

# ONTARIO RESIDENTS, QUÉBEC COTTAGES.

Why should you consider preparing a Will for your property in Québec?



As privileged as we are to live and work in Canada's national capital region, we are often faced with legal situations involving both civil and common law. Many people live freely in both provinces and often don't realize all of the legal consequences that could occur when they cross the bridge into another province. For example, when an Ontario resident owns a cottage in Québec.

Below you will find a few of the main reasons why you should prepare a distinct Will, a "Québec Will", for your Québec property and/or other assets.

## TRANSFER OF THE PROPERTY

Concepts such as "tenants in common", "joint tenancy", and "right of survivorship" do not exist under Québec civil law. As a result, transferring your assets in Québec to your heirs may be a more complex task than you anticipate.

In Ontario, there is a concept known as "joint tenancy". When one of the tenants dies, the survivor receives title by operation of law. In other words, automatically, as soon as one of the "tenants" dies.

In Québec, no such concept exists. When one of the co-owners dies, his share in the property is transferred according to his Will, and, in the absence of a Will, according to the law. The transfer is not done automatically. The shares of the deceased must be transferred by means of a document called a Declaration of Transmission, which is then registered on title.

Hence, having a Will ensures that your shares will be transferred to the people that you want, according to your last wishes.

## PROBATING YOUR "ONTARIO WILL" IN QUÉBEC

It is possible that your "Ontario Will" may have to be verified by the Québec Superior Court before your property can be transferred to your heirs or liquidator (estate trustee). This causes extra delays and legal fees that can be avoided.

Wills that are prepared by Ontario's lawyers are signed before two witnesses and usually accompanied by an affidavit of someone who attests to the testator's signature. In Québec, this is a valid form of Will known as a Will signed in the presence of witnesses.

Pursuant to section 772 of the Civil Code of Québec, a Will signed in the presence of witnesses must be "probated". **Probate**, under civil law, is the process of having a Will "verified" before the court in order to ensure its validity. It is not a tax on the value of the estate. The process which takes place in front of a judge, takes, on average, 1 to 3 months to complete, and usually represents a total cost of \$2,000.00 in court, bailiff, and legal fees.

**The probate process can be avoided entirely by preparing a Québec Will.** Not only will you save on the overall time to settle the estate, but you will save the costly process of having your Will probated in Québec. **The cost of a Québec Will is much lower than having your Ontario Will probated in Québec.**

In sum, having a Québec Will prepared by a notary can be very beneficial, because it is cost effective and it ensures that no probate will ever be needed in the province of Québec. The time and money required to have your Québec Will prepared is next to nothing when compared to the possible savings for the estate. Preparing a Québec Will ensures that your loved ones can spend less time settling your estate and more time enjoying the property that you left them.

## 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 balance sheet, which is a list of your property, investments and debts in Québec
- Any other information requested by your notary

### FOOD FOR THOUGHT

- Whom do you want to be your heirs and in what proportion?
- How to share the inheritance if one of the heirs dies or cannot receive their share?
- Who will settle your estate in Québec? Do you wish this person to be paid? Who will replace them if it becomes necessary to do so?
- Any other questions raised by your notary.

**WE ARE DEDICATED TO OFFERING OUR EXPERTISE TO HELP GUIDE OUR CLIENTS IN AVOIDING ANY POSSIBLE PITFALLS AND IN MAKING INFORMED DECISIONS.**

**For more information on preparing a “Québec Will”, make an appointment with one of our expert notaries today.**



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Note that preparing a Québec Will may not be the only solution available for an Ontario resident who owns property in Québec. Please contact us and one of our expert notaries will be delighted to help you determine if a Québec Will is right for you or if other solutions are available.

Note that not all Ontario Wills need to be probated in Québec. For more information, please contact us and one of our expert notaries will be delighted to help you determine if a Québec Will is right for you. This document has been prepared to help Ontario residents who own property in Québec better understand the estate settlement process in Québec. However, it does not apply to every situation. This document is not intended as a legal opinion, situations may vary and you should always consult a professional.