

You have
the right
to foresee.

Consult your notary!
www.cnq.org



The notarized will

A notarized will is
a sure thing!

Why opt for a notarized will?

1 To clearly define and express your wishes

When preparing a will, here are some of the questions you should ask:

- Who will be your **heirs** and what will their share of the inheritance be?
- Who will **settle your succession** and what powers do you want this person to have?
- Who will act as **tutor** for your children who are still minors?
- How will your business be transferred and managed?
- Do you want to consent to a **gift of organs** after your death?

Your notary is the ideal legal professional to advise you on preparing your will. He will help you make **informed choices** by explaining their **legal and tax consequences**. He will also answer any questions you may have, and draft your will in a manner that clearly expresses your wishes.

Beware of websites that offer pre-filled forms or notarized wills without a consult with a notary, as you are depriving yourself of a notary's expertise in understanding the impact of your wishes on your loved ones.

2 Save time and money

Your will is the most important document for **planning your succession**. Your notary will advise you on how to:

- Reduce taxes on your property after death.
- Transfer, with no immediate tax consequences after death, savings or retirement funds such as Registered Retirement Savings Plans (RRSP) or Tax Free Savings Accounts (TFSA).
- Name other people who may continue to contribute to any Registered Education Savings Plan (RESP) you have taken out.
- Manage your children's inheritance.
- Add a clause involving private dispute settlement methods (mediation, arbitration, conciliation, etc.) in the event of disagreement during the liquidation.

With a notarized will, your heirs **avoid costly fees and delays** after your death. A will that is not notarized must be probated by a notary or a court before it can be used to settle the succession. This process involves both time and money.

Did you know?

→ All the information you disclose to a notary is confidential. Only once you have passed away can your notary give copies of your will to those people legally entitled to receive it.

A notarized will allows your heirs to avoid significant costs and delays after your death.



3 Make life easier for your heirs

A notarized will provides added peace of mind and makes life easier for your heirs.

It is also a **reliable and secure** document for reasons that include:

- Your notarized will is harder to contest than one that is not, because your notary ensures its authenticity. He must verify your identity and prepare a will that **conforms to the law** and to **your wishes**. He must also explain its content and certify that you have understood it and signed it freely.
- A notarized will is always **protected** because your notary has to keep the original in a secure place, as required by law. You can therefore be certain that the document will not be lost, modified or destroyed. Your notary will give you a true copy of the original.
- After your death, your heirs may **easily check whether you had a notarized will** by submitting a search application to the Register of Testamentary Dispositions of the Chambre des notaires. Indeed, notaries are required to transmit information to the Registrar regarding the wills they keep. The purpose of the register is to maintain a list of all notarized wills in Québec. However, it does not contain copies of the wills themselves.

4 Avoid unpleasant surprises

If your will is not notarized:

- It must be probated by a notary or by a court before being used to settle your succession. This process usually **costs much more** than having your notary prepare a will. The probate procedure may also involve **major delays in settling the succession**.
- It may **not be valid** in Québec.

- It could contain clauses that are **illegible, incomprehensible or incompatible** with the law or be **incomplete**.
- It may be **lost, modified or destroyed**.

If you don't have a will, the law will determine the identity of your heirs and their share of the succession. Here are some of the legal rules that apply:

- Without a will, your common law spouse does not inherit anything. This rule applies regardless of the length of your relationship or whether you have had children together.
- Your spouse does not necessarily inherit all of your property, unless you have a marriage contract that says so.
- If you are separated but not divorced, your spouse is still considered your heir. This rule applies even if you have had a new common law partner for several years.
- Your children could end up being co-owners of your property with your spouse or with other members of the family. Furthermore, if they are still minors, the courts will make certain decisions for them, such as selling or mortgaging a house they have inherited.

If you quickly made an online will using a simple form:

- It could contain inappropriate or fiscally unfair inheritances that do not respect your initial wish.
- Even if a notary prepares the document online, it could end up not being a notarized will *en minute*, and your succession would need to have your will probated, which could result in delays and additional costs.
- Do you know the online company's security rules on protecting your personal information?

→ HOW TO PREPARE

Information to collect

- Your date of birth and social insurance number
- Documents relating to your civil status (*marriage certificate, marriage contract, judgment of divorce, etc.*)
- A **patrimonial inventory** accessible on the Chambre des notaires website under "The Chambre's Services.", which is a list of your property, investments and debts, including any property located outside Québec
- Your business documents (*shareholders agreement, partnership or association agreement, etc.*)
- Your life insurance policies
- Any other information requested by your notary

Food for thought

- Whom do you want as heirs? What portion of the inheritance do you want to leave them?
- How should the inheritance be shared if one of the heirs dies or cannot receive his share?
- Who will settle your succession? Do you want this person to be compensated? Who will replace him if it becomes necessary to do so?
- Who will act as tutor for your children who are still minors? Do you want this person to be compensated? Who will replace him if it becomes necessary to do so?
- What are your instructions for your funeral?
- Would you consent to a gift of your organs?
- Any other question raised by your notary.