

Estate Planning 101



**Personal
Directive**

**Enduring
Power of
Attorney**

Will

About CPLEA

The Centre for Public Legal Education Alberta, also known as CPLEA, is a not-for-profit, non-government organization committed to making the law understandable for Albertans. We offer **free** legal information and learning resources in plain language.

Our resources increase awareness and understanding of the law and empower Albertans to take action and, ultimately, gain better access to justice.

Visit www.cplea.ca to learn more about the laws that impact your life.

CPLEA is the operating name for the Legal Resource Centre of Alberta Ltd.

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Estate Planning 101

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Introduction

This booklet summarizes key information about estate planning for when you can no longer make decisions for yourself and for when you pass away. The law can be complicated but understanding your options and making plans don't have to be.

Don't miss these related CPLEA resources!

- Make a Will Checklist
- Make a Personal Directive Checklist
- Make an Enduring Power of Attorney Checklist
- Capacity
- Be an Attorney
- Be an Agent
- Be a Personal Representative
- Adult Guardianship and Trusteeship Act (AGTA)
- Medical Assistance in Dying (MAID)
- Getting a Grant of Probate or Administration
- Elder Abuse
- Beneficiaries: Dying without a Will

Find the above resources as well as more information about planning ahead in different formats, including info sheets, FAQs, videos and blog posts.



Get started at cplea.ca/planning-for-future-care/
and cplea.ca/willsandestates/

This guide replaces and brings together information formerly found in the following CPLEA documents:

- Making a Will
- Making a Personal Directive
- Making an Enduring Power of Attorney
- General Powers of Attorney
- Planning for Incapacity
- Planning Your Own Funeral

Get Started

What is estate planning?

Estate planning is the process of organizing how decision-makers you choose will manage your assets and affairs if you lose capacity and when you pass away.



A complete estate plan includes three important legal documents:

1. Personal Directive

Learn more about **Personal Directives** on page 10.

2. Enduring Power of Attorney (EPA)

Learn more about **EPAs** on page 11.

3. Will

Learn more about **Wills** on page 22.



A Personal Directive and EPA are used when you are still alive but do not have capacity, meaning you can no longer make decisions for yourself. In your Personal Directive, you name an agent to make personal decisions for you. In your EPA, you name an attorney to make financial decisions for you. Your attorney and agent can be the same person or different people.

A Will sets out your wishes for your property after you pass away.

Every adult 18 years and older should have an estate plan. It's not just for the elderly and the wealthy.

Why estate planning matters

Let's say you get injured tomorrow. You may think your spouse, partner, adult child or other family member can automatically make decisions for you while you're in the hospital. This is **not true**.

In a medical emergency, a healthcare provider can provide emergency medical services if you do not have capacity and do not have a Personal Directive.

Outside of emergency situations, no one can make personal or financial decisions for you unless:

- you have a Personal Directive and Enduring Power of Attorney, **or**
- someone gets a guardianship order and trusteeship order from the court allowing them to make decisions for you.

Now, let's say you die tomorrow. If you die without a Will in Alberta, you die "intestate". Two problems come up:

1. You haven't named someone, called a personal representative, to deal with your estate.
2. You haven't left a written record of who you wanted to inherit your property.

If you don't have a Will, the law in Alberta lists people in order of priority who can apply to court to become your personal representative. The law also says who inherits your estate.

To sum it up, estate planning is important for several reasons:

- You pick a decision-maker and set out your wishes for them to carry out on your behalf.
- You can reduce taxes and probate fees.
- You protect your loved ones from uncertainty and unnecessary legal processes.

TAXES

There are ways you can structure your finances to minimize taxes for your estate and beneficiaries when you die. Talk to an accountant or lawyer for more information.

Talk to your loved ones

Talking to your loved ones about your wishes and decisions is an important part of estate planning. Your loved ones may include family or close friends.

While talking about losing capacity and death are not always easy, these conversations can bring unity, certainty and clarity. Your loved ones will know what their roles are in your future care and what you wish to happen if you lose capacity and once you pass away.

It's up to you whether you share the contents of your Personal Directive, EPA and Will with those who are **not** your decision makers. But it is a good idea to let your loved ones know that you have made plans for if you lose capacity and for when you eventually pass away. It's also a good idea to let them know who you've named to act as your agent, attorney and personal representative.

Not sure how to start the conversation? There are a few resources available.

Advance care planning is the process of thinking about and documenting your wishes for when you can no longer make your own personal decisions, including your medical care and where you will live. This process includes making a Personal Directive and completing a **Goals of Care Designation**.

Advance Care Planning Canada has tool kits and guides to help you and your loved ones talk and make decisions about advance care planning.



Learn more from Advance Care Planning Canada:
www.advancecareplanning.ca/resources/tool-kits-and-guides/

Covenant Health's Compassionate Alberta project has tools to help you talk about death. You can join a death café near you to chat with others about death and dying. They also offer free and for-a-fee conversation starters.



Learn more from Compassionate Alberta:
covenanthealth.ca/about/centres-and-institutes/palliative-institute/compassionate-alberta/talk-about-death-and-dying

Capacity

What is capacity?

Capacity is the ability to understand and appreciate the nature of your decisions.

While you have capacity, you can make your own decisions. You can also appoint others to make decisions for you in case you lose capacity. The law presumes you have capacity until a medical professional or the court decides you don't.

If you lose capacity, no one has a legal right to make decisions for you unless:

- you have a valid legal document naming a decision-maker **or**
- someone has a court order allowing them to make decisions for you.

When it comes to making legal documents, capacity is black or white – either you are capable, or you are not. You must have capacity to make a Personal Directive, Enduring Power of Attorney and Will.

In day-to-day life, capacity is measured on a spectrum. This means there are a range of possibilities, from having full capacity to some capacity to no capacity. You may have capacity to make decisions about some things but not about other things.

→ **EXAMPLE** You may have capacity to take a crafting class but not capacity to decide where to invest your money.

Your capacity can change suddenly or over time. You may lose capacity quickly if you are in an accident that leaves you in a coma, in which case you cannot make any decisions for yourself. Or you may lose capacity over time if you are living with dementia.

Your capacity can also change throughout the day or day by day. Maybe you're more alert in the mornings but less alert in the evenings. On some days, you may need some help to make some decisions. Other days, you may not be able to make any decisions.

Personal vs. financial decisions

Capacity matters when it comes to making two types of decisions: personal and financial.

Personal decisions are any non-financial decisions. They include decisions about:

- healthcare
- where and with whom you'll live
- who you'll associate with
- your social activities

- your education and training
- where you'll work
- any legal proceedings not about financial issues

Financial decisions are about buying, selling, managing or protecting property. Simply put, they're decisions about anything you can own, including your home, money and belongings.

Assessing capacity

Different professionals may assess your capacity for different reasons.

To sign legal documents

A lawyer can decide whether you have capacity to sign legal documents. They may ask questions to make sure you understand what you're signing. They only decide on your capacity at that very moment. Lawyers cannot sign documents saying you have, or have lost, capacity.

To activate a Personal Directive

You can name someone in your Personal Directive to decide when you've lost capacity, after they consult with a doctor or psychologist. If you do not name someone, then a doctor or psychologist, along with another service provider, must assess you and complete a Declaration of Incapacity form.

To activate an Enduring Power of Attorney

You can decide when your Enduring Power of Attorney comes into effect, such as on a specific date or event. If your EPA says it comes into effect when you lose capacity, you can name someone to decide when you've lost capacity. If you do not name someone, then two doctors must assess you and put in writing that you've lost capacity.

To get a co-decision-making, guardianship, or trusteeship order

A capacity assessor must interview you and complete a **Capacity Assessment Report**. The Alberta government certifies capacity assessors. They must follow a standard of conduct and undergo training and continuing education. All doctors and psychologists are capacity assessors. Registered nurses, registered psychiatric and deficiency nurses, occupational therapists and social workers can apply to be capacity assessors.



Learn more about co-decision-making, guardianship and trusteeship orders in CPLEA's **Adult Guardianship and Trusteeship Act** booklet:
www.cplea.ca/AdultGuardianshipAndTrusteeAct.pdf

Make a Personal Directive and Enduring Power of Attorney

What is a Personal Directive?

A Personal Directive is a legal document used while you are still alive but cannot make decisions for yourself. In it, you name an **agent** to make personal decisions for you if you lose capacity. Some people refer to it as a "living will".

Learn more about **capacity and personal decisions** on page 8.

A Personal Directive **comes into effect** (starts) in one of two ways when you lose capacity:

- You can name a person in your Personal Directive (your agent or someone else) who must talk with a doctor or psychologist to decide whether you've lost capacity. To declare you've lost capacity, the person and the doctor/psychologist fill out the following form:
Declaration of Incapacity to Make Decisions about a Personal Matter (Section 9(2)(a)) - Schedule 2
- If you do **not** name a person in your Personal Directive to declare whether you have capacity or if that person doesn't want to decide, two service providers (one must be a doctor or psychologist) must decide whether you've lost capacity. To declare you've lost capacity, both service providers fill out the following form:
Declaration of Incapacity to Make Decisions about a Personal Matter (Section 9(2)(b)) - Schedule 3

Your Personal Directive **ends** when one of the following happens:

- you completely regain capacity
- you die
- you revoke (cancel) it while you have capacity
- a court decides your Personal Directive is no longer in effect
- your agent dies, quits or loses capacity and your Personal Directive doesn't name an alternate agent to take over

If you **regain capacity**, your agent and a healthcare provider can decide you're able to make your own decisions again. They fill out a **Declaration of Regained Capacity** form.

Alberta's *Personal Directives Act* sets out the law for Personal Directives and agents.



Find the **declaration forms** on the Office of the Public Guardian and Trustee (OPGT) website: www.alberta.ca/office-public-guardian-trustee-forms

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) is a legal document used while you are still alive but cannot make decisions for yourself. In it, you name an **attorney** to make financial decisions for you if you lose capacity.

Learn more about **capacity and financial decisions** on page 8.

Your EPA must say what triggers it to **come into effect** (start). It may be a date (such as when you turn a certain age) or event (such as when you lose capacity). It is common to say your EPA comes into effect when you lose capacity.

- You can name a person in your EPA (your attorney or someone else) who can declare in writing that the triggering event has happened and that your EPA is in effect.
- If your EPA says it comes into effect when you lose capacity **and** you don't name a person in your EPA to decide when that happens (or that person doesn't want to decide), then two doctors must declare in writing that you've lost capacity to bring your EPA into effect.

Your EPA **ends** when one of the following happens:

- you die
- you revoke (cancel) it while you have capacity
- a court decides your EPA is no longer in effect
- a court grants a trusteeship order that names a trustee to make financial decisions for you
- your attorney dies, quits or loses capacity and your EPA doesn't name an alternate attorney to take over

Once your attorney starts to act, it is very hard for them to **quit** being your attorney. They must apply to the court to renounce their appointment (step down) as your attorney. If your EPA names an alternate attorney, the court can allow them to start acting. If your EPA doesn't name an alternate attorney, the court can cancel your EPA and direct someone to apply for a trusteeship order.

Alberta's *Powers of Attorney Act* sets out the law for Enduring Powers of Attorney and attorneys. The *Trustee Act* sets out rules for attorneys when they're investing money.



Learn more about trusteeship orders in CPLEA's **Adult Guardianship and Trusteeship Act** booklet: www.cplea.ca/AdultGuardianshipAndTrusteeAct.pdf

GENERAL POWERS OF ATTORNEY

You can make a **General Power of Attorney** that allows your attorney to make financial decisions while you still have capacity. A General Power of Attorney can give your attorney general powers or very specific powers. For example, you may need a power of attorney to have someone else pay your bills while you're out of the country or sign papers to buy a house in another province or country if you cannot meet with the lawyer in person. The process for making a General Power of Attorney is the same as making an Enduring Power of Attorney except that a General Power of Attorney does not say it continues on after you lose capacity.

Choose an agent and attorney

To act for you, both your agent and attorney must be 18 years or older and have capacity themselves.

When you make your documents, you can name someone who's under 18 years, but if your document comes into effect before they turn 18, they can't be your agent/attorney. Also, if they lose capacity before or while acting for you, they can no longer be your agent/attorney.

Your agent and attorney may have to make important decisions for you, including in emergency situations. It's important to choose people who know you well and who you can trust. It's also a good idea, but not necessary, to choose people who live close to you.

You can name the same person to be your agent and attorney, or different people. If your attorney and agent are different people, they will very likely have to work together on some things. For example, if you need to move to a new residence, your agent decides where you will live and your attorney arranges finances, such as paying moving expenses and rent.

Before you name an agent and attorney in your documents, make sure they're up for the job. Being an agent/attorney can be stressful and time-consuming, and may last many years. Make sure they agree to assume this responsibility and know your wishes.

Agent and attorney responsibilities

Your agent and attorney have a legal duty to act in your best interests and to keep your personal information private.

You can give your agent/attorney the power to make all decisions for you or limit their powers to certain decisions. Remember, if you limit their powers, they can't decide on things outside their powers. If you don't give anyone power to make certain decisions and those decisions come up, someone will have to get a court order to make those decisions for you.

Your agent:

- should be comfortable making healthcare decisions
- should know your wishes, including what level of care you want as you age and if you get sick
- must consult with you (if possible) before making a decision they believe you would have made in the situation
- cannot consent to:
 - psychosurgery
 - sterilization that is not medically necessary
 - you participating in research or experimental activities that offer little or no potential benefit to you
 - you being a living donor
 - you receiving medical assistance in dying (MAID)
- must make decisions by:
 - following any clear instructions you leave in your Personal Directive
 - if there are no clear instructions, making the decision they believe you would have made based on what they know about your wishes, beliefs and values
 - if there are no clear instructions and they don't know your wishes, beliefs or values, making the decision they believe is in your best interests

Your attorney:

- should have experience handling finances
- should know what assets and debts you have, such as where your bank accounts and investments are and what property you own
- cannot change or make a new Will, EPA or Personal Directive for you
- cannot change the beneficiaries of your investment accounts, pensions or life insurance policies



Learn more about an agent's roles and responsibilities in CPLEA's **Be an Agent** booklet: www.cplea.ca/be-an-agent.pdf



Learn more about an attorney's roles and responsibilities in CPLEA's **Be an Attorney** booklet: www.cplea.ca/be-an-attorney.pdf



Learn more in CPLEA's **Medical Assistance in Dying** info sheet: www.cplea.ca/MedicalAssistanceInDying.pdf

Pay your agent and attorney

You must pay your agent and attorney for any expenses they incur on your behalf, such as photocopying and parking.

If you want to pay your agent and attorney for their time, you must clearly say this in your legal documents.

- If your **Personal Directive** says nothing about paying your agent, the law says they cannot ask for payment for acting for you.
- If your **EPA** says nothing about paying your attorney, they can apply to court to order you to pay them reasonable and fair compensation for acting on your behalf.

Being an agent/attorney can take a lot of time. It's a good idea to talk to your agent/attorney beforehand to see if they expect payment.

Name more than one agent or attorney

You can name one or more agents/attorneys to act at the same time, known as **co-agents** and **co-attorneys**. You can say in your documents whether your co-agents/attorneys act **jointly** (together) or **severally and jointly** (both alone or together). If your documents do not say your co-agents/attorneys can act severally (alone), then they must make all decisions jointly (together). Having co-agents/attorneys can complicate things if they need to make difficult decisions quickly.

You should name at least one **alternate** agent and attorney who can act if your first agent/attorney dies, loses capacity or cannot act for you for any reason. If you name several alternates, note in what order they should act.

If no one is willing to be your agent, you can talk to the **Office of the Public Guardian and Trustee (OPGT)** to see if they will be your agent. The OPGT must agree before you can name them in your Personal Directive. The OPGT will not be your attorney.

If none of your agents named in your Personal Directive or attorneys named in your EPA can act, then the document is not valid. If you still have capacity, you can make a new one. If you no longer have capacity, the law says who can apply to become your guardian or trustee.

→ **EXAMPLE** You name your spouse as your only agent in your Personal Directive. You name your child as your only attorney in your EPA. If your spouse passes away before you, no one has authority to make personal decisions for you if you lose capacity. Your child only has authority to make financial decisions for you under your EPA. Your child would have to apply to court to become your guardian, allowing them to make personal decisions for you.



Learn more about guardianship and trusteeship orders in CPLEA's **Adult Guardianship and Trusteeship Act** booklet:
www.cplea.ca/AdultGuardianshipAndTrusteeAct.pdf

Prepare your documents

Your Personal Directive and Enduring Power of Attorney (EPA) must be in writing. It's a good idea to type them up on a computer rather than handwrite them.

You don't have to use fancy legal terms in your documents. It's best to use clear language so others can understand your wishes.

You can make your own or have a lawyer help you. The Government of Alberta has a Personal Directive form you can fill out or use as a guide to create your own. They do not have an EPA form.

You must be 18 years or older to make a Personal Directive and EPA. You must also have capacity, meaning you understand each document and the authority you are giving your agent/attorney to make decisions for you.

You can make one or multiple originals of your Personal Directive and EPA.

- If you make only one original of each, keep them in a safe place that your agent and attorney know about and can access quickly if needed. You can also give your agent/attorney a photocopy for their reference. However, they'll need the originals to act for you.
- If you make multiple originals, keep one in a safe place and give originals to each of your agents/attorneys.

Your Personal Directive and EPA may not be valid outside Alberta. Personal Directives and EPAs made outside Alberta may be valid in Alberta if they meet the legal requirements. If you have property outside Alberta or live outside Alberta for part of the year, you should get legal advice about also preparing documents according to the laws of those other places.



Access the **Personal Directive form** on the Government of Alberta's website:
formsmgmt.gov.ab.ca/Public/OPG5521.xdp

LEAVE A NOTE

You can leave a note with your documents that sets out additional wishes or beliefs. Your agent/attorney does not have to follow these instructions. The benefit of a note is you can easily change it without changing your document. For example, you could say what your wishes are for or against certain medical treatments but leave it to your agent to decide if the decision comes up.

What to include in your Personal Directive

Your Personal Directive should include several items – below are some common ones. It's a good idea to review these items and then take some time to think and plan before you make your Personal Directive.

☐ **Revoke previous Personal Directives**

If this is not your first Personal Directive, it's a good idea to include a statement in your current Personal Directive that you revoke (cancel) all other Personal Directives. If you don't revoke your previous Personal Directives, then they continue to be valid to the extent they don't contradict newer versions. This can be confusing!

☐ **Name an agent and alternates**

Learn more about [choosing an agent](#) on page 12.

☐ **State your agent's pay** (optional)

Learn more about [paying your agent](#) on page 14.

☐ **Say who decides you no longer have capacity**

Learn more about [how your Personal Directive comes into effect](#) on page 10.

☐ **Set out your agent's powers**

Learn more about the [powers you can give your agent](#) on page 12.

☐ **Set out your wishes** (optional)

You can choose whether to include your wishes for certain medical treatments. Remember, if you change your mind about these treatments, you must change your Personal Directive or else your agent will be bound by what's in your Personal Directive.

You can also choose **not** to set out your wishes and instead give your agent general powers to make decisions for you. It's important to talk with your agent about your wishes.

☐ **Name guardians** (if you have minor children)

If you are a guardian for a minor child, you can name one or more people to care for your children.

What to include in your Enduring Power of Attorney

Your EPA should include several items – below are some common ones. It's a good idea to review these items and then take some time to think and plan before you make your EPA.

☐ **Revoke previous EPAs**

If this is not your first EPA, it's a good idea to include a statement in your current EPA that you revoke (cancel) all other EPAs. If you don't revoke your previous EPAs, then they continue to be valid to the extent they don't contradict newer versions. This can be confusing!

☐ **Say it continues after you lose capacity**

Your EPA must contain one of the following statements:

- This Enduring Power of Attorney continues to be valid even if I lose capacity after signing it.
- This Enduring Power of Attorney comes into effect when I lose capacity.

If your EPA does not contain one of these two statements (or something similar), then it ends when you lose capacity.

☐ **Say when the EPA comes into effect and who decides**

Learn more about [how your EPA comes into effect](#) on page 11.

☐ **Name an attorney and alternates**

Learn more about [choosing an attorney](#) on page 12.

☐ **State your attorney's pay** (optional)

Learn more about [paying your attorney](#) on page 14.

☐ **Set out your attorney's powers**

You can give your attorney full powers to make all financial decisions for you or you can limit their powers to certain decisions.

If you own real estate and want your attorney to have the power to deal with it, you must specifically say so in your EPA. For example, "I give my attorney the power to deal with my real property."

Correctly sign and date your documents

Your Personal Directive and EPA must meet the following legal requirements to be valid.

☐ **Dated**

The date on your documents must be the date you and your witness sign the documents together.

☐ **Signed by you**

You and your witness(es) must be in the same room and sign your documents together. (The exception is if you've hired a lawyer. The lawyer can arrange for witnesses to sign remotely.)

If you are physically unable to sign your documents, someone else can sign on your behalf. That person **cannot** be your agent/attorney or your agent's/attorney's spouse or adult interdependent partner.*

☐ **Signed by at least one witness**

You must have at least one person witness you sign your documents and sign your documents as a witness. You can choose to have more than one witness.

The following people **cannot** be your witness:

- anyone under the age of 18
- anyone who does not have capacity
- your spouse or adult interdependent partner*
- your agent(s) and attorney(s)
- your agent's/attorney's spouse or adult interdependent partner*
- the person who signed the documents on your behalf (if you're not physically able to sign yourself)
- the spouse or adult interdependent partner* of the person who signed the documents on your behalf

If the person believes you don't have capacity to make a Personal Directive and EPA, they should refuse to be your witness.

*An **adult interdependent partner**, or **AIP**, is a person in an **adult interdependent relationship**.

After you've signed your documents

Below are some further steps you can take once you've completed and signed your **Personal Directive**:

- ☐ Put your Personal Directive in a **Green Sleeve** and store it on top of your fridge.
- ☐ Fill in a **Goals of Care Designation** (GCD) with your doctor or nurse practitioner and keep it in your Green Sleeve.
- ☐ Tell your doctor, other healthcare professionals and family that you have a Personal Directive, though you don't have to tell them what it says.
- ☐ Register your Personal Directive with Alberta's **Personal Directives Registry**. This Registry only lists contact information for you and your agents. It does not keep a copy of your Personal Directive. Healthcare providers can see you have a Personal Directive and contact your agent.

Once you've completed and signed your **EPA**, tell your accountant, trusted advisors and family. Again, they only need to know that you have one, not necessarily what it says.



Learn more from the Government of Alberta about how to register with the Personal Directive Registry: www.alberta.ca/personal-directive

Review and change your documents

You should **review** your Personal Directive and EPA:

- at least once a year
- whenever there are important changes in your relationship with others, such as marriage or divorce
- if any of your loved ones get divorced or married, or die
- if your agent/attorney dies, loses capacity, moves far away or says they're no longer able or willing to act for you
- if there are significant changes in your health

Getting married or becoming **adult interdependent partners** does not make your Personal Directive or EPA invalid. Neither does separation, divorce or death.

If you decide your Personal Directive or EPA no longer reflects your wishes, and you still have capacity, you can revoke (cancel) it and make a new one.

You can **revoke** your Personal Directive or EPA by doing one of the following:

- say in your Personal Directive/EPA that it is revoked on a certain event happening
- make a new Personal Directive/EPA that contradicts (goes against) an earlier one. If you don't fully revoke your previous Personal Directive/EPA, then you have two valid Personal Directives/EPAs. The parts of the old document that don't contradict the new document are still valid.
- make a new Personal Directive/EPA that clearly says it revokes all previous ones
- make a written statement that clearly says you are revoking your Personal Directive/EPA

If you revoke your Personal Directive or EPA, you should:

- tell your agent/attorney and any other person who knows about the document
- destroy all originals and copies of the revoked documents
- if you've registered your Personal Directive, contact the Personal Directives Registry
- if you own your home or other real estate, have a lawyer register notice of the revocation of your EPA on the title to the property to prevent someone who doesn't have authority from selling it

Legal issues

It is against the law to misuse a Personal Directive and EPA. Examples of misuse include:

- your agent/attorney not following your wishes
- your agent making decisions that harm you physically or mentally
- your attorney making decisions that harm you financially
- your agent/attorney trying to get a doctor to declare you have no capacity even though they know you still do

You and your loved ones have options if your agent/attorney is not acting in your best interests. Remember, going to court takes time and money. It should be your last resort to resolve an issue.

Complaints about agents

Your friends, family or healthcare providers can make a complaint about your agent to the **Office of the Public Guardian and Trustee (OPGT)**. The OPGT can investigate further. If the OPGT cannot resolve the issue, they can ask the court to do so.

Your friends, family and healthcare providers can also ask the court to:

- decide whether you or your agent has capacity
- decide whether your Personal Directive is valid
- change, confirm, delay or cancel your agent's decision
- decide your agent's authority
- revoke your agent's authority, fully or partially
- give advice and direction
- make a decision if your agents cannot agree
- make any other order it sees fit

Complaints about attorneys

If you still have capacity, you can:

- revoke your EPA and make a new one naming a new attorney
- demand a full accounting from your attorney of all decisions they made under your EPA. If your attorney doesn't provide this information, you can ask the court to order your attorney to do so.

If you no longer have capacity, any **interested person** can:

- apply to court to order your attorney to provide a full accounting of all decisions they made under your EPA
- apply to court to terminate your EPA because your EPA is not in your best interests. The court cannot name a new attorney but they can direct the person to apply to become your trustee and name someone as your interim trustee.

The law does say who an "interested person" is. The court decides.

Make a Will

What is a Will?

A Will is a legal document used after you pass away. In it, you name a **personal representative**, also known as an executor, to deal with your **estate** according to your written instructions.

A Will **comes into effect** (starts) when you die. Your personal representative has the power to act right away but may need a **grant of probate** from the court to do certain things, like sell your house and deal with your bank accounts and investments. A grant of probate is a court order that confirms the person named in it, your personal representative, has authority to deal with your estate according to your Will.

A Will **ends** once your personal representative has wrapped up your estate, meaning they have filed all tax returns, paid all debts and distributed all your property to your beneficiaries.

Alberta's *Wills and Succession Act* sets out the rules for Wills. The *Estate Administration Act*, *Trustee Act* and *Surrogate Rules* set out the rules for personal representatives.



Learn more about grants of probate in CPLEA's **Getting a Grant of Probate or Administration in Alberta** booklet: www.cplea.ca/GrantOfProbateOrAdmin.pdf



Learn more about who inherits your estate if you die intestate in CPLEA's **Beneficiaries: Dying Without a Will** info sheet: www.cplea.ca/Beneficiaries.pdf

Types of Wills

There are three types of Wills in Alberta:

1. A **formal Will** is a typed up Will that is signed by you and two witnesses, all in the presence of each other.
2. A **holograph Will**, or **handwritten Will**, must be entirely in your own writing, dated, signed by you and not witnessed. These Wills are legal in Alberta but not in all provinces and territories in Canada.
3. A **military Will** is made while on active service with the Canadian Forces (naval, land or air force). You must date and sign the Will without witnesses.

Types of beneficiaries

There are two different types of beneficiaries you can name in your Will: those of specific gifts and those of the residue of your estate. Beneficiaries can be individuals or charities.

A **specific gift** is specific property that you say in your Will goes to a specific beneficiary. If the specific property no longer exists when you die, the beneficiary doesn't receive the gift or anything in its place. If you are naming beneficiaries of specific gifts, think about whether that person will want the gift.

→ **EXAMPLE** You say in your Will that your oldest child shall have your wedding ring. If you lose, sell or give away your wedding ring before you die, your oldest child doesn't get the ring or something of similar value.

The **residue** of the estate is the rest of the assets in your estate once your personal representative pays your debts and taxes, and gives away the specific gifts. Your personal representative will usually sell everything else so that all that is left is money to divide between the **residual beneficiaries**.

→ **EXAMPLE** You say in your Will that the residue of your estate shall be divided equally among your grandchildren. If the residue of your estate is worth \$100,000 and you have 5 grandchildren when you die, each grandchild will get \$20,000.

You don't have to name any beneficiaries of specific gifts, but you should say who gets the residue of your estate. If you don't name one or more residual beneficiaries and your Will doesn't list beneficiaries for every piece of property you own, then your personal representative must distribute the residue to those who the law says are beneficiaries. It's the same people who would inherit your estate if you didn't have a Will.



Learn more in CPLEA's **Beneficiaries: Dying without a Will** booklet: www.cplea.ca/Beneficiaries.pdf

Trusts

A trust is a way of holding property. The **trustee** holds and manages the trust property for the **beneficiaries**.

You can create trusts in your Will. For example, you may create a trust to hold money for a specific period of time for a beneficiary who is a minor or a dependent.

All trusts must have a trustee. You can name your personal representative or another adult to be the trustee for any trusts you create in your Will. You can also choose a registered trust company or the Public Trustee. It's important to make sure your trustee agrees to take on this role before you name them in your Will.

Your trustee must invest the trust's assets and file annual trust tax returns. The trustee can also make payments from the trust to the trust's beneficiaries as your Will instructs.

→ **EXAMPLE** You have two children under 18 years. Your Will says each child shall receive half of your estate once they each turn 21 years. Your Will says your personal representative shall hold the money in trust for the children until they reach 21 years. Before each child reaches 21 years, the trustee can pay money from the trust to the children's guardian for the benefit of each child, such as for their education or extracurricular activities. If you die while your children are young, the personal representative must continue to manage the money in the trust until each child reaches 21 years. Then they can pay out the money that's left to each child.

Your estate and other property

Your estate is the property you own at the time of your death, including your home, money, pets, vehicles and other belongings.

You can name beneficiaries in your Will to receive your estate. Your personal representative will use your estate property to pay your debts and taxes and then distribute the rest according to the instructions in your Will.

Two types of property are *not* usually part of your estate and so you do not usually deal with them in your Will: property you co-own in joint tenancy and assets with designated beneficiaries.

If you are Indigenous and live on reserve, the law is different for Wills and dealing with your estate when you die. The *Indian Act* and the *Indian Estates Regulations* apply to you. For more information, contact Indigenous and Northern Affairs Canada:
www.canada.ca/en/indigenous-northern-affairs.html

Property you co-own with others

You may own land, a house or bank accounts as **joint tenants** with someone else. This means each co-owner of the property owns the whole property. When you die, the other joint tenant(s) continue to be owners of the property through the "right of survivorship".

The other way to own only real estate with someone else is as **tenants in common**. This means each co-owner owns a share of the whole property. Each tenant in common can decide what to do with their share, including selling it or giving it away in their Will.

You may be thinking about adding a loved one to your bank account or to the title to your home now so they can easily help you if you lose capacity or to avoid paying probate fees when you die. Remember, co-owners of

any property can sometimes do things without permission from the other co-owners. If you decide to do this, it's important that you trust this person. As well, get legal advice if you want others to receive the property when you die. For example, you may add your adult child to your bank account to help you manage your finances but want your grandchildren to inherit the money that's left in your account when you die.

If you co-own property as joint tenants, you usually **do not** need to say in your Will who gets this property as the other joint tenants get it when you die. If you own property as tenants in common, you **do** need to say in your Will what happens to your share of the property. If you're not sure if you co-own property as joint tenants or tenants in common, look at the certificate of title (for real estate) or account statements (for bank accounts, investments, etc.).

Assets with designated beneficiaries

You may have bank accounts, investments, insurance policies or a pension plan where you have named a beneficiary for the specific account or plan.

On the account or plan documents, you can name a specific person or write "estate". If you name a specific person, that person can contact the institution or plan administrator when you die to receive the money. If you write "estate", then the money goes into your estate for your personal representative to deal with according to your Will.

The account or plan administrator keeps a record of who the beneficiary is. If you have capacity, you can usually change the beneficiary anytime with the account or plan administrator before you die. The exception is an irrevocable beneficiary, in which case you need the beneficiary's consent to change their share or remove them.

Choose a personal representative

To act as your personal representative, the person must be 18 years or older and have capacity.

When you make your Will, you can name someone who's under 18. But if you die before they turn 18, they can't be your personal representative. If they lose capacity before or while acting, they can no longer be your personal representative. You can also name a trust company to be your personal representative.

Your personal representative will have to go through your personal documents to wrap up your estate. It's important to choose a person who knows you well and who you can trust. It's also a good idea to choose someone who is likely to outlive you.

It's a good idea, but not necessary, to choose someone who lives close to you. If your personal representative lives outside Alberta, they may have to post a bond with the court as security before they can deal with your estate. If your personal representative lives outside Canada, there may be tax consequences for your estate. If you want to name someone who lives outside Alberta, talk to a lawyer first.

You can name the same person who is your agent or attorney to be your personal representative, or a different person. If your personal representative is different than your agent or attorney, then your agent/attorney will have to hand everything over to your personal representative if they were acting for you before you died. For example, your attorney will hand over all your financial information to your personal representative when you die.

Before you name a personal representative in your Will, make sure they're up for the job. Being a personal representative can be stressful and time-consuming. It may also take a few years to wrap up your estate. Make sure the person agrees to assume this responsibility.



Learn more about a personal representative's roles and responsibilities in CPLEA's **Be a Personal Representative** booklet:
www.cplea.ca/be-a-personal-representative.pdf

Personal representative responsibilities

Your personal representative has a legal duty to act in the best interests of your estate.

Your personal representative:

- must carry out the instructions in your Will
- should have experience handling finances
- must be comfortable filling out lots of paperwork and working with others, such as bank representatives, real estate agents and your beneficiaries
- should be organized and detail-oriented



Learn more about a personal representative's roles and responsibilities in CPLEA's **Be a Personal Representative** booklet:
www.cplea.ca/be-a-personal-representative.pdf

Pay your personal representative

Your estate must pay your personal representative for any expenses they incur, such as for photocopying and parking.

If you want to pay your personal representative for their time and efforts, you can say so in your Will. You can choose to give them a specific amount or a percentage of the estate.

If your Will doesn't say anything about paying your personal representative, they have two options for getting paid:

- propose how much they should get paid and get approval from your residual beneficiaries **or**
- apply to the court for reasonable compensation

Being a personal representative takes a lot of time. It's a good idea to talk to your personal representative beforehand to see if they expect payment.

Name more than one personal representative

You can name one or more personal representatives to act at the same time, known as **co-personal representatives**. You can say in your Will whether your co-personal representatives act **jointly** (together) or **severally and jointly** (both alone or together). If your Will does **not** say your co-personal representatives can act severally (alone), then they must do all things jointly (together). Having co-personal representatives can make things more complicated.

You should name at least one **alternate** personal representative who can act if your first personal representative dies, loses capacity or cannot act for you for any reason. If you name several alternates, note in what order they should act.

If no one is willing to be your personal representative, you can talk to a lawyer, your bank or a trust company to see if they will act. Be sure to talk to them **before** you name them in your Will. They will also charge a fee for being your personal representative.

If none of your personal representatives named in your Will can act when you die, then someone with priority in law can apply for a grant of administration with Will annexed. The **grant of administration with Will annexed** will name a personal representative who must still follow the instructions in your Will.



Learn more about grants of administration in CPLEA's **Getting a Grant of Probate or Administration in Alberta** booklet: www.cplea.ca/GrantOfProbateOrAdmin.pdf

Prepare your document

Your Will must be in writing. Only a holograph Will or military Will can be in your handwriting. A formal Will must be typed.

Learn more about the **types of Wills** on page 22.

You don't have to use fancy legal terms in your Will. It's best to use clear language so others can understand your wishes.

In most cases, you must be 18 years or older to make a Will. If you are under 18 years, you can make a Will if you:

- have a spouse or **adult interdependent partner**
- are a member on active service with the Canadian Forces (naval, land or air force), or
- have the court's permission

You must also have capacity, meaning you understand what a Will is, what property you have and are aware of the people you would normally financially support.

You should only prepare one original of your Will. You can make photocopies to give to your personal representatives for them to reference. Be sure to keep the original document in a safe place that your personal representative knows about and can access quickly. They will need your original Will to start acting once you pass away.

LEAVE A NOTE

You can leave a note with your Will that sets out additional wishes. Your personal representative does not have to follow these instructions. The benefit of a note is you can easily change it without changing your Will. For example, you could say what small, personal belongings you want to go to certain people if you still have those items when you die.

Ways to make a Will

You can make your own Will or hire a lawyer to make it for you. If you're making it yourself, there are DIY kits and online tools to help you.

However, it's a good idea to get a lawyer to help you make a Will. This is especially true if you:

- have a large or complex estate (for example, business assets or valuable real estate)
- want to make plans to minimize taxes for your estate
- have children who are under 18 years, live outside Canada or have special needs
- are thinking about getting married
- are separated or getting divorced
- are starting or ending an **adult interdependent relationship**
- have a blended family
- are older or ill, as others may question whether you had capacity at the time you made your Will
- feel others are pressuring or influencing you

Some lawyers offer packages to make your Will, Personal Directive and Enduring Power of Attorney all together.

What to include in your Will

Your Will should include several items – below are some common ones. It's a good idea to review these items and then take some time to think and plan before you make your Will.

- ☐ **Revoke previous Wills**

If this is not your first Will, it's a good idea to include a statement in your current Will that you revoke (cancel) all other Wills. If you don't revoke your previous Wills, then they continue to be valid to the extent they don't contradict newer versions. This can be confusing!

- ☐ **Name a personal representative and alternates**

Learn more about [choosing a personal representative](#) on page 25.

- ☐ **State your personal representative's pay** (optional)

Learn more about [paying your personal representative](#) on page 26.

- ☐ **Name beneficiaries of specific gifts** (optional)

Learn more about [beneficiaries of specific gifts](#) on page 23.

- ☐ **Name beneficiaries of the residue of your estate**

Learn more about [residual beneficiaries](#) on page 23.

- ☐ **Name guardians** (if you have minor children)

If you are a guardian for a minor child, you can name one or more people to care for your children.



Learn more about who are a child's guardians on CPLEA's website about family law in Alberta: family.cplea.ca

- ☐ **Create trusts**

Learn more about [trusts](#) on page 23.

- ☐ **Set out funeral arrangements**

You can leave instructions about whether you want your body to be buried or cremated. You can also leave wishes for your farewell ceremony.

Practically speaking, it's a good idea to share your wishes with your family and personal representative. They'll likely have to make these decisions soon after you die and may not have read your Will yet.

Learn more about [planning your funeral](#) on page 35.

Correctly sign and date your formal Will

If you're making a **formal Will**, it must meet the following requirements.

☐ **Dated**

The date on your Will must be the date you and your two witnesses sign the document together.

☐ **Signed by you**

You and your witness must be in the same room and sign your documents together. (The exception is if you've hired a lawyer. The lawyer can arrange for witnesses to sign remotely.)

If you are physically unable to sign your documents, someone else can sign on your behalf. That person **cannot** be your agent/attorney or your agent's/attorney's spouse or adult interdependent partner.*

☐ **Signed by two witnesses**

You must have **two** people witness you sign your Will and sign your Will as witnesses. Your witnesses do not need to read your Will.

You and your witnesses must sign your Will together.

The following people **cannot** be a witness:

- anyone under the age of 18
- anyone who does not have capacity
- the person who signed the Will on your behalf (if you're not physically able to sign yourself)

Your beneficiaries (or their spouses or adult interdependent partners*) **should not** be witnesses to your Will. If they are witnesses, your gift to them is void (invalid) unless a court validates it.

If a person believes you don't have capacity to make a Will, they should refuse to be your witness.

Learn more about the **requirements for a holograph Will or military Will** on page 22.

*An **adult interdependent partner**, or **AIP**, is a person in an **adult interdependent relationship**.

After you've signed your formal Will

It's a good idea to have one of your witnesses see a Commissioner for Oaths and swear an **Affidavit of Witness to a Will (GA8)**. This form says that they saw you sign your Will.

Keep this completed form with your Will. When you die, your personal representative must submit this Affidavit to the court as proof that you properly signed your Will. If you don't get this Affidavit done right away, it can be challenging to track down one of your witnesses later on or after you die.



Find the **Affidavit of Witness to a Will** form on the Government of Alberta's website: www.alberta.ca/surrogate-forms-non-contentious-matters

Review and change your Will

You should **review** your Will:

- at least once a year
- whenever there are important changes in your relationship with others, such as marriage or divorce
- if any of your loved ones get divorced or married, or die
- if your personal representative dies, loses capacity, moves far away or says they're no longer able or willing to act for you
- if there are significant changes in your health

If you get divorced or your **adult interdependent relationship** ends, your Will as a whole is still valid. However, certain parts of your Will may no longer be valid:

- If you leave a gift in your Will to your former spouse or **adult interdependent partner**, that gift is revoked (cancelled) unless your Will is clear that you intend for that person to still receive the gift even after the separation.
- If you name a former spouse or **adult interdependent partner** as your personal representative, their appointment is revoked (cancelled), meaning they can no longer be your personal representative.

Learn more about **naming more than one personal representative** on page 27.

If you decide your Will no longer reflects your wishes, and you still have capacity, you can change it in one of two ways: make a codicil or make a new Will.

A **codicil** is a separate document that changes only part of your Will. You must sign and witness your codicil in the same way as your Will (see page 30).

A codicil usually has three parts:

- refers to the Will it is changing (for example: "This codicil changes my Will made January 1, 2025.")
- clearly says what parts of the Will it is revoking (cancelling) and what parts it is changing (and what those changes are)
- confirms the terms of the original Will are still valid apart from the changes listed in the codicil

It's a good idea to **make a new Will** if you are making major changes or already have made a number of codicils. The first paragraph of a Will usually says: "I revoke all Wills and testamentary dispositions of any kind that I previously made." This statement revokes (cancels) your previous Wills and codicils leaving only the current one.

You should **not** change your Will by marking or crossing out words. Any handwritten changes you make after signing your Will are not valid.

Legal issues

Sometimes legal issues come up about your Will or estate after you die. The Alberta Court of King's Bench can deal with these concerns.

Validating your Will

Your Will may **not** be valid if:

- you made it outside Alberta
- it doesn't meet the legal requirements for a Will
- your personal representative can only find a photocopy of your Will but not the original

In some cases, the court will validate an invalid Will, meaning the court accepts the Will even though it isn't legally valid.

Challenges to your Will

Common challenges of a Will include claims that:

- someone was pressuring or influencing you to make a Will or to put certain things in your Will
- you did not have capacity to make a Will
- you did not provide enough for your family (see page 33)
- your Will was not properly executed, meaning it does not meet the legal requirements for a formal Will (see page 30)

Only the court has the final say about whether a Will is valid.

Providing for your family

You have a legal obligation to provide for the following family members when you die:

- your spouse or **adult interdependent partner**
- your child who is under 18 years, including a baby in the womb when you die who is later born alive
- your child who is 18 years or older and cannot support themselves because of a disability
- your child who is between 18 and 22 years and cannot support themselves because they're a full-time student
- your grandchild or great-grandchild who is under 18 years and to whom you were like a parent

If you do not leave enough money in your Will for any of these family members, they can ask the court to give them more money from your estate. Before deciding whether to give support to a family member, the court looks at all the circumstances, including:

- your legal obligations to support family members
- the nature and length of your relationship with the family member
- the family member's age and health
- the family member's financial situation and ability to support themselves, such as by getting a job
- the size of your estate and other property the family member might receive, such as if they are the beneficiary of your life insurance policy
- your reasons for not providing for the family member in your Will (it helps if you write down your reasons in your Will or on a signed paper kept with your Will)

Donate your Organs or Body

You can choose to donate your organs or body when you die.

There are several ways to indicate your wish to become an organ donor:

- register online with the **Alberta Organ and Tissue Donation Registry**
- sign the back of your **Alberta Personal Health Card** (must be witnessed) if your card was issued before 2018
- tell the registry agent when you renew your driver's license or government-issued ID card, and your new card will show your consent
- tell your loved ones, who can give consent when you pass away

In some cases, you can donate your body to a medical school for science. You should talk to the medical school of your choice beforehand to see if they'll accept your body. You should also have a back-up plan in case the school chooses not to take your body.



Learn more about the Alberta Organ and Tissue Donation Registry: myhealth.alberta.ca/Pages/OTDRHome.aspx



Learn more about becoming a donor from the Government of Alberta: myhealth.alberta.ca/Alberta/Pages/organ-and-tissue-donation-becoming-a-donor.aspx

Plan your Funeral

Did you know you can plan and even pay for your funeral before you die? Doing so can create certainty for your loved ones at a time when they're grieving your passing and overwhelmed with decisions.

There are several decisions you'll have to make to plan your funeral:

- What do you want to happen to your body? Do you wish to be buried or cremated? Do you want to donate your organs? Do you want to donate your body for research?
- If you want to be buried, do you want to be embalmed and have make-up put on you? Where do you want to be buried? Do you have a plot already?
- If you want to be cremated, what are your wishes for your ashes?
- Do you want a farewell ceremony? If so, what are your wishes for this event?

Below are a few places you can go to get more information about planning your funeral.

Funeral homes

Funeral homes deal with your body (burial or cremation). They can also plan and host the farewell ceremony. Some funeral homes may keep your preferences on file without you paying money in advance. Others may offer you a **pre-need funeral contract** – a contract where you pay all or part of the cost of the funeral services before you die. It's a good idea to get a few quotes from different funeral homes before you make a decision.

Learn more about **pre-need funeral contracts** on page 36.

Your church or religious organization

You may wish to discuss your wishes with your religious leaders. They may keep this information on file for their members. However, a funeral home still likely needs to be involved to deal with your body before the farewell ceremony.

Memorial societies

Memorial societies help their members plan their funerals and often offer reduced rates for funeral services from certain providers.

If you plan your funeral, make sure your loved ones and your personal representative know about your plans. If you have a pre-need funeral contract, make sure they know who the contract is with. They will be making decisions quickly when you die and may not go digging for information you haven't shared.

If you do not plan your funeral but have named a personal representative in your Will, they can decide what happens to your body and about a farewell ceremony. If you don't have a personal representative, then the law lists people who can make these decisions (in order of priority).

The rules for funerals are set out in Alberta's *Funeral Services Act*, *Cemeteries Act*, *Cemetery Companies Act* and *Bodies of Deceased Persons Regulation*.



Learn more about **financial aid for eligible veterans** from the Veteran Affairs Canada Funeral and Burial Program, administered by the Last Post Fund:
www.lastpostfund.ca

Pre-need funeral contracts

Pre-need funeral contracts are contracts where you pay all or part of the cost of the funeral services before you die. Only funeral homes with a pre-need salesperson license from the Alberta Funeral Services Regulatory Board can offer pre-need funeral contracts.

There are two ways to pay for a pre-planned funeral:

1. **Trust-funded plan:** You pay the funeral home directly. The funeral home holds your money in a trust account to pay for your funeral once you die.
2. **Insurance-funded plan:** You buy a pre-need insurance contract. When you die, the insurance policy pays the funeral home.

Make sure you ask about and understand the differences between these options before you decide. Different rules apply to each option. For example, a trust-funded plan may be easier to cancel than an insurance-funded plan. But an insurance-funded plan is easier to transfer to another province. Other areas of difference include administration fees, late fees, fees for extras and how inflation is calculated.

A pre-need funeral contract must be in writing and include the following:

- professional service charges
- facility charges
- transportation costs
- if being buried, cost of the casket and outer receptacle
- if being cremated, cost of the cremation, cremation container and urn
- amounts set aside for paying taxes
- list of costs for other disbursements
- total cost of all items
- a list of the current locations where embalming and cremation services take place as well as a statement that the final location may change (if the location changes, the funeral home must provide a list of locations at the time it provides funeral services)

- a statement that the funeral home will dispose of cremated remains not claimed within 5 years
- terms of cancellation (in at least size 12 font)
- your signature and that of the funeral home representative

You can cancel a pre-need funeral contract, but it may cost you.

- If you signed a trust-funded plan, you have 30 days to cancel it without charge or penalty. After the 30-day period, you can still cancel the contract, but the funeral home can charge you an administration fee. As of June 2025, the limit was 15% of the amount the funeral home was holding in trust for you.
- If you signed an insurance-funded plan, read the contract to see what it says about cancellation.

If you have concerns about a funeral home or your pre-need funeral contract, share them with the funeral home. If the issue remains, you can file a complaint with the **Alberta Funeral Services Regulatory Board**. The Board reviews and investigates complaints about the behaviour of any person or company licensed to provide funeral services.



Learn more about the **Alberta Funeral Services Regulatory Board**:
www.afsrb.ab.ca

Burial

If you choose for your body to be buried, you'll have to decide on embalming, a casket and where you'll be buried.

Embalming

Embalming is the process that replaces blood with a chemical in your body. It has three purposes:

- reduce the presence and growth of micro-organisms
- slow down decomposition
- temporarily preserve your physical appearance (such as for an open casket at the farewell ceremony)

Most times, you can choose whether to be embalmed. However, your body **must** be embalmed if:

- you died while infected with a communicable disease (other than certain highly communicable diseases, in which case your body is placed in a sealed container)
- your body will be transported by a common carrier, such as a railcar, boat, aircraft, vehicle or other transport method where you do not pay a fee (a funeral home vehicle, such as a hearse, is not a common carrier)

Casket

Your body must be buried in a casket.

Caskets can range from a few hundred dollars to many thousands of dollars. The funeral home may only let you use caskets from certain companies.

There are a few alternatives to buying a traditional casket:

1. You may be able to rent a casket for the funeral service.
2. You may be able to make your own casket as long as it meets all legal requirements. Note that some funeral homes will not let you use your own casket.
3. You can choose a “green casket”, which biodegrades.



Learn more about green caskets and green burials from the Green Burial Society of Canada: greenburialcanada.ca

Burial location

You must be buried in a registered cemetery, which are owned by churches, local government or private businesses.

There are two burial options:

1. Traditional earth burials, where you’re placed in a casket and lowered into the ground.
2. Mausoleum or tomb, where you and your casket are placed permanently in a structure above or just below the ground.

There are several costs to consider:

- the plot, the price of which depends on the cemetery’s fees and location, as well as the location of the plot within the cemetery
- grave opening fee
- grave marker, which varies depending on what you want
- grave closing fee
- surcharges for other things
- gravesite care and maintenance over time

Cemeteries must offer reduced rates for veterans.

Cremation

Cremation is the process of burning your remains to ashes. It is an irreversible process that eliminates all DNA and the ability to later investigate your cause of death.

If you choose to be cremated, you'll have to decide on a cremation container and what happens to your ashes.

Cremation container

You still need a casket or other proper cremation container. It must be enclosed, combustible and sturdy, and have handles. You can ask the crematory or funeral home about your options, including whether you can provide your own if it meets their requirements.

What happens to your ashes

You can choose whether the crematory (place where the cremation happens) disposes of your ashes or gives them to your loved ones to deal with.

You can choose for your ashes to be buried, such as in an urn garden, in a columbarium (an above-ground structure with spots for urns) or in a family plot.

If you wish for your ashes to be scattered, the following rules apply:

- You can have your ashes scattered on your own land.
- You can have your ashes scattered on someone else's land if you or your personal representative have written permission from the owner. This includes municipal, provincial and national parks, as well as unoccupied land or water owned by the government.
- If you want your ashes scattered outside Alberta, check the laws of that place first.



Learn more about scattering ashes on public land in Alberta from the Government of Alberta:

open.alberta.ca/publications/scattering-of-cremated-remains-in-alberta

Farewell ceremony

You may wish for a traditional funeral, an upbeat celebration of life or no ceremony at all.

You may wonder if your loved ones have to follow your wishes:

- If you have a ***pre-need funeral contract***, your loved ones must follow through with your wishes as you've already paid for the arrangements.
- If you put your wishes in your ***Will***, your personal representative must follow your instructions. However, sometimes they do not read your Will right away, so it's a good idea to talk with your personal representative about your wishes as soon as you make your Will.
- If you put your wishes in ***some other document*** or tell them to your loved ones, they have no legal obligation to follow them. You can only hope they do out of respect for you.

Glossary

An **adult interdependent partner**, or **AIP**, is a person in an adult interdependent relationship.

An **adult interdependent relationship**, or **AIR**, is unique to Alberta and describes an unmarried couple who live together, with or without children. It exists in three situations:

1. Two people have signed an Adult Interdependent Partner Agreement.
2. Two people have lived together in a relationship of interdependence for three or more years.
3. Two people live together in a relationship of interdependence and have a child together, by birth or adoption.

A relationship of interdependence exists where two people share one another's lives, are emotionally committed to one another and share their home and finances.

Goals of Care Designation (GCD) is a medical order that guides your healthcare team in caring for you. A doctor or nurse practitioner completes the document after getting to know you and understanding your wishes for your future medical care.

A **Green Sleeve** is a green plastic pocket that holds important documents about advance care planning, including your Personal Directive and Goals of Care Designation. You can ask your doctor for a Green Sleeve.

More Resources

Legal Support

Free legal clinics in Alberta

List of legal clinics across Canada that provide free legal support to those who qualify: www.cplea.ca/legalhelp/

Alberta Legal Coaches and Limited Services

Lawyers who provide coaching and limited services, for a fee: albertalegal.org

Law Society of Alberta Lawyer Directory

Find a lawyer in Alberta by name, location, practice areas, language(s) spoken, gender and whether they offer limited scope retainers: www.lawsociety.ab.ca/public/findalawyer/

Government & Court Services

Alberta Law Libraries

Free legal information and resources available at courthouse libraries across Alberta. Some services are also available online: lawlibrary.ab.ca

Government of Alberta

Services and information about advance care planning and death: www.alberta.ca/death

Office of the Public Guardian and Trustee

An Alberta government office providing services and support for vulnerable Albertans and their families, including help with guardianship and trusteeship orders: www.alberta.ca/opgt-supports

Alberta King's Printer

For free online and print copies of Alberta laws: kings-printer.alberta.ca/Laws_Online.cfm

Notes

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Still have questions? CPLEA has you covered!

More on this topic

Check out more booklets, checklists, blog posts and videos from the Centre for Public Legal Education Alberta (CPLEA) about estate planning, including about:

- Capacity
- Make a Personal Directive checklist
- Make an Enduring Power of Attorney checklist
- Make a Will checklist
- Be an Agent
- Be an Attorney
- Be a Personal Representative
- Getting a Grant of Probate or Administration
- Beneficiaries: Dying without a Will
- Adult Guardianship and Trusteeship Act

Visit www.cplea.ca/planning-for-future-care and www.cplea.ca/willsandestates to learn more!

Other legal topics

CPLEA also offers free legal information about other legal topics, including:

- Abuse and protection
- Consumer, money and debt
- Family and relationships
- Housing
- Recreation
- Resolving disputes
- Work

Visit www.cplea.ca to get started!