

Wills Act **Amendments**

General Fact Sheet



**Yukon's *Wills Act* is changing.
This document will help explain
the changes and how they'll affect
any will you prepare.**

What is a will?

It's a legal document that allows you to determine how your property will be distributed after you die. It also names the person who will represent you and carry out the wishes you have stated in your will.

Why should I have a will?

If you die without a will, the *Estate Administration Act* will determine how and to whom your property will be given out. To help your family and loved ones during a time of grief, and to make sure your wishes are followed, it is important to have a properly prepared will that directs where your property will go.

What does the *Wills Act* do?

The *Wills Act* specifies the requirements for making a valid will in Yukon. An amendment to the Act will become effective on May 1, 2021 and brings changes to the way wills are made and administered in Yukon.

How is the law changing?

There are changes in five areas including:

- Additional rules for making a will that is legally valid
- Whether automatic changes to your will could happen if you marry, divorce, or permanently separate
- Rules around what happens to gifts that fail to be received (for example, if the intended recipient of a gift in your will has died)
- New powers for courts to correct common errors
- Allowing international wills to be made and upheld in Yukon

Each of these changes are explained in more detail throughout this document.

Who could be affected?

If you are planning to make a new will, or replace an old will after May 1, 2021, the changes could affect you.

Why are the changes being made?

These changes bring the *Wills Act* in line with developments throughout Canada over the past few decades. They offer strengthened protections against fraud, coercion, and common errors that work against a person's intentions.

How will the changes affect existing wills?

- Existing wills will not be changed or cancelled by these changes. Wills and gifts that were made correctly under the rules in place before May 1, 2021 will still be valid and cannot be cancelled because of the amendments.
- Gifts that fail may be treated differently once the changes come into force (see section C, opposite).
- The provisions that allow the court to correct errors will apply to all wills made before and after the changes come into force (see section D, opposite).



An overview of the changes

A. Rules for making a legally valid will in certain situations

In order to be valid, a will must be in writing and signed by its testator (the person who is making the will) in the presence of two witnesses. This isn't changing—but some new directions will come into effect to prevent fraud or errors that would interfere with the will maker's intentions. The new directions guide the following areas:

- **Who may act as a witness:** a person who witnesses the signing of the will must be at least 19 years old and capable of understanding their role as a witness.
- **If the will maker cannot physically sign the will themselves:** the person who signs the will on behalf of the testator cannot also act as a witness. In addition, no gifts may be included in the will that would go to the person signing on behalf of the will maker, or the stand-in signator's spouse.

B. Changes can be made to your will if you marry, separate or divorce

Previously, a will was automatically cancelled if a person married after making a will. Under the new rules, a will made after May 1, 2021 will remain in effect if a person marries after making their will.

Another change is related to gifts or duties assigned in the will to be carried out by former spouses. Under the new rules, such gifts or appointments will be revoked when married or common-law spouses separate unless specific instructions state otherwise or the will was made before May 1, 2021.

C. Rules for what happens to gifts that fail

Sometimes a gift in a will cannot be completed because of unforeseen problems. The most common are that the person meant to receive the gift has died, or the recipient is unable to accept or refuses the gift.

The new rules set out who the gift will go to, unless the will states otherwise. First, to any alternate beneficiaries in the will. If there are none, and if the intended beneficiary was a child or sibling of the will maker, then it will go to the intended person's children. If no alternate beneficiaries are named and the intended beneficiary has no children, then any instructions in the will related to the residue of the estate will apply (the residue of the estate is what remains after all other gifts in the will have been given out). Finally, if there are no instructions for the residue, the gift will follow intestate succession rules in the *Estate Administration Act*.

D. Court powers to correct common errors

It's not uncommon that wills contain errors. The changes to the *Wills Act* will allow the court to correct some of these where there is clear evidence that the correction will fulfill the testator's wishes. The court will be able to correct:

- An accidental slip, omission, or incorrect description that occurred when the will was being written.
- A person was given a gift under the will despite rules in the *Wills Act* against it (such as a gift to a person who witnessed the signing of the will or signed it on behalf of the will maker, or their spouses).
- Words in a will that were made illegible because of damage, writing, or markings that are not valid changes to a will.



E. International wills

The *Convention Providing a Uniform Law on the Form of an International Will* (the Convention) will become law in Yukon. Joining the Convention means that a will made in Yukon can be upheld by courts in other countries and states that have adopted the Convention, and vice versa.

If the following requirements are met, the will has equal effect in each state or country that has adopted the Convention, regardless of where the will was made or where the will maker lived.

The will must be:

- Signed and dated in the presence of two witnesses and a person who has the authority to draw up the document; and
- Have an attached certificate, signed by a lawyer, confirming that the necessary requirements and procedures have been met.

The will may be written in any language.

Countries or states that have adopted the Convention include: Australia, Belgium, Bosnia-Herzegovina, Cyprus, Ecuador, France, Italy, Libya, Niger, Portugal, Slovenia, Iran, Laos, Russia, Sierra Leone, the United Kingdom, and 23 U.S. States (including Alaska).

⚠ Note: this fact sheet is intended as a simplified general resource and is not to be considered legal advice or legal opinion. Please seek legal advice about any specific issues.