

The Wills Act

being

Chapter 74 of *The Revised Statutes of Saskatchewan, 1920*
(Assented to November 10, 1920).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER 74

An Act respecting Wills

SHORT TITLE

Short title

- 1 This Act may be cited as *The Wills Act*.

R.S.S. 1909, c.44, s.1; R.S.S. 1920, c.74, s.1.

INTERPRETATION

Interpretation

- 2 In this Act, unless the context otherwise requires, the expression:

“Will”

1. “Will” shall extend to a testament and to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power and also to a disposition by will and testament and to any other testamentary disposition;

“Real property”

2. “Real property” extends to and includes messuages, lands, rents and hereditaments whether of freehold or any other tenure whatsoever and whether corporeal or incorporeal and any undivided share thereof and any estate, right or interest therein other than a chattel interest;

“Personal property”

3. “Personal property” extends to and includes leasehold estates and other chattels real and also moneys, shares of Government and other stocks or funds, securities for money, debts, choses in action, rights, credits, goods and all other property whatsoever other than real property as above defined;

“Person” and “testator”

4. “Person” and “testator” include a married woman;

“Issue”

5. “Issue” includes all lawful lineal descendants of the testator.

R.S.S. 1909, c.44, s.2; R.S.S. 1920, c.74, s.2.

WHO MAY MAKE A WILL

Power to dispose of all property

3 Subject to the provisions of *The Devolution of Estates Act* every person may devise, bequeath or dispose of by will executed in manner hereinafter mentioned all real property and personal property to which he may be entitled at the time of his death and which if not so devised, bequeathed or disposed of would devolve upon his heir at law or personal representative; and the power hereby given shall extend to estates *pur autre vie* whether there be or be not any special occupant thereof and whether the same be corporeal or incorporeal hereditaments; and also to all contingent, executory or other future interests in any real or personal property whether the testator be or be not ascertained as the person or one of the persons in whom the same may respectively become vested and whether he be entitled thereto under the instrument by which the same were respectively created or under any disposition thereof by deed or will and also to all rights of entry for conditions broken and other rights of entry and also to such of the same estates, interests and rights respectively and other real and personal property as the testator may be entitled to at the time of his death notwithstanding that he may become entitled to the same subsequently to the execution of his will.

R.S.S. 1909, c.44, s.3; R.S.S. 1920, c.74, s.3.

Infant cannot make will

4 No will made by any person under the age of twenty-one years shall be valid.

R.S.S. 1909, c.44, s.4; R.S.S. 1920, c.74, s.4.

Married woman may make will as if *feme sole*

5 Any married woman whether married before or after the passing of this Act and without obtaining her husband's consent or without his knowledge either of her will or of its contents may by such will executed as in this Act provided devise, bequeath or dispose of any real or personal property to which she is entitled either at law or in equity, and whether the same is acquired before or after marriage, in as free and ample a manner as if she were a *feme sole*.

R.S.S. 1909, c.44, s.5; R.S.S. 1920, c.74, s.5.

Wills of soldiers and sailors

6(1) A soldier being in actual military service or a mariner or seaman at sea, may dispose of his personalty in the manner in which he might so have done before the passage of this Act, and may dispose of his real estate in the same manner as his personal: and he may do so in either case notwithstanding that he may be under the age of twenty-one years.

(2) Subsection (1) shall apply retrospectively to wills made at any time after the fourth day of August, 1914.

1918-19, c.21, s.1; R.S.S. 1920, c.74, s.6.

FORM AND MODE OF EXECUTION

Formalities of execution

7 No will shall be valid unless it is in writing and executed in manner hereinafter mentioned, that is to say: it shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator but no form of attestation shall be necessary.

R.S.S. 1909, c.44, s.7; R.S.S. 1920, c.74, s.7.

Signature to will

8 Every will shall so far only as regards the position of the signature of the testator or of the person signing for him as aforesaid be deemed to be valid within the meaning of this Act if the signature is so placed at or after or following or under or beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will or by the circumstance that a blank space intervenes between the concluding word of the will and the signature or by the circumstance that the signature is placed among the words of the “testimonium” clause or of the clause of attestation or follows or is after or under the clause of attestation either with or without a blank space intervening or follows or is after or under or beside the names or one of the names of the subscribing witnesses or by the circumstance that the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it nor shall it give effect to any disposition or direction inserted after the signature was made.

R.S.S. 1909, c.44, s.8; R.S.S. 1920, c.74, s.8.

Appointment by will executed as a will

9 No appointment made by will in exercise of any power shall be valid unless the same is executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

R.S.S. 1909, c.44, s.9; R.S.S. 1920, c.74, s.9.

Due execution sufficient

10 Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

R.S.S. 1909, c.44, s.10; R.S.S. 1920, c.74, s.10.

Will not invalid if witness incompetent

11 If any person who attests the execution of a will is at the time of the execution thereof or becomes at any time afterwards incompetent to be admitted a witness to prove the execution thereof such will shall not on that account be invalid.

R.S.S. 1909, c.44, s.11; R.S.S. 1920, c.74, s.11.

Devise to witness void, but witness may prove execution

12 If any person attests the execution of any will to whom or to whose wife or husband any beneficial devise or legacy affecting any real or personal property (other than a charge for the payment of a debt) is thereby given, such devise or legacy shall so far only as concerns such person attesting the execution of such will or the wife or husband of such person or any person claiming under such person, wife or husband be null and void and such person so attesting shall be admitted to prove the execution of such will or the validity or invalidity of such will notwithstanding such devise or legacy, provided that where there are two competent witnesses to the will beside such person such devise, bequest or appointment shall not be void.

R.S.S. 1909, c.44, s.12; R.S.S. 1920, c.74, s.12.

Charge of debts on estate not to disqualify witness

13 If by any will any real or personal property is charged with any debt or debts and any creditor or the wife or husband of any creditor whose debt is so charged attests the execution of such will such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof.

R.S.S. 1909, c.44, s.13; R.S.S. 1920, c.74, s.13.

Executor may be a witness

14 No person shall on account of his being an executor of a will be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

R.S.S. 1909, c.44, s.14; R.S.S. 1920, c.74, s.14.

Execution outside province

15 Every will made out of Saskatchewan (whatever was the domicile of the testator at the time of making the same or at the time of his death) shall as regards personal property be held to be well executed for the purpose of being admitted to probate in this province if the same is made according to the forms required either:

- (a) by the law of this province; or
- (b) by the law of the place where the testator was domiciled when the same was made; or
- (c) by the law of the place where the same was made; or
- (d) by the law, then in force in that part of His Majesty's dominions where he had his domicile of origin.

R.S.S. 1909, c.44, s.15; R.S.S. 1920, c.74, s.15.

REVOCATION AND ALTERATION

Will not revoked by change of domicile

16 No will shall be held to be revoked or to have become invalid nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same.

R.S.S. 1909, c.44, s.16; R.S.S. 1920, c.74, s.16.

Marriage to revoke a will, exceptions

17 Every will shall be revoked by the marriage of the testator except in the following cases, namely:

- (a) where it is declared in the will that the same is made in contemplation of such marriage;
- (b) where a will is made in exercise of a power of appointment and the real or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator or the person entitled as next of kin under *The Devolution of Estates Act*;
- (c) where the wife or husband of the testator elects to take under the will by an instrument in writing signed by said husband or wife and filed within one year after the testator's death in the court in which probate of such will is taken or sought to be taken.

R.S.S. 1909, c.44, s.17; R.S.S. 1920, c.74, s.17.

Presumption of intention not to revoke

18 No will shall be revoked by any presumption of an intention to revoke the same on the ground of an alteration in circumstances.

R.S.S. 1909, c.44, s.18; R.S.S. 1920, c.74, s.18.

How revocation effected

19 No will or codicil or any part thereof shall be revoked otherwise than as aforesaid or by another will or codicil executed in manner by this Act required or by some writing declaring an intention to revoke the same and executed in the manner in which a will is by this Act required to be executed or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

R.S.S. 1909, c.44, s.19; R.S.S. 1920, c.74, s.19.

Obliteration, etc., effect of

20 No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration are not apparent unless such alteration is executed in the manner by this Act required for the execution of the will; but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator made by himself or some other person in his presence and by his direction and the subscription of the witnesses are made in the margin or in some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or in some other part of the will.

R.S.S. 1909, c.44, s.20; R.S.S. 1920, c.74, s.20.

Revoked will, how revived

21 No will or codicil or any part thereof which has been in any manner revoked shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner in this Act required and showing an intention to revive the same; and when any will or codicil which has been partly revoked and afterwards wholly revoked is revived such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof unless an intention to the contrary is shown.

R.S.S. 1909, c.44, s.21; R.S.S. 1920, c.74, s.21.

OPERATION AND CONSTRUCTION**Devise not to take effect as against personal representatives**

22 Excepting such devises as are made by the testator to his personal representative either in his representative capacity or for his own use no devise of land shall be valid or effectual as against the personal representatives of the testator until the land affected thereby is transferred to the devisee thereof by the personal representatives of the devisor or testator.

R.S.S. 1909, c.44, s.22; R.S.S. 1920, c.74, s.22.

Subsequent conveyances

23 No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal property therein comprised except an act by which such will is revoked as in this Act mentioned shall prevent the operation of the will with respect to such estate or interest in such real or personal property as the testator has power to dispose of by will at the time of his death.

R.S.S. 1909, c.44, s.23; R.S.S. 1920, c.74, s.23.

Will construed as if made immediately before death

24(1) Every will shall be construed with reference to real and personal property affected by it to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention appears by the will.

(2) This section shall apply to the will of a married woman made during coverture whether she is or is not possessed of or entitled to any separate property at the time of making it; and such will shall not be required to be re-executed or republished after the death of her husband.

R.S.S. 1909, c.44, s.24; R.S.S. 1920, c.74, s.24.

Lapsed devises included in residuary devise

25 Unless a contrary intention appears by the will such real property or interest therein as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise, if any, contained in such will.

R.S.S. 1909, c.44, s.25; R.S.S. 1920, c.74, s.25.

Devise of real property in certain cases

26 A devise of the real property of the testator or of the real property of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it shall be construed to include the leasehold estate of the testator or his leasehold estates or any of them to which such description extends, as the case may be, as well as freehold estates unless a contrary intention appears by the will.

R.S.S. 1909, c.44, s.26; R.S.S. 1920, c.74, s.26.

Property affected by general power of appointment included in general devise of property

27 A general devise of the real property of the testator or of the real property of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner shall be construed to include any real property or any real property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention appears by the will; and in like manner a bequest of the personal property of the testator or any bequest of personal property described in a general manner shall be construed to include any personal property or any personal property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention appears by the will.

R.S.S. 1909, c.44, s.27; R.S.S. 1920, c.74, s.27.

Devise of real property without words of limitation

28 Where any real property is devised to any person without any words of limitation such devise shall, subject to *The Devolution of Estates Act*, be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real property unless a contrary intention appears by the will.

R.S.S. 1909, c.44, s.28; R.S.S. 1920, c.74, s.28.

Devise of real property with words of limitation

29 Any devise or limitation which heretofore would have created an estate tail shall be construed to pass or transfer the absolute ownership or the greatest estate that the deviser or testator had in the land.

R.S.S. 1909, c.44, s.29; R.S.S. 1920, c.74, s.29.

Meaning of “heir” in a devise of real property

30 Where any real property is devised by any testator to the heir or heirs of such testator or of any other person and no contrary or other intention is signified by the will the words “heir” and “heirs” shall be construed to mean the person or persons to whom such real property would descend under the law of Saskatchewan in the case of intestacy.

R.S.S. 1909, c.44, s.30; R.S.S. 1920, c.74, s.30.

Import of words “die without issue”

31 In any devise or bequest of real or personal property the words “die without issue” or “die without leaving issue” or “have no issue” or any other words which import either a want or failure of issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of his issue unless a contrary intention appears by the will or by reason of such person having what but for sections 199 and 200 of *The Land Titles Act* or section 29 of this Act would have been a prior estate tail or of a preceding gift being without any implication arising from such words a limitation of what but for the said sections would have been an estate tail to such person or issue or otherwise: but this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift be born or if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

R.S.S. 1909, c.44, s.31; R.S.S. 1920, c.74, s.31.

When devise to trustee passes the whole estate

32 Where any real property is devised to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such real property or in the surplus rents and profits thereof is not given to any person for life or such beneficial interest is given to any person for life but for the purposes of the trust may continue beyond the life of such person such devise shall, subject to *The Devolution of Estates Act*, be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real property and not an estate determinable when the purposes of the trust are satisfied.

R.S.S. 1909, c.44, s.32; R.S.S. 1920, c.74, s.32.

Devise of real property to executor or trustee

33 Where any real property is devised to any trustee or executor such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real property unless a definite term of years absolute or determinable or an estate of freehold is thereby given to him expressly or by implication.

R.S.S. 1909, c.44, s.33; R.S.S. 1920, c.74, s.33.

When devise of estate tail shall not lapse

34 Where any person to whom any real property is devised for what but for sections 199 and 200 of *The Land Titles Act* or section 29 of this Act would have been an estate tail or for an estate *in quasi entail* dies in the lifetime of the testator leaving issue who would be inheritable under such entail if such estate existed and any such issue are living at the time of the death of the testator such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention appears by the will.

R.S.S. 1909, c.44, s.34; R.S.S. 1920, c.74, s.34.

Devise to children not to lapse if they have issue living

35 Where any person being a child or other issue of the testator to whom any real or personal property is devised or bequeathed for any estate or interest not determinable at or before the death of such person dies in the lifetime of the testator leaving issue and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention appears by the will.

R.S.S. 1909, c.44, s.35; R.S.S. 1920, c.74, s.35.

Illegitimate child taking under will of mother

36 If in any will of a testatrix any devise or bequest is made by her to or for her issue or to or for her child or children no child of such testatrix shall be debarred from taking under such will for the reason only that such child is an illegitimate child of the testatrix.

R.S.S. 1909, c.44, s.36; R.S.S. 1920, c.74, s.36.

Real property primarily liable for payment of mortgage

37(1) Where any person dies seised of or entitled to which any estate or interest in any real property at the time of his death was or is charged with the payment of any sum or sums of money by way of mortgage and such person has not by his will or deed or other document signified any contrary or other intention the heir or devisee to whom such real property descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal property or any other real property of such person; but the real property so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all mortgage debts with which the same is charged every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) Nothing herein contained shall affect or diminish any right of the mortgagee of such real estate to obtain full payment or satisfaction of his mortgage debt out of the personal property of the person so dying as aforesaid or otherwise.

R.S.S. 1909, c.44, s.37; R.S.S. 1920, c.74, s.37.

General directions for debts of testator

38 In the construction of any will or deed or other document to which section 37 relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal property shall not be deemed to be a declaration of an intention contrary to or other than the rule in the said section contained unless such contrary or other intention be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt or charged by way of mortgage on any part of his real property.

R.S.S. 1909, c.44, s.38; R.S.S. 1920, c.74, s.38.

