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February 2022

Updates to wills and applying for probate

There have been some important changes related to wills and applying for probate.

Getting married no longer cancels a will

Before January 1, 2022, when someone got married, their will was automatically revoked. This meant that the will stopped being valid. It was as if the will was never made.

Since January 1, 2022, when a person gets married, their will is not affected and continues to be valid. But to make their new spouse a beneficiary, the person must update their will or make a new one.

Separation is now treated the same as a divorce

Before January 1, 2022, separating from a spouse did **not** automatically change a will. This meant that if a person left property to a separated spouse in their will, that spouse would still get the property. To change this, the person had to update their will or make a new one.

Since January 1, 2022, when someone separates, their will is treated as if they got a divorce. This means that, like a divorce, a separation cancels any gifts made to the ex-spouse in the will.

What it means to be separated

In estates law, being separated or “living separate” is now defined as spouses who:

- are living separate and apart for 3 or more years, or
- have resolved their family law issues through a separation agreement, court order, or arbitration, and are still separated when one of them dies.

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How to make or update a will

If a person wants to add their new spouse as a beneficiary or make any other changes to their will, they can:

- [make a new will](#), or [Unsubscribe](#)
- make a codicil to change their will.

A **codicil** is a separate legal document made the same way as a will. It's usually used when there are small changes to the will, for example, adding or removing a beneficiary or changing an estate trustee.

Ways to [make a will](#):

1. Use CLEO's free online tool [Guided Pathway for making a will](#).
2. Write a holograph will **completely** by hand and signed at the end.
3. Buy a will kit based on Ontario law.
4. Hire an [estates lawyer](#).

Getting help with a will

People with low incomes might be able to get help from the [Queen's University Elder Law Clinic](#) or a [local community legal clinic](#).

There are also services, such as [Axxess Law](#), that offer legal services at lower rates.

Applying for probate

Probate is a process that asks the court to confirm that a will is valid and that the estate trustee has the right to deal with the estate. If the court agrees, it issues a certificate.

There are **new forms** to use when applying for probate. The forms are the same whether:

- there's a will that names an estate trustee, or
- there's no will.

How to apply for probate now depends on the value of the estate. If the value of the estate is:

- \$150,000 or less, use the [simplified small estate court process](#)
- more than \$150,000, use the [regular court process](#)

Simplified small estate court process

These are [the forms that must be completed](#):

- Form 74.1A Application for a Small Estate Certificate
- Form 74.1B Request to File an Application
- Affidavits as required, for example, the Form 74D Affidavit of Execution or Form 74E Affidavit of Condition
- Form 74.1C Small Estate Certificate

Applications are usually processed more quickly than in the regular court process.

Regular court process

Starting January 1, 2022, people must use [Form 74A Application for a Certificate of Appointment of Estate Trustee](#). Applications can take **several months** or longer to process depending on the court office.

Filing probate applications

Probate applications are filed with the Estate Registrar at the [Superior Court of Justice](#) in the area where the person lived or owned [real property](#).

Paying the estate administration tax

Applying for probate also involves paying an estate administration tax, often called [probate fees](#).

Probate fees are \$15 for every \$1,000 of assets over \$50,000. Use the government's [estate administration tax calculator](#) to get an idea of the amount.



[Guided Pathway for making a will](#)



[When should I update my will?](#)

[I've been named estate trustee in a will. How do I apply for a certificate?](#)

[How do I apply to be an estate trustee without a will?](#)

[What are probate fees and can I reduce them?](#)

Related resources

[Apply for probate of an estate](#)

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