



Wills Act **Amendments**

Information for the legal community

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

The *Act to Amend the Wills Act 2020* ("the Amendment") has received assent and will come into force on May 1, 2021. The Amendment makes several changes to the *Wills Act* which will affect how wills must be made and administered in Yukon. This information sheet provides a summary of the changes and how they will apply.

Overview of changes

The *Wills Act* will be amended in the following ways:

- Provisions will be added to the formal requirements for making a valid will;
- Sections requiring automatic revocation of a will when the testator marries will be repealed;
- Gifts and appointments to a former spouse will be automatically revoked, unless the will directs otherwise;
- Gifts that lapse or fail will be allocated according to a system of priorities;
- Courts will have powers to correct certain errors in a will;
- International Wills may be made and upheld in Yukon.

How and when the Amendment will apply

Aside from remedial provisions, the Amendment will only apply to wills made on or after May 1, 2021. A will made before May 1, 2021 will remain valid according to the version of the *Wills Act* in force at that time.

Wills and revocations executed on or after May 1, 2021 must comply with changes to the formal requirements. People who make a will after May 1, 2021 should also be aware of automatic changes to their will that could arise if they permanently separate from their married or common-law spouse.

Remedial provisions allowing the court to correct certain errors will apply to all wills, whether the will was made before or after the Amendment comes into force. The new process for distributing gifts that fail or lapse will also apply to all wills, regardless of the date the will was made.

Transitional provisions to note:

- A will that is re-executed or revived by a codicil is considered to have been made at the time at which it was originally executed.
- Requirements in the *Wills Act* involving spouses will follow the version of the Act that was in force on the date the will was executed. This includes provisions which invalidate gifts to spouses of witnesses or a person who signed the will on the testator's behalf, as well as any automatic changes that can apply if the testator marries or permanently separates from their spouse.

Changes to the formal requirements for making a valid will

Requirements for witnesses and people signing on the testator's behalf will change:

- Witnesses must be 19 years or older and have mental capacity to witness the execution of the will.
- A person who signs the will on behalf of the testator and at their direction may not also act as a witness.
- A person who signs the will on the testator's behalf, or their spouse, cannot receive gifts under the will.

Requirements for placement of signatures will change:

- A will will not be invalid if the signature is not at the end of the document, as long as it appears that the signature is meant to give effect to the will.
- Writing underneath the signature will be presumed not to be part of the testator's instructions.
- Gifts or directions added to a will after it has been signed are not effective. In order to add gifts or directions, testators must comply with the requirements for alterations, or make a new will.

Changes of the testator's spousal status and their effect on the will

No automatic revocation of wills due to marriage:

- Provisions in the Act directing that a will is automatically revoked if the testator marries will be repealed.
- If a will made before May 1, 2021 is cancelled because of the marriage of the testator (following rules in the current version of the Act), that will is not effective again, even though revocation upon marriage is repealed.

Gifts and appointments to former spouses will be revoked, unless the will directs otherwise:

- Unless the will gives directions otherwise, any gifts or appointments going to a former spouse will be revoked if the relationship is terminated. The rest of the will remains in place and will be construed as if the former spouse died before the testator.
- This applies to both married and common-law spouses.
- A relationship will be considered terminated if:
 - there is a judgment of divorce, or
 - the marriage is declared invalid, or
 - at the time the testator died, the couple had separated and had been living apart for 12 months or longer with no prospect of reconciling.
- However, these situations will not qualify as a termination if the testator and the person reconciled and are living as spouses again (married or common-law) at the point when the testator dies.
- If a person wants to benefit their former spouse they can put specific instructions in their will to do so. They would have to explain that the instructions apply even after a separation or divorce.

Transitional provisions to note:

- Wills made before May 1, 2021 are not changed by a separation or divorce, so gifts to a former spouse will continue in those cases.
- If a will was cancelled before the Amendment comes into force and is revived after coming into force, gifts to the former spouse are not revoked.

Gifts that fail or lapse

The Amendment will replace current provisions for failed gifts with priorities for distribution of gifts that lapse or fail for any reason.

- Under this process, failed gifts would go to any alternate beneficiaries named in the will. If there are none, and if the intended beneficiary was a child or sibling of the testator, then it would go to that person's children.
- In situations where these directions do not apply, then the gift follows any instructions in the will for the residue of the estate.
- If there are no instructions for the residue of the estate, the gift will follow intestate succession rules in the *Estate Administration Act*.
- The main difference between these provisions and those in the current version of the Act is that under the current provisions gifts that fail go straight into the residue of the estate.
- These provisions will apply to all wills, regardless of the date the will was executed.

Court Powers

The Amendment will allow errors in a will to be corrected by the court where there is clear evidence that the correction fulfills the testator's wishes. These new powers will ensure that a document which reflects the deliberate and final intentions of a deceased person is not set aside because of failure to comply with a formality.

Validation of non-compliant wills, alterations, and revivals

- On application, the Supreme Court may order that a writing is valid as a will or a revocation of a will, despite not meeting all of the formal requirements of the Act.

- On application, the Supreme Court may order that a marking, writing, or obliteration which does not meet the formal requirements of an alteration or revival is valid as an alteration or revival of a will.
- The Court must be satisfied on clear and convincing evidence that granting the order reflects the testamentary intentions of the testator.

Rectification of errors and restoration of original words

- On application, the Court may order that a will be rectified by adding or deleting characters, words or provisions in a will.
- To grant the order the Court must be satisfied on clear and convincing evidence that that the will does not reflect the testator's intentions due to an accidental slip or omission, or a misunderstanding or failure to give effect to the testator's instructions by a person who prepared the will.
- This applies to omission of the testator's signature only if the Court is satisfied on clear and convincing evidence that the testator intended to give effect to the document as their will and intended to sign it but did not do so only because of pure mistake or inadvertence.
- The Court may also order that the original words in a will be restored or determined by any means appropriate if a writing, marking, or obliteration which is not a valid alteration renders part of a will illegible.

Gifts to witnesses and people who sign the will on the testator's behalf can be saved

- On application, the Court may allow gifts to witnesses or people signing the will on the testator's behalf if it is satisfied that there was no undue influence and the gift reflects the testator's wishes. These gifts would otherwise be automatically voided by the Act [s.9(2)(b) and s.9.01.]

Timing of applications

- The deadline to apply for any of these orders is within six months of the grant of probate. The Court may allow an extension if appropriate.

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 visa versa. If certain requirements are met, a 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.

According to the Convention, in order for a will to be recognized internationally, the document:

- Can be written in any language;
- Must be signed and dated in the presence of two witnesses and a lawyer; and
- Must have an attached certificate, signed by a lawyer, confirming that the necessary requirements and procedures have been met.

Among others, 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 states in the United States of America (including Alaska).