

CONSOLIDATION OF WILLS ACT
R.S.N.W.T. 1988,c.W-5

(Current to: April 21, 2013)

AS AMENDED BY:

S.Nu. 2005,c.6

In force March 22, 2005

S.Nu. 2010,c.3,s.21

s.21 in force March 23, 2010

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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WILLS ACT

INTERPRETATION

Definitions

1. In this Act,

"immovable property" includes real property and a leasehold or other interest in land; (*biens immobiliers*)

"moveable property" includes personal property other than a leasehold or other interest in land; (*biens mobiliers*)

"will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition; (*testament*)

"writing" includes words printed, engraved, lithographed, typewritten or represented or reproduced by any mode of representing or reproducing words in a visible form. (*écrit*)

APPLICATION

Wills made after March 31, 1955

2. (1) This Act applies only to wills made after March 31, 1955, and, for the purposes of this subsection, a will that is re-executed or revived by a codicil shall be deemed to be made at the time at which it is so re-executed or revived.

Wills made before April 1, 1955

(2) The laws respecting wills and devolution by will in force in the Northwest Territories before April 1, 1955, shall continue in force as if unaffected by this Act with respect to wills made before that date. S.Nu. 2005,c.6,s.2.

PROPERTY DISPOSABLE BY WILL

Property disposable by will

3. Any person may devise, bequeath or dispose of by will all real and personal property, whether acquired before or after the making of his or her will, to which at the time of his or her death the person is entitled either at law or in equity for an interest not ceasing at his or her death, including, without restricting the generality of the above,

- (a) estates *pur autre vie*, whether or not there is any special occupant of them and whether they are corporeal or incorporeal hereditaments;
- (b) contingent, executory or other future interests in any real or personal property, whether or not the testator is ascertained as the person or one of the persons in whom they may respectively become vested and whether the testator is entitled to them under

- the instrument creating them or under disposition by deed or will;
and
- (c) rights of entry whether for breach of conditions or otherwise.

CAPACITY AND EXECUTION

Will made by minor

4. (1) A will made by a person who is under the age of 19 years is not valid unless at the time of making the will the person
- (a) is or has been married;
 - (b) is a member of a component of the Canadian Forces that is
 - (i) referred to in the *National Defence Act* (Canada) as a regular force, or
 - (ii) placed on active service under the *National Defence Act* (Canada);
 - (c) is a mariner or sailor; or
 - (d) is a member of the Royal Canadian Mounted Police.

Certificate

(2) A certificate purporting to be signed by or on behalf of an officer having custody of the records of the force in which a person was serving at the time his or her will was made setting out that the person was at the time a member of the Canadian Forces described in paragraph (1)(b) is, in the absence of evidence to the contrary, proof of that fact.

Revocation

(3) A person who has made a will under subsection (1) may, while under the age of 19 years, revoke that will.

Formalities of execution

5. (1) A will is validly made if
- (a) it is in writing and is signed by the testator, or by another person in the testator's presence and by the testator's direction;
 - (b) the signature is made or acknowledged by the testator in the presence of two or more witnesses; and
 - (c) at least two of the witnesses
 - (i) are both present at the same time as the signature is made or acknowledged by the testator, and
 - (ii) sign the will, or acknowledge their signatures, in the presence of the testator, but not necessarily in the presence of each other.

When testator must be present

(2) A will is not invalid on the ground that the testator does not see the witness sign, if the testator is otherwise present.

Place of signature

(3) A will is not invalid solely on the ground that the signature required by paragraph (1)(a) is not at the end of the will, if it appears that the testator intended by the signature to give effect to the will. S.Nu. 2005,c.6,s.3.

"Own writing"

5.1. (1) In this section, "own writing" means handwriting, footwriting, mouthwriting or writing of a similar kind.

Formalities of execution of will in testator's own writing

(2) A will that is wholly in the testator's own writing and signed by the testator is validly made without meeting the requirements set out in paragraphs 5(1)(b) and (c).

Will partly in own writing and partly in other written form

(3) A will that is partly in the testator's own writing and partly in printed, typewritten or other written form is validly made without meeting the requirements set out in paragraphs 5(1)(b) and (c) if

- (a) it appears that the testator intended to incorporate the printed, typewritten or other words; and
 - (b) the will is signed by the testator.
- S.Nu. 2005,c.6,s.3.

Wills by member of Canadian Forces and others

6. (1) A member of the Canadian Forces placed on active service pursuant to the *National Defence Act* (Canada), or a member of any other naval, land or air force while on active service, or a mariner or a sailor when at sea or in the course of a voyage, may make a will by a writing signed by him or her or by some other person in his or her presence and by his or her direction without any further formality or any requirement as to the presence of or attestation or signature by a witness.

Certificate

(2) For the purpose of this section, a certificate signed by or on behalf of an officer purporting to have custody of the records of the force in which a person was serving at the time the will was made setting out that the person was on active service at that time, is, in the absence of evidence to the contrary, proof of that fact.

Where certificate not available

(3) For the purpose of this section, where a certificate described in subsection (2) is not available, a member of a naval, land or air force shall be deemed to be on active service after he or she has taken steps under the orders of a superior officer preparatory to serving with or being attached or seconded to a component of such a force that has been placed on active service.

7. Repealed, S.Nu. 2005,c.6,s.4.

Power to appointment

8. Every will made in accordance with this Act is, insofar as the execution and attestation of the will are concerned, a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will in exercise of the power shall be executed with some additional or other form of execution or solemnity.

Publication of will

9. A will made in accordance with this Act is not invalid by reason only of the fact that there is no further publication of the will.

Incompetency of witness

10. (1) A will is not invalid by reason only of the fact that a person who attests the execution of the will is at that time or becomes at any time afterwards incompetent as a witness to prove the execution of the will.

Where gift to attesting witness

(2) Where

- (a) a person attests the execution of a will, and
- (b) that person or his or her then spouse is by that will given a beneficial devise, legacy, estate, interest, gift or appointment, other than charges or directions for the payment of debts,

that person is competent as a witness to prove the execution of the will or the validity or invalidity of the will, but, unless it is a will that is sufficiently attested without the attestation of that person or is one in which no attestation is necessary, the devise, legacy, estate, interest, gift or appointment is void so far only as concerns that person or the spouse of that person or persons claiming under either of them.

Creditor as witness

(3) Where by a will any real or personal property is charged with debt and a creditor or spouse of the creditor whose debt is so charged attests the execution of the will

- (a) the charging provision is not by reason only of that attestation invalid; and
- (b) the person so attesting is, notwithstanding the charge, competent as a witness to prove the execution of the will or the validity or invalidity of the will.

Executor as witness

(4) No person is, by reason only of being an executor of a will, incompetent as a witness to prove the execution of the will or the validity or invalidity of the will.

REVOCATION

Change of circumstances

11. (1) Alteration in circumstances since the making of a will does not in itself raise any presumption of an intention to revoke the will.

Revocation in general

- (2) No will or any part of a will is revoked otherwise than by
- (a) marriage as provided in subsection (3);
 - (b) another will executed in accordance with this Act;
 - (c) a writing declaring an intention to revoke the will or a part of the will and executed in accordance with the provisions of this Act respecting the execution of a will; or
 - (d) burning, tearing or otherwise destroying the will by the testator or by some person in the presence and by the direction of the testator with the intention of revoking it.

Revocation by marriage

(3) Subject to an order made under subsection (4), a will is revoked by marriage of the testator after it is made, except where

- (a) it is declared in the will that it is made in contemplation of that marriage; or
- (b) the will is made in exercise of a power of appointment and the real or personal property appointed by that means would not, in default of the appointment, pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if the testator died intestate.

Evidence will made in contemplation of marriage

(4) A court of competent jurisdiction may order that a will was not revoked by the marriage of the testator if it is satisfied on clear and convincing evidence that the testator made the will in contemplation of the marriage. S.Nu. 2005,c.6,s.5.

ALTERATIONS

Alterations

12. (1) No obliteration, interlineation, cancellation by drawing lines across a will or any part of a will or other alteration made in a will after its execution is valid or has any effect, except insofar as the words or effect of the will before the alteration are not apparent or cannot be ascertained, unless the alteration is executed in accordance with the provisions of this Act respecting the execution of a will.

Execution of alterations

(2) For the purposes of subsection (1), the will with the alteration as part of the will shall be held to be duly executed if the signatures or written initials of the testator and of the witnesses subscribing to the alteration are made in the margin or in some part of the will opposite or near to the alteration or at the foot, end of or opposite to a memorandum referring to the alteration and writing in some other part of the will or in a codicil to the will.

REVIVAL

Revival

13. (1) A will or any part of a will that has been in any manner revoked shall not be revived otherwise than by its re-execution or by a codicil showing an intention to revive it and executed in accordance with the provisions of this Act respecting the execution of a will.

Effect where will first partly and then wholly revoked

(2) Unless an intention to the contrary is shown, where a will that has been first partly revoked and then afterwards wholly revoked is subsequently revived, the revival does not extend to that part that was revoked before the will being wholly revoked.

DISPENSING WITH FORMAL REQUIREMENTS

Court may dispense with formal requirements

13.1. (1) If a document or writing on a document was not made in accordance with all or any of the formalities set out in section 5, 5.1, 6, paragraph 11(2)(c) or section 12 or 13, a court of competent jurisdiction may order that the document or writing is valid as

- (a) a will of a deceased person; or
- (b) the revocation, alteration or revival of a will of a deceased person.

Evidence required

(2) In order to exercise the authority under subsection (1), the court must be satisfied on clear and convincing evidence that the deceased person intended the document or writing to constitute a will of the deceased person or the revocation, alteration or revival of a will of the person, as the case may be.

Application

(3) This section applies to a document or writing for which probate had not been granted before this section comes into force. S.Nu. 2005,c.6,s.6.

DEVICES AND BEQUESTS

Effect of subsequent conveyance or other Act

14. (1) A conveyance or other act relating to real or personal property comprised in a devise or bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of the death of the testator.

Right or chose in action

(2) Except where a contrary intention appears in the will, where a testator at the time of his or her death has a right, chose in action or equitable estate or interest that was created by a contract, conveyance or other act relating to real or personal property comprised in a devise or bequest made or done after the making of a will, the devisee or

donee of that real or personal property takes the right, chose in action or equitable estate or interest of the testator.

Proceeds of sale of property

(3) Except where a contrary intention appears by the will, where the testator has bequeathed proceeds of the sale of property and the proceeds are received by the testator before the death of the testator, the bequest is not adeemed by commingling the proceeds with the funds of the testator if the proceeds are traced into those funds.

When will speaks and takes effect

15. Unless a contrary intention appears by it, every will shall, with reference to the real and personal property comprised in it, be construed to speak and take effect as if it has been executed immediately before the death of the testator.

Lapsed and void gifts

16. Unless a contrary intention appears by the will, any real or personal property or interest in the will that

- (a) is comprised or intended to be comprised in any devise or bequest in the will, and
- (b) fails or becomes void by reason of
 - (i) the death, within the lifetime of the testator, of the person to whom it is devised or bequeathed, or
 - (ii) the gift being contrary to law or otherwise incapable of taking effect,

shall be included in the residuary estate, if any, contained in the will.

Inclusion of leaseholds

17. Except where a contrary intention appears in the will, where a testator devises

- (a) his or her land,
- (b) his or her land in a place mentioned in the will or in the occupation of a person mentioned in the will,
- (c) land described in a general manner, or
- (d) land described in a manner that would include a leasehold estate if the testator had no freehold estate that could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates.

Appointment by general gift

18. Unless a contrary intention appears by the will, a devise or bequest of the real or personal property of the testator described in a general manner or as being in any particular place or in the occupation of any particular person mentioned in his or her will shall be construed to include the real or personal property of the testator or any of it to which the description extends, as the case may be, over which the testator may have power to appoint in any manner the testator may think proper and shall operate as an execution of that power.

Where no words of limitation

19. (1) Unless a contrary intention appears by the will, where real property is devised to any person without words of limitation, the devise shall be construed to pass the fee simple or other whole estate that the testator had power to dispose of by will in the real property.

Estate tail

(2) Any devise or limitation that would before April 1, 1955, have created an estate tail, shall be construed to pass the fee simple or greatest estate the testator had in the land.

Devise to heirs

(3) Unless a contrary intention appears by the will, real property that is devised to the heir or heirs of the testator or of any other person shall pass to the person or persons to whom the beneficial interest in the real property would go in the case of intestacy.

Meaning of "die without issue" and similar expressions

20. In any devise or bequest of real or personal property, the words "die without issue" or "have no issue" or any other words that import a want or failure of issue of any person shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of that person and not an indefinite failure of his or her issue, subject to any contrary intention appearing by the will or to any requirements as to age or otherwise contained in the will for obtaining a vested estate.

Gifts to issue of persons who predecease testator

21. Unless a contrary intention appears by the will, where a person

- (a) is a child, other issue or the brother or sister of a testator to whom, either as an individual or as a member of a class, real or personal property is devised or bequeathed by the testator for an estate or interest not determinable at or before the death of that person,
- (b) dies in the lifetime of the testator, either before or after the making of the will, and
- (c) leaves issue who are living at the time of the death of the testator,

the devise or bequest to that person shall not lapse but shall take effect as if it had been made directly to the persons among whom and in the shares in which the estate of the deceased person would have been divisible if he or she had died intestate and without debts immediately after the death of the testator.

Rights of posthumous child

22. Where no provision is made in the will of a father for his child born after his death

- (a) the child shall have the same interest in the estate of his father as if the father had died intestate; and

- (b) in providing for the share of that child, the devise and bequests in the will shall abate proportionately and the share of the child shall be affixed and approved by the Court so as to affect as little as possible the disposition the father made of his property by his will. S.Nu. 2010,c.3,s.21(2).

Executor as trustee of residue

23. (1) Where a person dies after March 31, 1955, having by will appointed a person as executor of the will, the executor shall be deemed to be a trustee of any residue not expressly disposed of for the person or persons, if any, who would be entitled to that residue in the event of intestacy, unless it appears by the will that the executor was intended to take the residue beneficially.

Where no person entitled to residue

(2) Nothing in this section affects or prejudices any rights to which an executor would have been entitled, if this Act had not been enacted, in cases where there is no person who would be entitled to the residue.

Unlimited devise to trustee

(3) Where

- (a) real property is devised to a trustee without any express limitation of the estate to be taken by the trustee, and
- (b) the beneficial interest in the real property or in the surplus rents or profits of the real property is not given to any person for life or, if given to a person for life, the purposes of the trust may continue beyond his or her life,

the devise shall be construed to vest in the trustee the fee simple or whole legal estate that the testator had power to dispose of by will and not an estate determinable when the purposes of the trust are satisfied.

Devise to trustees other than for a term

(4) A devise of real property to a trustee or executor shall be construed to pass the fee simple or whole estate or interest that the testator had power to dispose of by will unless a definite term of years absolute or determinable or an estate of freehold is by the devise given to the trustee or executor expressly or by implication.

Definition of "mortgage"

24. (1) In this section, "mortgage" includes an equitable mortgage and any charge whether equitable, statutory or of any other nature and any lien or claim on freehold or leasehold property for unpaid purchase money.

Primary liability of mortgaged land

(2) Where a testator has not by will, deed or other document signified a contrary intention and dies possessed of or entitled to or under a general power of appointment by his or her will disposes of any interest in freehold or leasehold property that at the time of his or her death is subject to a mortgage, that interest, as between the different persons

claiming through the testator, is primarily liable for the payment or satisfaction of the mortgage debt, and every part of that interest, according to its value, shall bear a proportionate part of the mortgage debt on the whole of the mortgage debt.

General charge of debts

- (3) A contrary intention shall not be deemed to be signified by
- (a) a general direction for the payment of any or all the debts of the testator out of his or her personal estate or out of his or her residuary estate either real or personal or both; or
 - (b) a charge of debts on an estate referred to in paragraph (a), unless there is further signification by words expressly or impliedly referring to all or some part of the mortgage debt.

Rights of mortgagee

(4) Nothing in this section affects any right of a person who is entitled to a mortgage debt to obtain payment or satisfaction of the mortgage debt out of the other assets of the deceased or otherwise.

CONFLICT OF LAWS

Law governing immovable property

25. The manner of making, the validity and the effect of a will, so far as it relates to immovable property, is governed by the law of the place where the property is situate.

Law governing movable property

26. (1) Subject to subsections (2) and (3), the manner of making, the validity and the effect of a will, so far as it relates to movable property, is governed by the law of the place where the testator was domiciled at the time of his or her death.

Will of movable property made in Nunavut

(2) A will made in Nunavut, whatever was the domicile of the testator at the time of the making of the will or at the time of his or her death, shall, so far as it relates to movable property, be held to be well made and be admissible to probate under the laws in force in Nunavut if it is made in accordance with this Act or in accordance with the law, in force at the time of the making of the will,

- (a) of the place where the testator was domiciled when the will was made; or
- (b) of the place where the testator had his or her domicile or origin.

Will of moveable property made outside Nunavut

(3) A will made outside Nunavut, whatever was the domicile of the testator at the time of making the will or at the time of his or her death, shall, so far as it relates to movable property, be held to be well made and be admissible to probate under the laws in force in Nunavut if it is made in accordance with this Act or in accordance with the law, in force at the time of the making of the will,

- (a) of the place where the testator was domiciled when the will was made;
- (b) of the place where the will was made; or
- (c) of the place where the testator had his or her domicile or origin.
S.Nu. 2005,c.6,s.7.

Change of domicile

27. A subsequent change of domicile of a person who has made a will shall not, in itself, effect revocation of a will or invalidate it or alter its construction.