, the first thing that must be done is that the Administrator or Executor must consolidate the Estate. This includes closing and emptying bank accounts, cashing in RRSPs, GICs, Stocks, and selling property for cash.

All of this cash is supposed to go into a single account, established and administered by the Receiver General for ISC. The Administrator or Executor deposits into this account, and draws from it to pay bills and distribute money to Beneficiaries. They can also draw on this account to pay expenses of the Estate, such as auction costs, hiring an accountant, or filing income tax returns.

The Administrator or Executor should keep their own ongoing record of all of the transactions relating to the Estate, including the date, amount and terms of any sale of property, any deposit to the account, and any withdrawals, bill payments or expenditures.

There are two exceptions to this:

1. Where the property has no cash value – things like clothes, old furniture, photographs or wedding rings or other mementos. It can be disposed of or divided up by the Administrator or the Executor as they see fit. In some cases it will be thrown out; in other cases it may be passed on to family or relatives of the departed. An Administrator or Executor may consult with family members before making a decision, or check to see if the departed had wishes or instructions outside the will. But the Administrator or Executor has final decision; and
2. Where there are specific directions or instructions in a Will. The Will may direct that a boat may go to one relative, guns to another, a car to another, photographs to another and so on. Where a Will gives specific instructions for property, then it should be honoured. Property specifically identified in a Will to be given out and should not be sold for cash.

While the Estate is being settled and the monies gathered into an account, the next thing to do is payment of outstanding debts and liabilities of the departed, such as credit cards, insurance, rent, Hydro, etc. It is necessary to notify all creditors of the death so that they do not continue to charge the departed. Make sure to cancel credit cards, phone accounts and other utilities, or transfer them to the Estate.

The debts of the Estate should be paid from the cash received from the assets, monies, property and land in the Estate. An Administrator or Executor is not required to spend their own money to settle these debts. An Administrator or Executor is entitled to go to creditors and negotiate, to see if they will accept a lesser amount.

Once the debts of the Estate are paid or resolved, and all claims that might be against the departed are settled, then the next step is called **"Distribution of the Estate."** The collected cash of the Estate is paid out to the Beneficiaries or Heirs, so that there is nothing left and the Estate is closed. If there is no Will, the distribution is simple and the rules set out in the Indian Act and Indian Estate Regulations apply.

If there is a Will, then the Executor or Administrator should be careful. Generally a Will may contain three kinds of bequests or gifts:

1. Specific property, such as houses or cars, which are directed to go to specific persons.
2. The shares of the cash value of the Estate which are directed to go to specific persons; this can either be a proportion or percentage, or it can be a specific amount.
3. If there is anything left over, this is called the "Residue." The Residue will go either as the Will specifies, or if the Will does not specify, then according to the Indian Act or Indian Estates Regulations.

The general rule is that an Estate should be settled within a year of the death of the departed. During the year, the outstanding bills and debts of the departed should be paid, any specific bequests or gifts of property set out in a Will should be made, and the remaining value of the Estate should be collected and paid out. Once all the property is distributed, the Estate is closed.

Complications can arise in the settling of outstanding debts and liabilities; in claims made under provincial legislation dealing with marital property or child support, in matters dealing with Off-Reserve lands, or the terms of any Will that are disputed or need to be considered.

5. What Sort of Property is in an Estate

There can be different types of property, which may be required to be distributed. These can include:

1. Interests in Houses or Land on Reserve – PROVIDE THE FIRST NATION OFFICE, LANDS DEPARTMENT OR HOUSING DEPARTMENT WITH A COPY OF ANY WILL, or any other evidence of the intentions of the departed or their family or relatives, and SPECIFICALLY REQUEST THAT THE INTENTIONS BE RESPECTED.
2. Off-Reserve Houses or Lands. Off-Reserve property interests may have to be dealt with in accordance with Provincial laws. Some Provinces recognize Wills or Administrations under the Indian Act and will respect this authority. However, some may not and you may be required to make application for probate under Provincial law. You should check with a lawyer if this comes up.
3. Bank accounts – you should check with any bank or credit union the departed had, for chequing or savings accounts;
4. Registered Retirement Savings Plans, Guaranteed Investment Certificates, Tax Free Savings Accounts, Canada or Provincial savings bonds, Life Insurance Policies, Pension funds, Death Benefits, other accounts or investments such as other financial savings plans. Often in these, taxes may be required to be paid before they can be cashed. These will go into the Estate, unless they have a specific named recipient in their paperwork. If there is a recipient named, then it does not go to the Estate, it goes to the recipient. Always check for a recipient.
5. Shares in a Public Corporation - some companies have shares, which can be purchased by the general public. There will be a transfer agent for the company who will need to be contacted to deal with the shares.
6. Shares in a Private Corporation - the company's by-laws will have to be consulted to see how shares can be transferred or if there are any special conditions. This could include restrictions on the transfer of shares upon the death of a shareholder.
7. Rights Licenses and Quotas – including commercial fishing licenses, trapline licenses, or traditional rights.

8. In some cases, a departed may have assets registered in other provinces or countries. If you become aware of these, then you should consult a lawyer to assist. There can be certain assets, which may not form part of the Estate of a departed. Examples are land or property off-reserve, or a house or lease on reserve, owned with another person as a joint tenant. In a joint tenancy of two people, when one person dies, the other person automatically gets the whole thing.

6. Compensation for Administrators, Executors, Lawyers, Accountants and Others

The Indian Act and Indian Estate Regulations do not have any provision for compensation, and there are no specific rules. By practice, compensation for the work done on an Estate by the Executor or Administrator is allowed. Compensation must be reasonable and is dealt with on a case-by-case basis.

Considerations can be such as: the size or amount of money in the Estate, the simplicity or complexity of an Estate, the extent of service and the amount of work required, the decisions which were made to the benefit of the Estate.

An Executor or Administrator is entitled to hire help. They can retain or consult with a lawyer about complications. They can hire an accountant to deal with tax or financial issues. They can hire people to clean up or fix up property for sale or pay people to help sell property. The costs of hiring help are paid through the Estate. They are not charged to the Executor or Administrator and if and where their own money is spent on these things, they are entitled to be reimbursed.

Usually it amounts to a fraction of the value of the Estate. It is not acceptable that an Executor or Administrator fees take up most or a large part of the money in an Estate. There are no rules in the Indian Act or Indian Estate regulations for compensation for lawyers or accountants who work on an Estate, but Provincial law will usually be applied, and their fees will usually be restricted to a fraction of the Estate.

As long as the Executor or Administrator follows the Indian Estate Regulations, they are released from all liability regarding the administration of the Estate. Also, financial institutions, which make payments or deliver bonds or certificates under the Indian Estate Regulations are also released from any liability.

These Forms are to be requested by the Executor or Administrator from ISC:

Notice of Death - a notice filed with the Estates unit of the regional office of ISC indicating the death of the departed.

Statement of Inventory - a form itemizing all of the property owned by the departed, including cash and bank accounts, or owed by the departed including any known debts or claims. It must include value for each item and indicate if the departed had a Will and list any Beneficiaries named in a Will.

Notice to Creditors, Beneficiaries and Other Claimants - a form that must be posted in the post office, band office and any other meeting or public place in the community of the departed where notices are posted. It must say that creditors have eight (8) weeks from the time of posting to file a claim.

Application for Probate - an application made by the Executor under the Indian Act. The application is granted by ISC to authorize the Executor to manage and distribute the Estate of a departed who had a Will.

Application for Administration - the application made by a person seeking to be appointed as an Administrator under the Indian Act. ISC appoints the Administrator to manage and distribute the Estate of a departed who did not have a Will.

Section 16 of the Indian Estate Regulations allows ISC to develop and use such other notices and forms as it deems necessary to conduct the administration of the Estates of departed persons.

ISC Website: <https://www.canada.ca/en/indigenous-northern-affairs.html>

ISC Wills and Estate Management: aandc.estates-successions.aandc.@canada.ca

GLOSSARY & TERMS

administration - the management and settlement of the estate.

attorney - one who is designated to transact business for another by acting as the person's agent.

beneficiary - a person who is designated to benefit or receive something as a result of a legal arrangement or instrument such as a will.

certificate of possession - a certificate issued under s.20 of the *Indian Act* to an Indian who is lawfully in possession of land in a reserve as evidence of his or her right to possession of the land described therein.

codicils - a supplement or addition to a will, made by the testator, that modifies the estate in some manner.

common law - the body of law derived from judicial decisions as opposed to coming from statutes or Constitutions.

Constitution Act, 1867 - the construct of rules, regulations and laws that establishes and orders the political, governmental and legal structure of a Canada.

Crown Land - land belonging to the government of Manitoba or Canada.

deceased - to die

dependents - one who relies on another for support and is not able to sustain oneself without the aid of someone else.

duress - the threat of confinement or detention, or other threat of harm, used to compel a person to do something against his or her will or judgment.

estate - all the property that the deceased person leaves after death including the collective assets and liabilities of the deceased person.

Executor - the person appointed by the testator to carry out the provisions of the testator's will.

First Nation - a term used instead of Indian Band/Reserve.

gift over - an estate created upon the expiration of a preceding estate.

Indigenous - a person who pursuant to the *Indian Act* is registered as an Indian or is entitled to be registered as an Indian.

Indian Act - an Act of the Parliament of Canada respecting Indians.

Indigenous Services of Canada - federal department established to administer the *Indian Act*.

Indian Band Election Regulations - *Indian Act* regulations outlining the rules and restrictions that govern the process for electing Chief and Council.

Indian Estate Regulations - *Indian Act* regulations outlining the rules and restrictions that govern the wills and estates of Indians.

Indigenous child - a registered Indian or an Indian who is entitled to be registered as an Indian and who is under the age of eighteen (18) years.

instrument - a written legal document that defines rights, duties, entitlements or liabilities such as a contract or will

intestate/intestacy - a person owning property who dies without a will.

jurisdiction - a geographic area within which political or judicial authority may be exercised.

lawyer - a person who is licensed to practice law in the Province of Manitoba.

mentally competent - the mental ability to understand, make decisions and act reasonably.

Minister - the Minister of ISC.

notary public - a person authorized by a province to administer oaths, certify documents, attest to the authenticity of signatures and perform official acts in commercial matters.

ordinarily reside - where a person intends to live for most of the time, or, where the person normally lives.

peace officer - a civil officer such as a sheriff or police officer appointed to maintain public order and peace.

permanent improvements - an addition to real property that adds permanent value to the property.

personal property - any movable or intangible thing that is subject to ownership and not classified as real property. It includes goods, chattel paper, documents of title, instruments, money, securities and intangibles.

power of attorney - an instrument that allows one person to authorize another person to act as the person's agent or attorney. The person making the appointment is called a donor (principal) and the person so appointed is the donee (attorney). A power of attorney only applies to the donor's financial affairs.

per stirpes - this is a legal term which is used to distribute a beneficiary's share of an estate when the beneficiary dies before the person who made the will. As an example, where there are several children named in a will, and one of those children dies before the parents, under this term, the other children would be entitled to part of the share of the sibling who died.

principal - one who authorizes another to act on his or her behalf as an agent.

RCMP - Royal Canadian Mounted Police

real property - land and anything growing on, attached to, or erected on land, excluding anything that may be severed from the land without causing damage to the land.

regulations - rules or restrictions that usually form part of a Statute.

residue - the residue is what remains of a testator's estate after every debt, special devise and bequest is discharged .

First Nation (reserve) - a tract of land, the legal title of which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of an Indian band.

revoke - capable of being cancelled or withdrawn. In the context of a will, it is the invalidation of a will by the testator, either by destroy ing the will, executing a new one or by a subsequent marriage or divorce.

specific gifts - the gift of a certain item of personal estate in a will.

statute - a law passed by a legislative body such as a provincial or federal government.

survivor - living descendants of the testator.

testamentary capacity - the sound mental ability one must have to prepare a valid will. It entails that the testator must understand the nature of the act and its effects. He or she must understand and recollect the extent of the property he or she is disposing of remember the persons he or she might expect to benefit. The testator must be able to comprehend and appreciate the claims of those he or she is excluding as a beneficiary.

testator - the person making a will.

transmission - The right possessed by an heir of transmitting to his or her successor or successors any inheritance, legacy, right, or privilege, to which he or she is entitled, even if he or she should die without enjoying or exercising it.

undue influence - the improper use of power or trust, usually through threats, pressure or fraud, in a way that deprives a person of free will and substitutes another's objectives.

widow - a woman whose husband has died and who has not remarried.

widower - a man whose wife has died and who has not remarried.

will - a document by which a person directs his or her estate to be distributed upon death.



Indigenous Services
Canada

Services aux
Autochtones Canada

ISC Website: <https://www.canada.ca/en/indigenous-northern-affairs.html>



www.swampycree.com

A WILL FOR FIRST NATIONS



SWAMPY CREE TRIBAL COUNCIL INC.

