

## Is a handwritten Will legal?

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When people are considering their estate plan, the legal document most thought of is a Will. If people believe their estate is fairly simple, and their wishes for their estate once they pass away are equally as simple, the question often comes up: “If I were to write my own Will, would that handwritten Will be legal?”

### **Holograph Wills**

The legislation in Manitoba states that a handwritten Will, referred to as a “Holograph Will”, is valid when the person making the Will:

1. writes the Will fully in their own handwriting, and
2. signs their signature at the end of the Will.

It is also highly recommended that the person making the Will includes the date when it was made.

### **Issues with Probating Holograph Wills**

While handwritten Wills may be valid and legal in Manitoba, there can be issues that arise from these types of Wills if the Will must be submitted to probate or relied upon during the administration of the Estate. A handwritten Will is often not sufficient on its own for the Court to determine that the Will was validly made and that it should be enforced.

In order to determine the validity and enforceability of the handwritten Will, the Court will require evidence from individuals who know the deceased to confirm the following:

1. that the handwriting belongs to the deceased;
2. that the deceased was at the age of majority when they wrote the Will; and
3. that the deceased was of sound mind, memory and understanding at the time they wrote the Will.

Depending on the timing of the Estate administration, there can be difficulties with locating individuals who would have known the deceased at the time of writing their Will as this may have been many years prior. In light of these requirements for handwritten Wills, it can be easier for individuals to have a lawyer prepare their Will. A lawyer would prepare the evidence, in the form of an Affidavit, confirming the required information to satisfy a judge should probate be required.

In addition, a handwritten Will may not contain all of the information or direction needed to properly administer an Estate. If a handwritten Will does not include the correct information or the direction is not clear, then it may be deemed invalid and not useful for the Estate. It is always important to ensure that a Will is properly drafted so that your wishes and directions are followed.

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