

PROBATING A WILL THAT IS NOT NOTARIZED

What must be done if a person dies leaving a will that is not notarized?

YOU MUST VERIFY ITS VALIDITY!



When a person dies leaving a will that is not notarized, you must verify its validity.

Consult your **notary!**



WHAT IS A WILL THAT IS NOT NOTARIZED?

The law recognizes **two types of wills that are not notarized:**

1. The holograph will

In order to qualify as a "holograph will", the will must be entirely written and signed by the person himself, without using a computer or other technical device. It is generally hand written, but if a person cannot use his hands, he may write with his mouth or his feet.

2. The will before two witnesses

To qualify as a "will before two witnesses", the will must be signed by the person in front of two witnesses. It may be written out by the person himself or by another person. It may also be drafted on a computer or otherwise (by filling out a form, for example).

The witnesses must attest that the document is indeed the will of the person who is about to sign, and afterwards that it is his signature. They must then write their initials on every page of the will and sign it.

A notarized will does not need to be probated.

WHY PROBATE A WILL THAT IS NOT NOTARIZED?

When a person dies leaving behind a will that is not notarized, the **law requires that its validity be ascertained** by a notary or by a court.

Similarly, any non-notarized modification made to a will must be probated, whether the will is notarized or not. This is the case for modifications made in a **holograph will or in a will before two witnesses** (as when someone makes changes himself to his own notarized contract).

The probate procedure required by the law is intended to:

- + Confirm that the person is deceased.
- + Ascertain that the will is his own and that on first sight it appears to be his last.
- + Verify that the will meets the legal conditions required to be valid.

The probate procedure also allows those who are settling the succession, as well as the heirs named in the will, to consult it. The notary or the clerk may provide them with true copies or excerpts of the will.

Are you questioning the validity of a will?

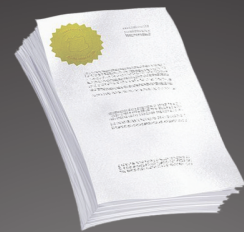
Any person who has an interest in having the will probated and who questions its validity may attempt, for example, to prove the following:

- + It is not the will of the deceased person.
- + There is a more recent will.
- + The will has been changed.
- + The person is not dead.

DID YOU KNOW?



A will prepared by a lawyer is considered a will made before two witnesses. It must therefore be probated when the person who signed it dies.



A NOTARIZED
WILL DOES
NOT HAVE TO
BE PROBATED.

Once a will has been probated, is it too late to challenge it?

No. Probating a will **does not mean that it is definite or unchallengeable**. Its purpose is simply to establish that the will meets the requirements of the law.

Even after the will is probated, it is still possible to:

- + Challenge the content of the will (if the heirs don't agree on the interpretation of a sentence in the will, for example).
- + Challenge the validity of the probated will if new evidence (such as a new will) is found.
- + Demonstrate that the testator did not have the capacity to sign it or was forced to do so (perhaps the person could not understand that he was signing his own will at the moment of signing).

HOW TO PROBATE A WILL THAT IS NOT NOTARIZED?

Your notary will take care of all the legal procedures required to probate a will that is not notarized or modifications that are not notarized. This will include:

- + Verifying the identity of the deceased and the evidence of his death.
- + Informing potential heirs in writing that there is a will or that modifications have been made to it.
- + Obtaining the affidavits of witnesses to confirm (among other things) that the will is indeed that of the deceased.
- + Submitting to the court all documents required by the law.

To do this, your notary will need certain documents, including:

- + The original will and its modifications
- + An official copy of the act of death
- + The search certificates from the Register of Testamentary Dispositions of the Chambre des notaires and the Barreau du Québec

Probate report of the will

Your notary will prepare a **probate report** which will be the official document confirming that the will has been probated.

Otherwise, your notary will submit a file to the court containing all the documents required to probate the will. The court will then render a **probate judgment**.

*If the probating of the will is contested, the notary **must** submit the file to a court so that it may render judgment.*

WHAT HAPPENS TO THE SUCCESSION DURING THE PROBATE PROCEDURE?

During the probate procedure, **the succession is "frozen"**. The succession's money and property cannot be used.

The probate procedure may take several months and may be costly. Normally, these costs are paid with the money and the property of the deceased. If there is not enough, consult your notary about various possible solutions.

*When the will or its modifications have been probated and are not contested, **the liquidation of the succession may begin.***

HOW TO PREPARE?

INFORMATION TO COLLECT

About the deceased person

- His full name, contact information, date of birth and social insurance number
- The date and location of his death
- The documents relating to his civil status (*marriage certificate, marriage contract, judgment of divorce, etc.*)
- The original will and its modifications
- Any other information requested by your notary

About the people involved in probating the will

- The full name and contact information of the people named in the will and in the modifications to the will
- The full name and contact information of the witnesses to the will (when relevant)
- The full name and contact information of a person able to swear under oath that the writing or the signature in the will is truly that of the deceased (when relevant)

FOOD FOR THOUGHT

- Did the deceased leave a will? Has it been modified?
- Do you have an official copy of the death act issued by the Directeur de l'état civil?
- Have you obtained the search certificates from the Register of Testamentary Dispositions of the Chambre des notaires and the Barreau du Québec?
- Any other question raised by your notary.