

UNEDITED

The Wills Act

being

Chapter 120 of *The Revised Statutes of Saskatchewan, 1953*
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

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 120

An Act to make Uniform the Law respecting Wills

PRELIMINARY

Short title

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

R.S.S. 1953, c.120, s.1.

Interpretation

2 In this Act “will” includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

R.S.S. 1940, c.110, s.2; R.S.S. 1953, c.120, s.2.

PART I

General

Property disposable by will

3 Any person may devise, bequeath or dispose of by will all real and personal property, whether acquired before or after the making of his will, to which at the time of his death he is entitled either at law or in equity for an interest not ceasing at his death, including therein:

- (a) estates *pur autre vie*, whether there is or is not any special occupant thereof and whether the same are corporeal or incorporeal hereditaments; and
- (b) contingent, executory or other future interests in any real or personal property, whether the testator is or is not ascertained as the person or one of the persons in whom the same may respectively become vested, and whether he is entitled thereto under the instrument by which the same were respectively created or under any disposition thereof by deed or will; and
- (c) rights of entry for conditions broken and other rights of entry.

R.S.S. 1940, c.110, s.3; R.S.S. 1953, c.120, s.3.

Infant

4 Except as hereinafter otherwise provided, no will made by any person under the age of twenty-one years shall be valid.

R.S.S. 1940, c.110, s.4; R.S.S. 1953, c.120, s.4.

Wills of sailors, soldiers, etc.

5(1) The will of a member of naval, military, air or marine forces, when in actual service, or of any mariner or seaman when at sea or in course of a voyage, may be made by a writing signed by him or by some other person in his presence and by his direction, without any further formality or any requirement as to the presence of or attestation or signature by any witness.

(2) A member of naval, military, air or marine forces shall be deemed to be in actual service after he has taken some steps under the orders of a superior officer in view of and preparatory to joining the forces engaged in hostilities.

(3) The fact that the member of naval, military, air or marine forces, or the mariner or seaman, is under the age of twenty-one years at the time he makes his will shall not invalidate it.

R.S.S. 1940, c.110, s.5; R.S.S. 1953, c.120, s.5.

Execution of will

6(1) Except as in this Act otherwise provided, no will shall be valid unless it is in writing and executed in accordance with the following provisions:

- (a) 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
- (b) the signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (c) at least two of such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

(2) A holograph will, wholly in the handwriting of the testator and signed by him, may be made without any further formality or any requirement as to the presence of or attestation or signature by any witness.

R.S.S. 1940, c.110, s.6; R.S.S. 1953, c.120, s.6.

Place of signature

7(1) Every will shall, so far only as regards the position of the signature of the testator or the person signing for him as aforesaid, be valid 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 the signature to the writing signed as his will.

(2) No will shall be affected by the circumstance:

- (a) that the signature does not follow or is not immediately after the foot or end of the will; or
- (b) that a blank space intervenes between the concluding words of the will and the signature; or
- (c) that the signature is placed among the words of a testimonium clause or of a clause of attestation or follows or is after or under a clause of attestation either with or without a blank space intervening, or follows or is after or under or beside the name of a subscribing witness; or
- (d) 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
- (e) 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.

(3) The enumeration of the above circumstances does not restrict the generality of subsection (1) 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. 1940, c.110, s.7; R.S.S. 1953, c.120, s.7.

Power of appointment

8 Every will made in accordance with the provisions of this Act shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will notwithstanding that it has been expressly required that a will in exercise of the power shall be executed with some additional or other form of execution or solemnity.

R.S.S. 1940, c.110, s.8; R.S.S. 1953, c.120, s.8.

No publication

9 Every will made in accordance with the provisions of this Act shall be valid without any further publication thereof.

R.S.S. 1940, c.110, s.9; R.S.S. 1953, c.120, s.9.

Incompetency of witnesses

10 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 as a witness to prove the execution thereof, the will shall not on that account be invalid.

R.S.S. 1940, c.110, s.10; R.S.S. 1953, c.120, s.10.

Gift to attesting witness

11 If any person attests the execution of a will to whom or to whose then wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal property, other than and except charges and directions for the payment of any debt or debts, is thereby given or made, the devise, legacy, estate, interest, gift or appointment shall, so far only as concerns the person attesting the execution of the will or such wife or husband or any person claiming under such wife or husband, be null and void, and the person so attesting shall be competent as a witness to prove the execution of the will or the validity or invalidity thereof:

Provided that where the will is sufficiently attested without the attestation of any such person, or where no attestation is necessary, the devise, legacy, estate, interest, gift or appointment shall not be null and void.

R.S.S. 1940, c.110, s.11; R.S.S. 1953, c.120, s.11.

Creditor as witness

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

R.S.S. 1940, c.110, s.12; R.S.S. 1953, c.120, s.12.

Executor as witness

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

R.S.S. 1940, c.110, s.13; R.S.S. 1953, c.120, s.13.

Revocation by marriage

14 Every will shall be revoked by the marriage of the testator except:

- (a) where it is declared in the will that the same is made in contemplation of such marriage; or
- (b) where the 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 of the testator or to the persons entitled to the estate of the testator if he died intestate.

R.S.S. 1940, c.110, s.14; R.S.S. 1953, c.120, s.14.

No revocation by presumption

15 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. 1940, c.110, s.15; R.S.S. 1953, c.120, s.15.

Revocation in general

16 No will or any part thereof shall be revoked otherwise than:

- (a) by marriage, as provided in section 14; or
- (b) by another will executed in accordance with this Act; or
- (c) by some writing declaring an intention to revoke the same and executed in accordance with the provisions of this Act respecting the execution of a will; or
- (d) by 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. 1940, c.110, s.16; R.S.S. 1953, c.120, s.16.

Execution of alterations

17 No obliteration, interlineation, cancellation by drawing lines across a will or any part thereof, or other alteration made in a 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 accordance with the provisions of this Act respecting the execution of a will, but the will with such alteration as part thereof shall be held to be duly executed if the signature of the testator and the subscription of the witnesses are made in the margin or in some 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. 1940, c.110, s.17; R.S.S. 1953, c.120, s.17.

Revival

18(1) No will or 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 accordance with the provisions of this Act respecting the execution of a will and showing an intention to revive the same.

(2) When a will which has been partly revoked and afterwards wholly revoked is revived, the revival shall not extend to so much thereof as 'vas revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

R.S.S. 1940, c.110, s.18; R.S.S. 1953, c.120, s.18.

Subsequent conveyances, etc.

19 No conveyance of or other act relating to any real or personal property comprised in a will, made or done subsequent to the execution of the will, shall prevent the operation of the will with respect to such estate or interest as the testator had power to dispose of by will at the time of his death.

R.S.S. 1940, c.110, s.19; R.S.S. 1953, c.120, s.19.

Will speaking from death

20 Unless a contrary intention appears by the will every will shall be construed, with reference to the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator.

R.S.S. 1940, c.110, s.20; R.S.S. 1953, c.120, s.20.

Lapsed and void devices

21 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 the 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 the will.

R.S.S. 1940, c.110, s.21; R.S.S. 1953, c.120, s.21.

Inclusion of leaseholds

22 Unless a contrary intention appears by the will, a devise of the land of the testator or of the land 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 the description extends, as the case may be, as well as freehold estates.

R.S.S. 1940, c.110, s.22; R.S.S. 1953, c.120, s.22.

Appointment made by general gift

23(1) Unless a contrary intention appears by the will, 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 the 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 the power.

(2) Unless a contrary intention appears by the will, 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 the power.

R.S.S. 1940, c.110, s.23; R.S.S. 1953, c.120, s.23.

No words of limitation

24 Unless a contrary intention appears by the will, where real property is devised to any person without any words of limitation, the devise shall be construed to pass the fee simple or other the whole estate which the testator had power to dispose of by will in the real property.

R.S.S. 1940, c.110, s.24; R.S.S. 1953, c.120, s.24.

Devise to “heir”

25 Where real property is devised to the heir or heirs of the 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 the beneficial interests in the real property would go under the law of the province in the case of intestacy.

R.S.S. 1940, c.110, s.25; R.S.S. 1953, c.120, s.25.

Meaning of “die without issue”, etc.

26 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 that person and not an indefinite failure of his issue, unless a contrary intention appears by the will, but this provision shall not extend to cases where such words 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. 1940, c.110, s.26; R.S.S. 1953, c.120, s.26.

Unlimited devise to trustees

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

R.S.S. 1940, c.110, s.27; R.S.S. 1953, c.120, s.27.

Device to trustees or executors

28 Where real property is devised to a trustee or executor, the 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 the 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. 1940, c.110, s.28; R.S.S. 1953, c.120, s.28.

Devises of estate tail

29 Unless a contrary intention appears by the will, where any person to whom real property is devised for what would have been under the law of England an estate tail, or an estate *in quasi entail*, dies in the lifetime of the testator leaving issue who would be inheritable under the entail if such estate existed, and any such issue are living at the time of the death of the testator, the devise shall not lapse but shall take effect as if the death of that person had happened immediately after the death of the testator.

R.S.S. 1940, c.110, s.29; R.S.S. 1953, c.120, s.29.

Gifts to issue predeceasing testator

30 Where any person, being a child or other issue or the brother or sister of the testator, to whom, either as an individual or as a member of a class, any real or personal property is devised or bequeathed for an estate or interest not determinable at or before the death of that person, dies in the lifetime of the testator either before or after the making of the will leaving issue, and any of the issue of that person are living at the time of the death of the testator, the devise or bequest shall not lapse, but shall, unless a contrary intention appears by the will, take effect as if it had been made directly to the persons among whom and in the shares in which that person's estate would have been divisible if he had died intestate and without debts immediately after the death of the testator.

R.S.S. 1940, c.110, s.30; 1949, c.37, s.1; R.S.S. 1953, c.120, s.30.

Note.—Subsection (1) of section 1 of chapter 37 of the statutes of 1949, being *An Act to amend The Wills Act*, amended section 30 of *The Wills Act* (chapter 110 of *The Revised Statutes of Saskatchewan, 1940*):

- (a) by inserting after the word “issue” in the first line the words “or the brother or sister”; and
- (b) by inserting after the word “testator” in the fifth line the words “either before or after the making of the will”.

By subsection (2) of the said section 1, the insertions above mentioned apply only where the testator died after the thirtieth day of March, 1949, and, in such cases, whether the will was or is made before, on or after the thirty-first day of March, 1949.

Illegitimate children

31 Every illegitimate child of a woman shall be entitled to take under a testamentary gift by or to her or to her children or issue the same benefit as he would have been entitled to if legitimate, unless a contrary intention appears by the will.

R.S.S. 194.0, c.110, s.31; R.S.S. 1953, c.120, s.31.

Primary liability of mortgaged land

32(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, any interest in freehold or leasehold property, which at the time of his death is subject to a mortgage, and the deceased has not by will, deed or other document, signified a contrary or other intention, the interest shall, as between the different persons claiming through the deceased, be primarily liable for the payment or satisfaction of the mortgage debt, and every part of the said interest, according to its value, shall bear a proportionate part of the mortgage debt on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified:

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate or his residuary real or personal estate or his residuary real estate; or

(b) by a charge of debts upon any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects any right of a person entitled to the mortgage debt to obtain payment or satisfaction thereof, either out of the other assets of the deceased or otherwise.

(4) In this section “mortgage” includes an equitable mortgage and any charge whatever, whether equitable, statutory or of any other nature, including any lien or claim upon freehold or leasehold property for unpaid purchase money, and “mortgage debt” has a meaning similarly extended.

R.S.S. 194.0, c.110, s.32; R.S.S. 1953, c.120, s.32.

Executor as trustee of residue

33(1) When any person dies after the tenth day of March, 1931, having by will appointed any person executor thereof, such executor shall be deemed a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled thereto, in the event of intestacy in respect thereof, unless it appears by the will that the person so appointed executor was intended to take such residue beneficially.

(2) Nothing in this section affects or prejudices any right to which the executor, if this Act had not been passed, would have been entitled, in cases where there is not any person who would be so entitled.

R.S.S. 194.0, c.110, s.33; R.S.S. 1953, c.120, s.33.

PART II

Conflict of Laws

Immovable and movable property

34(1) In this Part:

- (a) immovable property includes real property and a leasehold or other interest in land;
 - (b) movable property includes personal property other than a leasehold or other interest in land;
- (2) The manner of making, the validity and the effect of a will, so far as it relates to immovable property, shall be governed by the law of the place where the property is situate.
- (3) Subject to the provisions of this Part, the manner of making, the validity and the effect of a will, so far as it relates to movable property, shall be governed by the law of the place where the testator was domiciled at the time of his death.

R.S.S. 1940, c.110, s.31; R.S.S. 1953, c.120, s.34.

Wills of movables made in Saskatchewan

35(1) A will made within the province, whatever was the domicile of the testator at the time of the making of the will or at the time of his death, shall, so far as it relates to movable property, be held to be well made and be admissible to probate, if it is made in accordance with the provisions of Part I, or if it is made in accordance with the law in force at the time of the making thereof:

- (a) of the place where the testator was domiciled when the will was made;
or
- (b) of the place where the testator had his domicile of origin.

Wills of movables made outside of Saskatchewan

(2) A will made outside the province, whatever was the domicile of the testator at the time of the making of the will or at the time of his death, shall, so far as it relates to movable property, be held to be well made and be admissible to probate, if it is made in accordance with the provisions of Part I, or if it is made in accordance with the law in force at the time of the making thereof:

- (a) of the place where the testator was domiciled when the will was made;
or
- (b) of the place where the will was made; or
- (c) of the place where the testator had his domicile of origin.

R.S.S. 1940, c.110, s.35; R.S.S. 1953, c.120, s.35.

Change of domicile

36 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. 1940, c.110, s.36; R.S.S. 1953, c.120, s.36.

PART III
Supplementary

Construction of Act

37 This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it.

R.S.S. 1940, c.110, s.37; R.S.S. 1953, c.120, s.37.

Application of Act

38(1) Except as provided in subsection (2), this Act applies only to wills made after the tenth day of March, 1931; and for the purpose of this Act a will which is re-executed or revived by any codicil shall be deemed to be made at the time at which it is so re-executed or revived.

(2) In the case of any person dying after the tenth day of March, 1931, section 30 applies to his will whether it was made before, on or after the tenth day of March, 1931.

R.S.S. 1940, c.110, s.38; R.S.S. 1953, c.120, s.38.

Application of Rev. Stat. 1930, c.90.

39 *The Wills Act*, chapter 90 of *The Revised Statutes of Saskatchewan, 1930*, shall continue in force in respect of wills made before the eleventh day of March, 1931.

R.S.S. 1940, c.110, s.39; R.S.S. 1953, c.120, s.39.