

Legal Matters:

**Wills, Enduring Powers
of Attorney & Advance
Care Directives**



These materials were put together by a group of researchers and practitioners in New Brunswick who work with older adults. Our aim was to help older adults in New Brunswick navigate the complex landscape of information, services, forms, and resources. We hope that you will find this helpful. This guide was last updated in December 2023.

www.stu.ca/aging-in-nb/

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Overview:

It is important to plan ahead to make sure that your needs and wishes can be taken care of by those you trust. There are 3 important documents that will help you do this:

1) A WILL

2) ENDURING POWER OF ATTORNEY

3) ADVANCE CARE DIRECTIVES

Don't wait! Talk to a lawyer today! Having these documents will give you peace of mind, knowing that someone you chose will be able to take care of you if you are no longer able to do so. If you wait to have these documents written, you may not be able to do so later, such as if you have an accident or get very sick. Not having a Will or Enduring Power of Attorney can mean months of paperwork and legal fees for those you leave behind.

To make these documents, it is best to contact a lawyer. Lawyers can be very helpful for making a Will and will ensure it is valid. To get help, look for a lawyer who does Wills and estates.

For a list of New Brunswick lawyers:

- Visit <https://lsnb.alinityapp.com/client/publicdirectory>, or Google "NB Lawyer directory" and enter your city and province to find a list of lawyers in your area (you do not need to enter a lawyer's name or firm)
- Call New Brunswick Law Society at **(506) 458-8540**



Tip: Lawyers don't always keep your documents on file after they are made, so make sure to keep your documents in a place that is safe from fire, water damage, loss, and theft.

This guide is for informational purposes only and is not a substitute for professional medical, legal, or financial advice. Programs and information can change over time, so please check details with the services and agencies mentioned in these documents. [Last update, December 2023]

A Will

A Will is a legal document which names an Executor to pay your debts and give your property to the people you choose after you die.

Although the law does not require that you use a lawyer to create a Will, it is a good idea. Lawyers know how to properly prepare the Will to make sure it is valid.

What is an Estate?

Your estate is what you own at the time of your death. This can be anything from a car, a house, a cottage, land, furniture, money, jewelry, and even your social media accounts and email.

When making a Will, you will have to make two important decisions:

1) WHO WILL BE MY BENEFICIARIES?

Beneficiaries are the people or organizations that you name in your Will, who will get a share of your estate after your death.



Financial Tip: If you cannot afford to hire a lawyer to create a Will, some bookstores and websites have standard forms or “Will kits” you can buy. If you decide to use one, it is important to keep in mind that they may not include all information required by law in New Brunswick to be considered a valid Will. Whenever possible, hiring a lawyer is the best option to make sure the Will is valid. If you use a website or Will kit, you must follow their instructions exactly.

For more information on Wills, contact Public Legal Education and Information Service of New Brunswick (PLEIS): By phone: **(506) 453-5369**

Online: Visit http://www.legal-info-legale.nb.ca/en/index.php?page=making_a_will, or Google “PLEIS will.”

2) WHO WILL BE MY EXECUTOR (AND MY ALTERNATE EXECUTOR)?

An Executor is the person you pick to take care of your Will when you die. This is a big job, so choose someone you trust and someone who is willing and able do the job.



Tip: Be sure to talk to your Executor about your wishes. See the chapter on “End of Life” for tips on pre-planning funerals. Pre-planning can make things easier for your Executor.

Executors take care of:

- Making and paying for your funeral arrangements.
- Working with your lawyer and getting the original copy of your Will
- Taking control of your estate and making a list of all your assets
- Paying all of your debts from the money in your estate. This includes filing your taxes
- Distributing your assets according to your wishes
- If necessary, applying to the court for letters probate (“probating the Will” means it is approved and validated by the court. This gives the Executor the authority to deal with the Estate.)

An Executor can only do the things written in your Will and cannot do anything else or change anything.

It is a good idea to name an Alternate Executor who can step in if your Executor is not able or willing to act as Executor after you die.

Many people choose a relative or close friend as their Executor. An Executor must be 19 years of age or older. If you don’t have someone you would like to name as Executor, you may want to have The Public Trustee of New Brunswick, or a licensed trust company act as your Executor. Ask your lawyer or accountant about this. Keep in mind that choosing this option can be expensive.

You can choose two or more people to act together as your Executors. If you choose to do this, it is important to include specific instructions in your Will explaining how they are to settle differences of opinion.

The Executor has the right to be paid for doing this job. Talk to your lawyer about this.



Tip: Talk to the person you want to be your Executor and make sure they are willing and understand what will be needed of them. They have the right to say no.



Tip for Caregivers: Being an Executor takes time and responsibility. Make sure you are up for it. You have the right to say no.

Planning ahead and having important documents ready before you meet with a lawyer will save you time and money. It can also help your Executor. Keep a list of everything you own (e.g., house, car, investments, pension, etc.) and all your debts (e.g., mortgage, bills). The Public Legal Education Information System (PLEIS) has a helpful checklist for keeping track of this information and making a Will. You can request it by calling **(506) 453-5369** or downloading it at: http://www.legal-info-legale.nb.ca/en/uploads/file/pdfs/Checklist_for_Making_a_Will_EN.pdf, or by Googling “PLEIS checklist will”



Tip: Keep the original copy of the Will in a safe, fireproof place (like a safe or a safety deposit box at a bank). You can also scan all important documents and save them electronically in another place as a back-up copy.

Make sure your family and Executor know where to find your Will and any information you have about your wishes for funeral arrangements. Your Executor should also know where you keep important documents, such as life insurance policies. If these are locked up in a safe or safety deposit box, make sure they have access to the key or passcode.



Tip: Marriage, common-law partnership, separation, divorce, remarriage, and death of a spouse all have different consequences for your Will and Enduring Power of Attorney. Be sure to talk to a lawyer and update your legal documents to reflect any changes in your life.

WHAT HAPPENS IF I HAVE DEBT?

Your debts and taxes get paid first. Although Wills are instructions for what you wish to leave for your family and how to distribute your estate when you die, your beneficiaries will only get what is left over after debts and taxes are paid.

Enduring Powers of Attorney:

There are two types of Enduring Powers of Attorney.

1) The Enduring Power of Attorney for Property and Financial Affairs is a document that must be made with a lawyer to be legally binding. In it you give someone you trust the authority to manage your finances and property (called your “financial Attorney”). They can act for you anytime you authorize them to, or when you are not able to act or make your own decisions (e.g., if you are in a coma or if you develop advanced dementia).

Financial Attorneys can do things like:

- Deposit cheques into your bank account
- Take money out of your bank account
- Pay your bills
- Pay your taxes
- Sell your home or car
- Manage your investments

2) The Enduring Power of Attorney for Personal Care is a document that outlines your wishes for your future medical treatment and care. In it, you name a personal care Attorney who can make decisions for you if you can't (e.g., if you are in a coma, are very sick, or in an advanced stage of dementia).

Personal Care Attorneys can do things like:

- Make medical decisions for you when you are unable (e.g. what medications you get; decide if you should have a medical procedure or operation)
- Talk to your doctor or other health care providers
- Make decisions about your personal and daily care (e.g., food, shelter, and personal safety. For example, should you be allowed to walk around alone even if there is a risk you might fall? Or, should you be offered solid food if there is a risk of choking?)

For more information on **Enduring Power of Attorney**, contact The Public Legal Education and Information Service of New Brunswick (PLEIS): By phone: **(506) 453-5369**. Online: Visit http://www.legal-info-legale.nb.ca/en/powers_of_attorney, or Google “PLEIS POA.”

Options for Choosing the People you Name in your Enduring Powers of Attorney Documents

One Person for Both Forms of Enduring Powers of Attorney (Financial and Personal Care)

You can have **one person** be your Attorney for financial and personal care decisions. That person would be responsible for managing your financial and personal care decisions if you are unable to do this for yourself.

Example: Marie, your niece, is your financial and personal care Attorney.

Different People for Financial and Personal Care Enduring Powers of Attorney

You can have different people be your Attorney for financial and personal care decisions. One person would manage your financial matters and a different person would manage your personal care decisions, once you can't. There are rules to settle any disputes between your Attorneys.

Example: Marie, your niece, is your financial Attorney. Daniel, your son, is your personal care Attorney.

Multiple People for Each Kind of Enduring Powers of Attorney (Financial and Personal Care)

You can have more than one person be your Attorney for financial or personal care decisions. There are two ways to set this up:

- You can require everyone named as Attorney to agree on a decision before anything can happen.

Example: Your children, Daniel AND Linda, are your Financial Attorneys. They both need to be present to make any financial decisions. They BOTH need to agree and sign on every decision before anything can be done.



Tip: Having everyone agree can make it more complicated, especially if the different people who act as Attorneys live in other provinces or countries. Talk to your lawyer about what works best for you.

- You can arrange that any one person named as Attorney can make decisions on their own.

Example: Your children, Daniel and Linda, are your Personal Care Attorneys. Either one of them can make a personal care decision for you. If the doctor calls Daniel to ask which medicine he would rather you have, he can answer the doctor on his own, and does not need Linda to agree. If Daniel is away on vacation and the nursing home needs a decision made, they can call Linda and she can make the decision without Daniel's approval.



Tip: You can choose in advance which decisions your Attorney is able to make on your behalf.

Often spouses identify each other as Attorney. It is a good idea to also name an Alternate Enduring Power of Attorney in case both spouses are injured at the same time (e.g., in a car accident).

Be sure to name people who are trustworthy in your Enduring Powers of Attorney documents. This decision is very important, and it can be hard and expensive for your family to change later. For example, do not just make the financial Attorney your eldest child by default. Choose someone you know you can trust, because they will have control over your money. Avoid making your Attorney someone who may be tempted to misuse your funds. This could include people who have problems with gambling, high financial needs or who have committed fraud in the past.

Being someone's financial or personal care Attorney is a big job. Choose someone responsible, who will spend the time to manage your affairs well.

Making someone an Attorney does not give that person the ability to change your Will. When you die, the Enduring Power of Attorney ends and your Executor takes over all decisions that you laid out in your Will.



Tip: It is a good idea to ask the people you name in your Enduring Power of Attorney document. Give them a copy or tell them where to find the document should they need to use it.



Tip: It is very important to name an Alternate Attorney in case the person you originally named in your Enduring Power of Attorney document is no longer able to act or make decisions on your behalf.



Tips for Caregivers: When taking care of financial matters, keep a copy of your Enduring Power of Attorney with you. Having your document on hand is helpful because you will need to show proof of Enduring Power of Attorney before acting on someone else's behalf (e.g., paying bills, changing insurance policies, selling their house or car, changing their address with Canada Post, etc.). Banks and other institutions may insist on seeing the original document.

Tips for Caregivers: If you use email, scan a copy of your Enduring Power of Attorney so that you have this ready to send when you are asked for it.

WHAT IF THERE IS NO ONE WHO CAN ACT ON MY BEHALF AS ENDURING POWER OF ATTORNEY?

If you do not have anyone trustworthy available to act on your behalf, such as a family member or friend, you can appoint The Public Trustee of New Brunswick or a licensed trust company to act on your behalf. Ask your lawyer or accountant about this. Keep in mind that choosing this option can be expensive.

You can contact The Public Trustee of New Brunswick at **1 (888) 336-8383** for details and cost information. If you cannot afford to pay, they may be able to reduce the cost of the services.



Tip: You could also appoint the Public Trustee as an Alternate Enduring Power of Attorney, in the event your chosen person can no longer act on your behalf.

Health Care Directives

A Health Care Directive is a document in which you state your wishes for your future medical treatment and care. As long as you are able to understand your doctors and communicate with them, you will make your own decisions about your health care. However, if in the future you can't make decisions on your own (e.g., after you have a stroke or if you are in a coma), this document will help your health professionals and your loved ones understand the decisions you would have made for yourself.

By setting up a Health Care Directive, you can state your wishes for future health care. Some examples include:

- I do (or do not) want CPR
- I do (or do not) want to be put on a respirator or ventilator
- I do (or do not) want to go to the Intensive Care Unit (ICU)
- I want to die at home, in hospice, or in hospital.



Tip: Talk with your doctor about these different choices. These are big decisions to make.

You can set out your health care instructions in three ways:

1. You can hire a lawyer to prepare an Enduring Power of Attorney for personal care and include your health care instructions in it.
2. You can make an Enduring Power of Attorney for personal care yourself using this form from the Public Legal Education and Information Service of New Brunswick (PLEIS): https://www.legal-info-legale.nb.ca/en/uploads/file/pdfs/planning_ahead/F-1.%20Enduring%20Power%20of%20Attorney%20for%20Personal%20Care%20-%20Forms%20-%20English.pdf. You must sign and date this document in front of two independent adult witnesses. The witnesses cannot be the people you name in the document (e.g., as your personal care Attorney), their spouse, common-law partner or child.

- Before completing this document, read this guide on Enduring Powers of Attorney published by the Public Legal Education and Information Service of New Brunswick: https://www.legal-info-legale.nb.ca/en/powers_of_attorney.
- For more information call PLEIS at (506) 453-5369 or Google “PLEIS Enduring Power of Attorney.”

3. You can make your own Health Care Directive by writing your health care instructions down and dating and signing the document. You can also use this form from the Public Legal Education and Information Service of New Brunswick (PLEIS) https://www.legal-info-legale.nb.ca/en/uploads/file/pdfs/planning_ahead/F-2.%20Health%20Care%20Directive%20-%20Forms%20-%20English.pdf.

- Before completing this document, read this guide on Health Care Directives published by the Public Legal Education and Information Service of New Brunswick: <https://www.legal-info-legale.nb.ca/en/health-care-directives>.
- For more information call PLEIS at (506) 453-5369 or Google “PLEIS Health Care Directive.”

Since Health Care Directives do not need to be made by a lawyer, they are easy to change and update as your health changes over time.

If you make different documents (e.g., An enduring Power of Attorney and a Health Care Directive) and there is a conflict in your instructions, the most recent document will be followed. Keep your Health Care Directive up to date. Sign it and date it when you make changes.

It is important to give a copy of your Health Care Directive to your doctor, your personal care Attorney, and any family members or friends involved in your care, so they know your wishes for treatment if you are hospitalized and unable to communicate. It is also a good idea to give a copy to the Health Records Department at the hospital you go to. Again, keep in mind that what is set out in your most recent document are the instructions that must legally be followed.



Tip: It is a good idea to keep a copy of your Health Care Directives on your refrigerator so that it is easy to find. Ambulance workers will often check your refrigerator to see if there are directives posted there.

Tip: You can register your Health Care Directive with Medic Alert and wear a bracelet stating this.

Tip: You can change your personal care Attorney. In the case of separation or divorce, your ex-spouse is automatically no longer your personal care Attorney.

Tip: These online resources can be helpful for thinking about your health care instructions: <https://planwellguide.com> and <https://www.advancecareplanning.ca>.