



WILLS AND ESTATES

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“Someday” Isn’t Soon Enough When It Comes to Estate Planning

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Essential Estate Planning Documents

1. Personal Directive or “Living Will”
2. Power of Attorney (POA)
3. Last Will and Testament



Last Will & Testament – Background & Overview

What is a Will?

- A Will is a written and signed statement, made by an individual, which provides for the disposition of their property (or “**Estate**”) when they die
- The person who makes the will is referred to as the “**Testator**” or “**Testatrix**”



Last Will and Testament

What is the purpose of having a Will?

- So that **YOU** decide how your property will be distributed after you die, not the government.



Last Will & Testament – Why Bother?

Because,

- A valid Will allows you to ensure that the disposition of your property and estate are in accords with your wishes
- This can make things easier on your family and friends



Last Will & Testament – Why Bother?

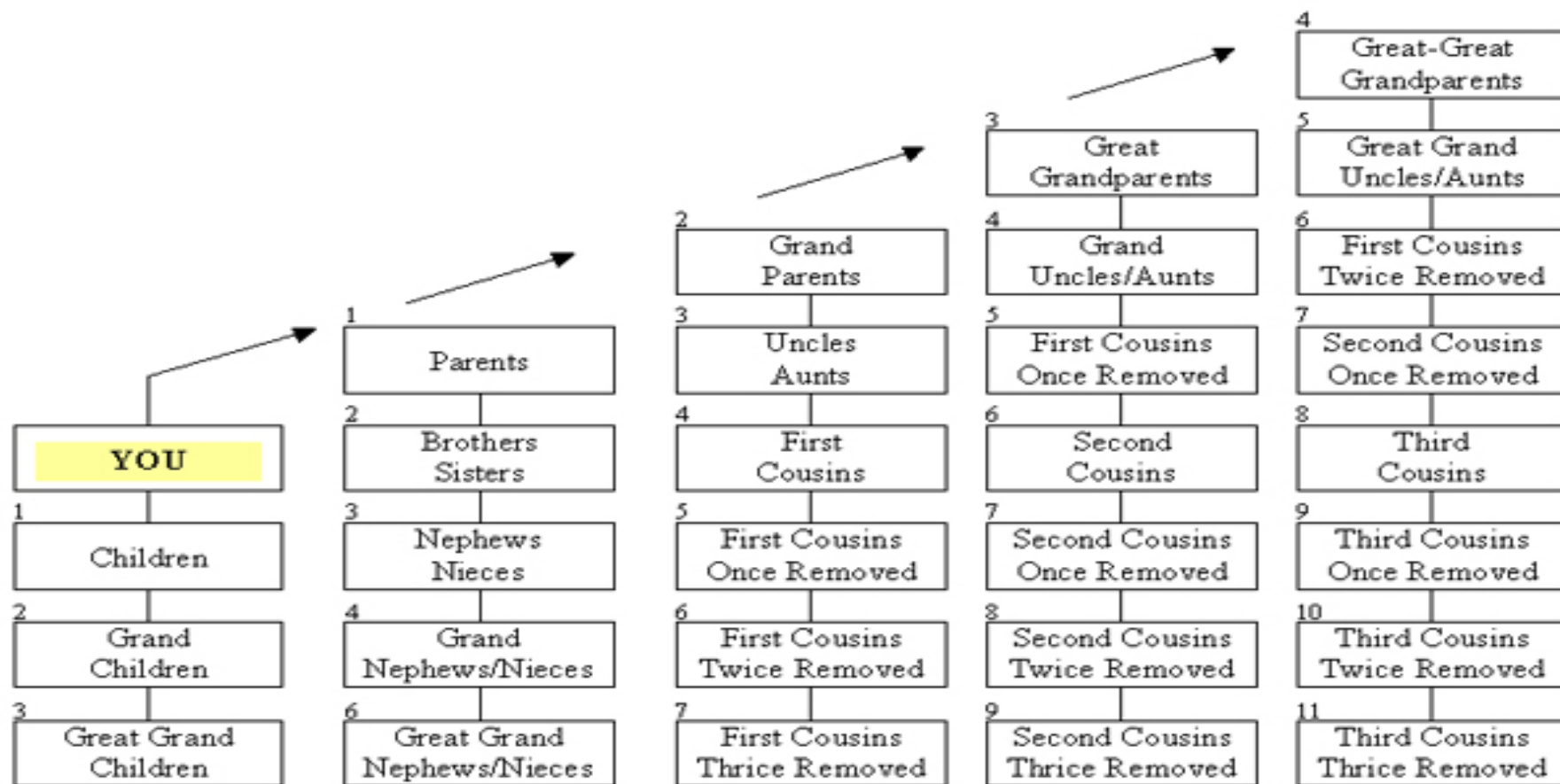
Because,

- If you don't have a valid Will the Government will make decisions about your property and estate for you

... Do you need any more reason to make a Will than that?



Last Will & Testament – Rules of Consanguinity





Last Will & Testament – Background & Overview

Types of Wills Recognized in the NWT:

- Solemn Will
 - Must adhere to the *Wills Act*, 1988*

- Holographic Will
 - Written wholly in handwriting of testator and dated and signed by testator

- Will under the *Indian Act**
 - Applicable to reserve lands where band does not have a land code in place



Last Will and Testament - Key Terms

- **Attesting Witness:** the persons who are present at the time a Will is signed and affix their signature indicating they witnessed the signature of the testator/testatrix
- **Bequest:** property or gift given by a Will
- **Codicil:** is a document that amends your original will



Last Will and Testament - Key Terms

- **Executor:** the personal representative appointed by the Testator/Testatrix to administer their estate in accords with the Will
- **Intestate:** to die without a valid Will
- **Probate:** a legal process by which a Will is reviewed to determine its validity
- **Trustee:** an individual named in the Will to administer any Trusts created by the Will*



Preparing a Will

- A Will Planning Questionnaire can assist you in gathering all required information and directions for making a valid Will
- Required Information Includes:
 - a summary of assets, liabilities and description and location
 - names, ages of children or dependents



Preparing a Will

- Required Direction Includes:
 - Executor/Personal Representative
 - Who will be the personal estate manager?
 - Named Beneficiary or Beneficiaries
 - Guardian/Guardianship if dependents involved



Selecting a Personal Representative

- It is recommended that the person live in the NWT and not have a conflict of interest
- They should be comfortable with financial matters, possess sound judgment and a positive relationship with the named beneficiaries
- You should seek their consent prior to naming them in your Will



Mechanics of Creating a Will

Key considerations in drafting a Will include:

- Any specific gifts of certain property to named individuals
- Whether any beneficiaries are minors and, if so, whether any trust or special conditions are to be created



Requirements for Valid Will – Capacity and Execution

To be a Valid Will in the NWT:

- Testamentary capacity of the Testator or Testatrix must be in place
 - Testator must be the age of majority
 - All formalities must be adhered to

...OK, but what does this mean?



To have Testamentary Capacity one must:

- Understand the nature and effect of a Will
- Recollect the nature and extent of their property/estate
- Remember the people that might expect to benefit under the Will
 - If applicable, understand the nature of the claims that may be made by such persons if they are excluded from the Will



Limits on Testamentary Freedom

Court May Find a Will Void if:

- Testator/Testatrix lacked the requisite mental capacity to make the Will at the time it was executed; or
- Testator/Testatrix was unduly influenced at the time of making their Will



Limits on Testamentary Freedom

Courts May Also Invalidate a Will if:

- The Will is not in accord with the statutory requirements of the *Dependents Relief Act*
- The Act provides that adequate provision must be made for any spouse and children under the age of 19



Capacity to Make a Will

Wills by minors are **not** valid in most circumstances

- The age of majority in the NWT is 19



Proper Formalities & Execution of a Will

To be a Valid Will it must:

- Be in writing
- Be signed and dated at the jurat – or at the end of the document – by the person making the Will
- Be signed by two witnesses to the testator's signature



Picking a Witness to a Will

- Preferably **not** any person who is a beneficiary, either directly or indirectly
 - While the interest of the witness will not serve to invalidate an otherwise valid Will, the interest conveyed to that person may be held invalid
- Similarly, while an executor may be a witness to the Will, if they are also a beneficiary, it is not recommended that they be a witness to its execution



I have a Valid Will, Now What?

- Store the original in a safe place that is known to your Personal Representative
- It is recommended that you compile an inventory of your assets and the up-to-date contact information of all beneficiaries named in your Will



Changing a Will

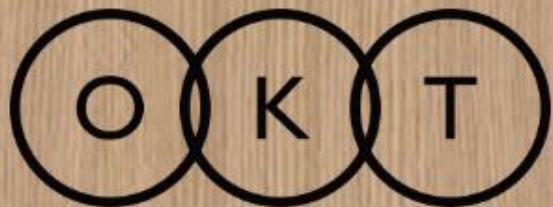
By way of:

1. Codicil
2. Revocation



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Questions?



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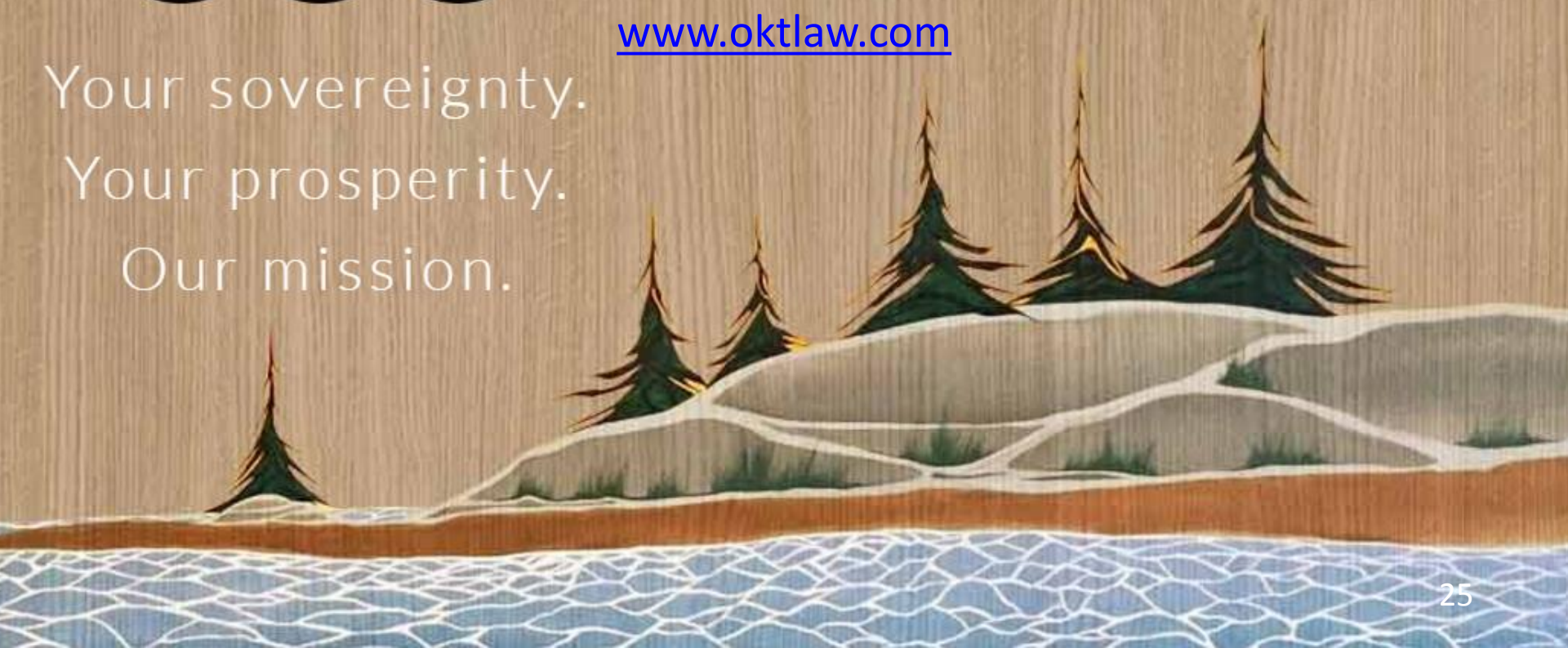
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Legislative References & Resources

Legislation

- [*Dependents Relief Act, 1988*](#)
- [*Intestate Succession Act, 1988*](#)
- [*Indian Act, 1985 \(s.42-50.1\)*](#)
 - [*Indian Estates Regulations*](#)
- [*Personal Directives Act, 2005*](#)
- [*Powers of Attorney Act, 2001*](#)
- [*Wills Act, 1988*](#)

NWT Policy Guides

- [*Personal Directives*](#)
- [*Power of Attorney in the NWT*](#)

[*Commissioner for Oaths*](#)
[*Notaries Public*](#)