

2000 Victoria, BC

## **The Formalities of Will-making and the Consequences of NonCompliance under Quebec Law**

In the province of Quebec the formalities that must be observed in the making of a valid will are set out in the Civil Code. More specifically, they are contained in Book 3, Title 4, Chapter 3, Articles 712-730. Copies of those provisions are appended.

Under Quebec Law, a will may validly be made in any one of three different forms: a notarial will, a holograph will, or a will made in the presence of witnesses. Each form of will is governed by its own body of formalities.

If the formalities have not been complied with a will may still be valid if it is saved by either of two provisions. The first is article 713:

713. The formalities governing the various kinds of wills shall be observed on pain of nullity. However, if a will made in one form does not meet the requirements of that form of will, it is valid as a will made in another form if it meets the requirements for validity of that other form.

Thus, for example, a will intended to be in notarial form but which fails to meet one of the requirements set out in 716 to 725 might still be valid as a will made in the presence of witnesses if all the requirements of Article 727 to 730 are met.

The other “saving” provision is Article 714 which provides:

714. A holograph will or a will made in the presence of witnesses that does not meet all the requirements of that form is valid nevertheless if it meets the essential requirements thereof and if it unquestionably and unequivocally contains the last wishes of the deceased.

The test embodied in Article 714 is very similar to that contained in the legislation of many common law jurisdictions that have adopted a “saving” provision for noncompliance with formalities.

**Civil code of Québec : Book three Successions : Title four Wills :**

## **Chapter 3 Forms of wills :**

### **Section I General provisions**

712. The only forms of will that may be made are the notarial will, the holograph will and the will made in the presence of witnesses.

712. The formalities governing the various kinds of wills shall be observed on pain of nullity.

However, if a will made in one form does not meet the requirements of that form of will, it is valid as a will made in another form if it meets the requirements for validity of that other form.

714. A holograph will or a will made in the presence of witnesses that does not meet all the requirements of that form is valid nevertheless if it meets the essential requirements thereof and if it unquestionably and unequivocally contains the last wishes of the deceased.

715. No person may cause the validity of his will to be subject to any formality not required by law.

### **Section II Notarial wills**

716. A notarial will is made before a notary, en minute, in the presence of a witness or, in certain cases, two witnesses.

The date and place of the making of the will shall be noted on the will.

717. A notarial will is read by the notary to the testator alone or, if the testator chooses, in the presence of a witness. Once the reading is done, the testator shall declare in the presence of the witness that the instrument read contains the expression of his last wishes.

The will, after being read, is signed by the testator, the witness or witnesses and the notary, in each other's presence.

718. The formalities governing notarial wills are presumed to have been observed even when this is not expressly stated, subject to the Acts respecting notaries.

However, where special formalities are attached to certain wills, the reason for their observance shall be mentioned in the act.

719. The notarial will of a testator who cannot sign contains a declaration by him to that effect. This declaration also is read by the notary to the testator in the presence of two witnesses, and it compensates for the absence of the signature of the testator.

720. The notarial will of a blind person is read by the notary to the testator in the presence of two witnesses.

In the will, the notary declares that he has read the will in the presence of the witnesses, and this declaration also is read.

721. The notarial will of a deaf person or a deafmute is read by the testator himself in the presence of the notary alone or, if he chooses, of the notary and a witness. If the testator is only deaf, he reads the will aloud.

In the will, the testator declares that he has read it in the presence of the notary and, where such is the case, the witness.

If the testator is deafmute, the declaration is read to him by the notary in the presence of the witness; if he is deaf, it is read aloud by the testator himself, in the presence of the notary and the witness.

722. A person unable to express himself aloud who wishes to make a notarial will conveys his wishes to the notary in writing.

723. In no case may a notarial will be made before a notary who is the spouse of the testator or is related to him in either the direct or the collateral line up to and including the third degree, or connected with him by marriage.

724. The notary before whom a will is made may be designated in the will as the liquidator, provided his discharge of that office is gratuitous.

725. A witness called upon to be present at the making of a notarial will shall be named and designated in the will.

Any person of full age may witness a notarial will, except an employee of the attesting notary who is not himself a notary.

### **Section III Holograph wills**

726. A holograph will shall be written entirely by the testator with his own hand and signed by him without the use of any mechanical process.

It is subject to no other formal requirement.

### **Section IV Wills made in the presence of witnesses**

727. A will made in the presence of witnesses is written by the testator or by a third person.

After making the will, the testator declares in the presence of two witnesses of full age that the document he is presenting is his will. He need not divulge its contents. He signs it at the end or, if he has already signed it, acknowledges his signature; he may also cause a third person to sign it for him in his presence and according to his instructions.

The witnesses thereupon sign the will in the presence of the testator.

728. Where the will is written by a third person or by a mechanical process, the testator and the witnesses initial or sign each page of the act which does not bear their signature. The absence of initials or a signature on each page does not prevent a will made before a notary that is not valid as a notarial will from being valid as a will made in the presence of witnesses, if the other formalities are observed.

729. A person who is unable to read may not make a will in the presence of witnesses, unless the will is read to the testator by one of the witnesses in the presence of the other.

The testator, in the presence of the same witnesses, declares that the document read is his will and signs it at the end or causes a third person to sign it for him in his presence and according to his instructions.

The witnesses thereupon sign the will in the presence of the testator.

730. A person who is unable to speak but able to write may make a will in the presence of witnesses, provided he indicates in writing, otherwise

than by a mechanical process, in the presence of witnesses, that the writing he is presenting is his will.