QUESTIONS AND ANSWERS

ABOUT WILLS IN THE

NORTHWEST TERRITORIES

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WHAT IS A WILL?

A will is a legal document that expresses a person's wishes regarding the disposal of his or her property upon death.

A will may also include special wishes about burial or cremation, and appoint a guardian or custodian for children.

In order to be valid, the will must be signed and witnessed according to certain formalities (See Question 5).

A man who makes a will is called a **testator**. A woman who makes a will is called a **testatrix**.

Until the maker of the will dies, the will is only an expression of intention. Therefore, the maker can change it at any time.

A person may dispose of any property during his or her lifetime, even if the property is mentioned in the will. The will only applies to those assets owned at the time of death plus any future or contingent interests.

The property of the deceased is called the **estate**. A person who inherits all or part of an estate under a will is called a **beneficiary**.

A beneficiary does not receive the inheritance immediately upon the death. First, all of the property goes to the **personal representative** of the deceased (See Question 10). The maker of the will may choose the personal representative by naming him or her in the will. In this case, the personal representative is called the **Executor** (if male) or the **Executrix** (if female).

The personal representative must first pay any debts of the deceased. Upon payment of all known debts, the personal representative is entitled to distribute the remaining property to the beneficiaries according to the terms of the will.

WHAT HAPPENS IF YOU DIE WITHOUT A WILL?

If you die without a will, you are said to die **intestate**. If you die intestate, your property goes to your relatives according to a certain order of priority.

The order of priority is set out in the **Intestate Succession Act** of the Northwest Territories. This law describes in detail what happens to the property of a person who dies without a will. The distribution of your property depends upon which relatives are alive at the time of your death.

For example, if you die intestate leaving:

(a) **a spouse but no children** -- all your estate goes to your spouse;

(b) **a spouse and one child** --

(i) As a preferential share your spouse may elect to receive (a) $50,000 (b) the matrimonial home, if the home is worth more than $50,000 or (c) the matrimonial home as part of a $50,000 preferential share, where the matrimonial home is worth less than $50,000.

(ii) The remainder of the estate, after deducting the spouse's preferential share, is divided equally between the spouse and the child;

(c) **a spouse and two or more children** -- after deducting the preferential share of the spouse, as listed in (b)(i) above, one-third of your estate goes to your spouse, and two-thirds is divided equally among your children;

(d) **no spouse but a child or children** -- all your estate is divided among your children and the children of any deceased child of yours (Note 4, Page 3);

(e) **no spouse and no issue** ("**issue**" includes your children, grandchildren or other lineal descendants) -- then your estate is (a) divided equally between your father and mother if both are alive, or (b) given totally to the survivor, if either of your parents is deceased;

(f) **no spouse, no issue, and no parents** -- then your estate is divided equally among your brothers and sisters.

If none of the above close relatives is alive at the time of your death, then your estate will go to other relatives, such as aunts, uncles, nieces, nephews and cousins, in the order set out in the **Intestate Succession Act**.

If there are no surviving relatives at all, then the Crown (Government) receives your estate. Many people think that if a person dies without a will, the Government inherits the estate. However, as you can see from the above scheme that only happens when there are no relatives at all.

There are several important points to note about the scheme of distribution set out in the **Intestate Succession Act**. These facts may help you determine whether you should make a will:

(1) "Spouse" includes a legally married spouse and a common-law spouse;

(2) Pursuant to section 13 of the Act a spouse shall take no part of the estate where:
(a) before the death of the intestate, either spouse had commenced a divorce proceeding and the spouses had not reconciled;

(b) before the death of the intestate, the spouses were separated and

(i) either spouse had made an application to determine his or her entitlement under subsection 36(1) or (3) of the *Family Law Act*,

or

(ii) had entered into a domestic contract respecting the division of property;

(c) immediately before the death of the intestate, the surviving spouse was cohabiting with another person; or

(d) immediately before the death of the intestate, the spouses were separated and the intestate had entered into a spousal relationship with another person.

(3) "Children" includes "illegitimate" children and legally adopted children, but not step-children. The distinction between **legitimate** and **illegitimate** was abolished by the amendments to Northwest Territories legislation in 1987. All relationships (children, brothers, sisters, etc.) now include illegitimate relatives. However, there may be problems in proving the relationship if the child has not been acknowledged by his or her father;

(4) If a beneficiary who is a descendant of the deceased is not alive, but leaves surviving children, those children will receive the deceased beneficiary's share of the estate. This is called a "**per stirpes**" distribution;

(5) Children do not receive an inheritance until they reach nineteen. Until then, a child's share of the estate must be held in trust for the child. To ensure that the child's funds are available for use, a will can give the entire estate to the surviving spouse or can set up a type of trust fund which allows the surviving parent to use the child's inheritance for certain purposes without court approval. Under the **Children's Law Act** certain amounts of a trust fund may be disbursed without court approval.

When a person dies without a will, someone must still act as the deceased's personal representative to wind-up his or her affairs. Any person entitled to a share of the estate, such as a relative or creditor, may apply to the Court to become the personal representative. The order of priority of individuals who may be appointed as the personal representative is set forth in the Probate Rules of the Supreme Court of the Northwest Territories. Only the Court can grant the authority to such a person to wind-up the estate of a person who has died without a will.

The person appointed by the Court to act as the personal representative in the absence of a will is called an **Administrator** (if male) or **Administratrix** (if female).

If no relative or creditor applies to the Court to become the personal representative, the Public Trustee may act as the deceased's personal representative.

WHO CAN MAKE A WILL?

Anyone over the age of majority who is mentally competent can make a will. In the Northwest Territories, the age of majority is nineteen years. In addition, a person under the age of nineteen can make a will if the person (a) is a member of the Canadian Forces or of the Royal Canadian Mounted Police, (b) is a mariner or sailor, or (c) is or has been married.

In order to make a valid will, the maker must understand what is being done and appreciate the nature and extent of property owned. Also, the person must be aware of those people who would normally expect to inherit, and, the person must be free from any undue influence, pressure or fraud when making the will.

SHOULD YOU HAVE A WILL?

You can see from Question 2 what will happen to your estate if you die without a will.

If you don't want your property to be distributed as set out in the **Intestate Succession Act**, then you should have a will. In particular, you should consider making a will if:

(1) you are living common-law;

(2) you are separated but not yet divorced;

(3) your family includes step-children;

(4) you have children but want your estate to go entirely to your spouse;

(5) you wish your children to inherit at an age older than nineteen; or

(6) you wish to allow a child's share to be used on certain conditions for the child's benefit before the age of inheritance.

You should also consider making a will if you want to choose your own personal representative. If you die without a will, no one will be able to deal with your estate until the Court has appointed a personal representative for you, or decides that the Public Trustee should act.

WHAT ARE THE REQUIREMENTS OF A VALID WILL?

In the Northwest Territories, the requirements of a valid will are set out in the **Wills Act**. If all of these requirements are not met, then the will is not valid. The person will then be considered as dying intestate and the person's property will be distributed among relatives as set out in the **Intestate Succession Act** (See Question 2).

Also, you should note that these rules are requirements for a valid **Northwest Territories** will. There may be different requirements in other provinces or countries. If you own property located

outside the Northwest Territories, you may wish to consult a lawyer to ensure that your will is valid in those places where you own property.

The requirements of a valid will are as follows:

(1) The will must be in writing;

(2) The will must be signed by the maker at the very end of the document. Any words written after the signature will probably not count;

(3) The will must be signed or acknowledged by the maker in the presence of at least two witnesses. The witnesses must both be present at the same time. Therefore, signing a will always requires at least three people to be present at the same time -- the maker and two witnesses;

(4) The two witnesses must sign their names on the will in the presence of the person making the will, and in the presence of each other;

(5) A beneficiary under the will or a beneficiary's spouse must never be one of the two witnesses to the will because this invalidates any gift to them contained in the will. The reason for this is to prevent the possibility of a beneficiary exercising undue influence on the maker of the will.

Besides the above requirements, there are a number of other rules of thumb which lawyers follow to avoid potential problems. Some of these are as follows:

(1) There should be no alterations or corrections in the will because this raises the question of whether the change was made before or after the will was signed. If changes are necessary, the old words should be crossed out and the changes type in and initialled by the person making the will and the two witnesses both at the beginning and the end of the change;

(2) The will should be dated and the date initialled by the maker and the two witnesses;

(3) There should be only one original will. It should be kept in a safe place, and the personal representative should know its location;

(4) The maker and witnesses should each initial the bottom of each page of the will so there can be no question of pages being replaced or additions made after the will was signed;

(5) A lawyer will usually have each witness swear an affidavit that they saw the maker sign the will in the presence of both witnesses. These affidavits will then be used as evidence in court to validate the will;

(6) In the event that your will is contested, it is helpful if the witnesses can be located and summoned to court to give evidence as to your mental capacity, intention, and freedom from undue influence. You should therefore pick credible witnesses who can be located if necessary.

There are two exceptions to the requirements of a valid will as set out in the **Wills Act**. The first is a **holograph will**. A holograph will is a will written entirely in the handwriting of the deceased and signed by the deceased.

A holograph will is valid in the Northwest Territories, even though the requirements as to witnesses set out above are not met. However, these wills are not recognised in many other places and should be avoided wherever possible. Will forms purchased from a stationery store are <u>not</u> considered holograph wills, because they are partly in print and only partly in the handwriting of the maker.

The second exception occurs with the wills of status Indians. The wills of status Indians who live on reserves or land set aside for Indians by the Federal or Territorial Governments have different requirements found in Section 42 to 47 of the **Indian Act** of Canada. The Minister of Indian Affairs must approve the will of a status Indian. The will has no legal effect until it has received this approval, or until a court has granted probate under the **Indian Act** In the Northwest Territories, the Minister of Indian Affairs generally transfers his jurisdiction over estates to the Supreme Court of the Northwest Territories.

WHAT ABOUT THOSE FORMS FROM THE STATIONERY STORE?

The will forms purchased in stationery stores can be used to prepare a valid will. However, there are four main problems that leave considerable room for error when using these forms:

(1) The forms are generally designed for use in other places (usually Alberta). Laws of inheritance and the requirements for a valid will change from province to province. Therefore, even if you follow the instructions given, you cannot assume that the document will be considered a valid will in the **Northwest Territories**.

(2) The form must be signed and witnessed according to the formal requirements described in Question 5. There is considerable room for error here, which even lawyers must be very careful to avoid.

(3) The biggest problem lies in filling in the blanks on the form with words that are precise enough so that survivors will know what you mean. Many words in common use have a different legal meaning. The word "money", for example, depending on the context it is used in, may not include RRSP's, term deposits or Canada Savings Bonds. The maker may have intended to include these in the bequest. The term "personal possession" is also very vague and should not be used. Does it include a car, for instance? Vague words can give rise to dispute

among your beneficiaries which could have been prevented by clear, precise words.

(4) Other problems arise due to the fact that the maker of the will has not sufficiently considered all possible eventualities that may exist at the time of death. For example, if your children are to inherit part of your estate, at what age is each to inherit, how is the estate to be managed in the meantime, can money be advanced for special purposes, etc.?

Lawyers are trained to reduce the possibility of later problems by using language that is very precise. A lawyer can also raise, for your consideration, a number of possible contingencies that should be dealt with in your will.

It is possible to arrange a consultation with a lawyer to request a legal opinion on a will that you have completed yourself on a form purchased from a stationery store.

WHAT SHOULD YOU PUT IN A WILL?

There is really no such thing as a "standard" will. Wills range from being very simple to very complex. Generally, the larger your estate, the more complex your will becomes. The complexity arises not only because you have more to give away, but because the way in which your assets are dealt with can become more sophisticated, especially when the will is used as a "tax planning" device.

There are various methods of reducing the tax consequences of death, which are beyond the scope of this booklet. Tax planning, contrary to popular belief, is not only for the rich. Anyone who earns income and pays taxes can benefit from some very simple tax planning techniques. You might consider consulting a lawyer for this reason.

A will usually follows a standard format:

(1) The first provision declares your intention to make a will by stating: "This is the last will of me, Jane Doe, of the City of Yellowknife, in the Northwest Territories."

(2) All previous wills are revoked;

(3) A personal representative is appointed. This person is called the Executor (if male) or Executrix (if female). The personal representative may be a beneficiary under the will. The personal representative administers the estate by paying any outstanding debts and transferring the property to the beneficiaries according to the terms of the will.
In appointing a personal representative, it is important to appoint someone who is familiar with your affairs and has the ability, time and willingness to do the work. Preferably, the person will be geographically close to your assets and within the

Northwest Territories, and will not be so traumatised by your death so as to be unable to function.

You may have more than one personal representative. You may also wish to appoint alternates because the person you appoint does not have to accept the position at the time of your death, or indeed, may be unable to accept due to illness, incapacity or other commitments;

(4) A trustee is appointed if there are beneficiaries under age nineteen (or whichever age of inheritance over nineteen that you so choose). The responsibility of the trustee is to hold the property on behalf of the beneficiary upon such terms as you describe in the will. The trustee may be the same person as the personal representative if you wish. It is possible to have joint trustees or alternate trustees. Traditionally, people choose relatives or a trust company to be the trustee;

(5) Property is given to the beneficiaries. A person making a will can leave specified items or amounts of money to named individuals, or to classes of people, such as "all my nieces and nephews". The property that is left over, i.e. not specifically given to anyone is called the **residual estate**. A will usually includes a clause saying who is to receive the residual estate;

(6) Any special authority or power to deal with your property must be specifically given to your personal representative or trustee. For example, if a trustee is to hold money in trust for a child over a long period of time, you may wish to give the trustee the power to take advantage of various income tax reducing provisions of the **Income Tax Act**. You may also wish to set out those purposes, such as education or medical needs, that would allow your trustee to pay monies to the child's guardian or make expenditures for the child before the age of inheritance;

(7) A custodian or guardian of your children may be appointed. However, this appointment will not override existing custody arrangements resulting from a separation or divorce. For example, if a husband dies and has appointed a custodian but the wife has custody of the children, the wife will continue to have custody. If you don't appoint a custodian, and your spouse does not survive you, the Court will appoint a custodian who is willing to accept the appointment, if such arrangement is in the child's best interest. If no one volunteers to become custodian, the child will become a ward of the Superintendent of Child Welfare;

(8) Burial or cremation wishes, if any, may be specified. Your personal representative is the person legally responsible for disposing of your remains and will normally want to carry out your wishes. However, your directions as to burial or cremation are not legally binding on your personal representative. As a practical matter, it is important that your wishes are known before you die, since your remains may already be disposed of before the will is read;

(9) The signatures of the testator or testatrix, and the two witnesses are, of course, required at the end of the will.

CAN YOU CHANGE A WILL?

Changing and revoking a will are two different things.

First, to **change** a valid will you can either write a whole new will or make a new document amending the original will. This new document which amends a will is called a **codicil**.

You should never simply write the change on the original will. This creates a problem as to whether the change was properly witnessed, and may cause the whole will to become invalid.

A codicil must be signed with the same formalities as a will. You do not need exactly the same people to witness the codicil as witnessed the original will, but all the formal requirements are the same (See Question 5). For example, two people may witness the will, and three people may witness the codicil.

If major changes are to be made, it is preferable to **revoke** the original will and make a new will.

Once a will is revoked, it is no longer valid. There are three ways in which a will can be revoked:

(1) The usual way of revoking a will is by writing a new will which specifically states that all previous wills are revoked. This is an intentional revocation;

(2) The second type of intentional revocation occurs when a person who made a will destroys it for the purpose of revoking it;

(3) The third type of revocation is automatic and does not depend on the intention of the maker. The law states that a will is automatically revoked where the maker of the will marries after making the will, even if the beneficiary under the will is the spouse. This result can be avoided where the will specifically states that it is made in contemplation of that particular marriage.

There are other situations that may occur that do **not** result in the will being revoked. If, for example, a person makes a new will but the new will does not specifically say that all previous wills are revoked, then any prior wills continue to be valid, and problems can obviously arise with respect to the maker's intentions. If the wills can be read together without being inconsistent, they may both be valid.

Nor is a will revoked merely upon separation or divorce. Therefore, a new will may be in order if your intentions change upon separation or divorce.

Finally, a will is **not** revoked if it is accidentally destroyed. Although destruction does not invalidate the will, it will certainly make it more difficult to obtain probate (See Question 10). Probating the will may be possible if a photocopy or carbon copy is available.

IS THERE ANY PROPERTY YOU CAN'T GIVE AWAY IN A WILL?

Some property **cannot** be disposed of by a will. Such property usually falls into two classes:

(1) **Property which you own in joint tenancy with another person**: This type of ownership means that if one co-owner dies, the asset belongs entirely to the surviving person. Therefore, you cannot leave your half of that particular asset to anyone in your will, because your ownership of it ceases at your death.

However, not all property that is co-owned is owned in joint tenancy. The most common types of property that are owned in joint tenancy are land and joint bank accounts. You will need to find out from your bank or the Land Titles Office or a lawyer whether your bank account or land is owned in joint tenancy. If not, you are free to dispose of your share in a will;

(2) **Insurance proceeds, if you have designated a particular beneficiary in your application for insurance:** In this case, the proceeds go directly to the beneficiary and are not treated as part of your estate. Naturally, if you have designated your beneficiary as "my estate", the insurance proceeds become part of your estate and can be used to pay off debts of your estate. There is also a procedure under the **Insurance Act** of the Northwest Territories whereby you can designate a beneficiary of insurance proceeds in your will.

Otherwise, a person making a will can freely dispose of all property owned at the time of death.

WHAT MUST YOUR EXECUTOR OR EXECUTRIX DO?

The personal representative appointed by your will is called an Executor, if the person you appoint

is male. If the person you appoint is female, she is called your Executrix. Both are referred to here as your personal representative.

The formal way in which a will works is that all of your property is given to your personal representative to be distributed or managed according to the terms of your will.

For example, a will usually authorises the personal representative to:

(a) pay all funeral expenses;

(b) convert into cash (sell) all assets which are not specifically given to any person;

(c) collect any debts owed to the deceased, and pay off those people owed money by the deceased;

(d) pay any income tax owing to Revenue Canada;

(e) pay out or deliver specific bequests, such as giving an antique ring to Aunt Mary or giving $5,000 to Bill;

(f) dispose of the **residual estate** (the remainder) as directed by the will.

In order to carry out these tasks, the personal representative has a number of responsibilities that can require legal help. The process described above is called **administering the estate**. For practical purposes, administering the estate involves obtaining a **grant of probate** from the Supreme Court of the Northwest Territories. This is usually a straightforward procedure. A Judge will read the documents and approve them. A court appearance is not required. However, if the will is contested, or if it not clear enough or properly signed, then a trial must be held and witnesses called to prove the deceased's intentions or the validity of the will.

The practical duties in administering an estate which thus fall on the personal representative are usually as follows:

(a) to dispose of the deceased's remains;

(b) to **probate** the will, that is, to prove to the satisfaction of a Judge of The Supreme Court of the Northwest Territories that:
  (i) this is the last will
  (ii) it was properly signed and witnessed

(c) once probate is granted, to attend at the bank to open and list the contents of any safety deposit box;

(d) to determine what debts the deceased has and pay them;

(e) to collect all assets, and convert assets into cash as far as is necessary or desirable;

(f) to transfer ownership of assets from the deceased to the personal representative and then from the personal representative to any purchaser if any assets are being sold;

(g) to start or continue any legal actions or lawsuits that may be required by the Estate;

(h) to file any outstanding income tax returns, including one for the year of death;

(i) to file estate tax returns;

(j) to obtain a tax clearance from Revenue Canada certifying that all taxes have been paid;

(k) to transfer all bequests under the will from the personal representative to the beneficiaries;

(l) to **pass the accounts**, which means that the personal representative must obtain approval of The Supreme Court of the Northwest Territories for the way things were handled. The personal representative's accounts will show which assets came into his or her possession and how those assets were disposed of. If all beneficiaries agree, the personal representative often does not complete this step, however they must file an application to close the estate with the Court.

A personal representative is entitled to be compensated from the estate for any reasonable expenses, time and trouble. There is no fixed rule determining what is reasonable compensation. However, often the compensation is in the range of 2% to 5% of the value of the whole estate. If desired, a person can specify in the will what compensation the personal representative is to receive for administering the estate. Otherwise the personal representative may apply to the Court to decide. See the Probate Rules of the Northwest Territories Supreme Court for a more detailed description of other fees and charges allowed.

The above sets out the functions and responsibilities of the personal representative.

In addition, if there is a trustee appointed by the will to hold certain property for the benefit of a child, for example, the trustee has the obligation to manage and invest that property according to any conditions set out in the will. If there are no conditions, or the conditions are not complete, the **Trustee Act** of the Northwest Territories will govern the trustee's actions.
Often the personal representative is also appointed as the trustee. This one person then carries out both functions.

If a person dies without a will, the affairs of the deceased must still be administered. The list of persons entitled to preference to administer the estate is established in the Probate Rules of the Supreme Court, and starts with the spouse. Those persons may apply to a Judge of the Supreme Court of the Northwest Territories for **letters of administration**. This means, in effect, the

authority from the Court to go ahead and handle the estate. The person who is granted this authority is called the **Administrator** (if male) or the **Administratrix** (if female). This person acts as the personal representative of the deceased.

If no one comes forward to act as the administrator or administratrix, then the **Public Trustee** has the authority under law to administer the estate. The Public Trustee will then divide up any assets remaining after the debts are paid. Assets will be divided among those living relatives of the deceased in the order set out in the **Intestate Succession Act** (see Question 2).

Whoever handles the estate, whether it is a relative or the Public Trustee, will generally follow the same steps as set out above for the personal representative appointed under a will.

A FINAL WORD OF CAUTION

The discussion of inheritances would not be complete without a reference to the very important legislation known as the **Dependant's Relief Act** of the Northwest Territories. This law gives the Court discretion to override the terms of a person's will, or the distribution of an estate provided by the **Intestate Succession Act**, where the Court is of the opinion that a person who was **dependent upon the deceased** is not properly or sufficiently provided for.

A **dependant** is defined as:

(a) the surviving spouse of the deceased;

(b) a child of the deceased who is under the age of nineteen years at the time of the deceased's death;

(c) a child of the deceased who is nineteen years of age or over at the time of the deceased's death and unable by reason of mental or physical disability to earn a livelihood;

(d) a person who cohabited with the deceased for one year immediately preceding the time of the deceased's death and was dependent on the deceased for maintenance and support;

(e) a person who at the time of the deceased's death was cohabiting with the deceased and between whom one or more children were born;

(f) a person who at the time of the deceased's death was acting as a foster parent of the children of the deceased in the same household and who was dependent upon the deceased for maintenance and support.

Therefore, in the Northwest Territories, a person who falls into any of these categories may still be able to claim a share of the estate. An application must be made to the Supreme Court of the Northwest Territories within six months of the grant of probate or letters of

administration. A lawyer can assist in advising such a person of the procedure and likelihood of success.

Also, a person who is making a will who wishes to **disinherit** a dependant (that is, not leave a share of the estate to any of the persons described in (a) to (e) above) should obtain legal advice as well.

A trust set up by a will may also be varied by a Judge of the Supreme Court pursuant to the **Trusts Variation Act** of the Northwest Territories.

LEGAL WORDS

ADMINISTRATOR	A man appointed by the Court to handle the affairs of a person who dies without a will.
ADMINISTRATRIX	A woman appointed by the Court to handle the affairs of a person who dies without a will.
ALTERNATE EXECUTOR OR EXECUTRIX	The person appointed by a will to handle the deceased's affairs in the event that the original Executor or Executrix is unable or unwilling to do so.
BENEFICIARY	A person or institution which inherits property from a deceased person either under a will or under the **Intestate Succession Act** of the Northwest Territories.
CODICIL	A document changing a will. In order to be valid, a codicil must be signed and witnessed in the same manner as a will.
ESTATE	A general term usually used to refer to all the property owned by a person at the time of death.
EXECUTOR	A man appointed by a will to handle the deceased's affairs, including taking care of the deceased's property and paying out any debts owed by the deceased and transferring property to beneficiaries. Also called the personal representative.
EXECUTRIX	A woman appointed by a will to handle the deceased's affairs as above. Also called the personal representative.
GRANT OF PROBATE	An order of The Supreme Court of the Northwest Territories confirming that the will is valid and thereby proving the personal representative with proof of his or her authority to handle the deceased's affairs. This is sometimes called "letters probate".
HOLOGRAPH WILL	A will written entirely in the handwriting of the deceased and signed by him or her. This is considered a valid will in the Northwest Territories. Will forms purchased in stationery stores are <u>not</u> holograph wills.
INTESTATE	A person who dies without a will (or without a valid will). An intestate's property, after payment of debts, will be distributed among relatives

according to the rules set out in the **Intestate Succession Act** of the Northwest Territories.

INTESTATE SUCCESSION ACT — Legislation passed by the Government of the Northwest Territories which describes what happens to the property of a person who dies in the Northwest Territories without a will.

ISSUE — All children, grandchildren and other lineal descendants of a person.

LETTERS OF ADMINISTRATION — An order of The Supreme Court of the Northwest Territories authorising a named individual to handle the affairs of a person who died without a will.

PERSONAL REPRESENTATIVE — The person with legal authority to wind-up the deceased's estate. The personal representative is called an Executor or Executrix if appointed by a will, and an Administrator or Administratrix if appointed by the Court where there is no valid will or the Executor or Executrix of a will have renounced their right to administer the estate.

PER STIRPES — A type of distribution that results in a beneficiary's share being transferred to the beneficiary's children if the beneficiary dies before the maker of the will rather than being divided among the other beneficiaries under the will. If a testator leaves all of his property to his issue **per stirpes**, and has three children, A, B, and C, but C dies before the testator, then C's one-third share would go to C's children and not to A & B. The presence or absence of this technical term in a will has very significant consequences and a lawyer's advice should be sought.

PROBATE — The process of proving a will by filing the will in The Supreme Court of the Northwest Territories, together with the necessary documentation to establish that it is the last will of the deceased and meets all legal requirements.

PROPERTY — A general term usually used to mean everything owned by a person. In law, the term **real property** refers to land and buildings, while **personal property** refers to everything else.

PUBLIC TRUSTEE — A government official who is authorised by law to act as the personal representative of a deceased person in the event that no relative or creditor applies to the Court to administer an estate.

TESTATOR — A man who makes a will.

TESTATRIX — A woman who makes a will.

TRUSTEE	A person who holds property on behalf of another. A trustee is required by law to administer the person's property fairly and in their best interests. An Executor or Executrix appointed under a will is a trustee, because he or she holds the deceased's property on behalf of the beneficiaries and creditors of the deceased. A person who is required to hold and invest a child's inheritance until age nineteen is also a trustee of that inheritance for the child. The will may designate the personal representative, the child's guardian, another person or a trust company as a trustee for this purpose.
WILL	A document that expresses the wishes of the person making it with respect to disposing of his or her property upon death. The will usually appoints a person to handle all of the deceased's affairs and sets out who is to receive the deceased's property. In order to be valid, a will must be signed and witnessed in the manner set out in the **Wills Act** of the Northwest Territories.