

∞ WILLS ∞
LETTERS

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INTRODUCTION

In the field of wills and estates, a large part of the communication between the law firm and other parties is in writing. Although the lawyer is responsible for the contents of the correspondence, the legal assistant is responsible for the appearance of each letter. An attractively prepared letter creates a feeling of competence and conveys a high standard of performance.

Most law firms have their own format and templates for correspondence. If you are uncertain as to what the procedure is, or there are simply no set templates or procedures in your office, review the following, decide on the appearance of the correspondence, and adopt a consistent format. For example, consider the following:

- whether the style should be modified block or full block (in this *Guide*, full block is used);
- where the file number should be typed;
- where the date should be typed;
- the appearance of the address (whether to use: Mr./Mrs./Ms./Esq., etc.);
- the form of salutation (Dear Sirs:, Gentlemen:, or Dear Mr. Smith:);
- the appearance of the attention line (whether underlined, bolded, etc.);
- the appearance of the Re: line (again whether underlined, bolded or both); and
- the wording of the complimentary close and signature (whether “Yours very truly”, “Yours truly”, etc.).

Ascertain the number of copies to be made at the time of the preparation of the letter. Usually, one (preferably coloured) copy is made for the file. Sometimes, the lawyer may want another copy for the diary system. If it is the law firm’s policy to send copies of outgoing correspondence to the client, then make such an additional copy. If a copy is sent to anyone, indicate this by typing “cc: Mr. and Mrs. Soandso” or the words “cc: client” under the signature.

Both the supervising lawyer and the legal assistant should become familiar with the letters included in this *Guide*, and whether the letters should be used in the format provided or be adapted to suit the supervising lawyer’s preference.

When you purchase the *Guide*, precedents for every letter, document and form (situated on the odd pages of the *Guide*) are included on the accompanying CD with detailed instructions as to how to save and use them in a file called “Welcome!OpenMeFirst”.

As a result, you should be able to prepare most of the correspondence by simply completing and adapting the standard forms of precedents in this *Guide*. Only in complex situations that require more involved drafting will the letters be dictated by the supervising lawyer.

Being able to draft letters without dictation will save a considerable amount of time; free the supervising lawyer from routine tasks; make the assistant’s work more rewarding (nothing is more frustrating than having to listen to repetitious dictation); and enable the legal assistant to become a better and more involved assistant to the supervising lawyer.

Generally, letters are signed by the supervising lawyer (or, if not available, by another lawyer of the law firm who has first been briefed by the supervising lawyer). In certain circumstances, to save time, or for convenience, some lawyers may allow the assistant to sign routine letters on their behalf. However, if any kind of an **undertaking** is included in a letter, that letter must be signed by the supervising lawyer or by another lawyer who is acquainted with the file.

An **undertaking** is a promise given by the lawyer on his/her own behalf, or on the law firm's behalf, to perform some action. The lawyer is personally responsible for fulfilling that promise. For example: the letter may contain the following: "We hereby undertake that, upon receipt of the signed Release, we shall forward to you our trust cheque in the amount of \$_____." If the lawyer or the law firm does not send the cheque when the Release is received, the lawyer whose name appears on the letter will be in breach of the undertaking.

Any letter containing an undertaking must be flagged in the file and diarized to ensure that the undertaking is fulfilled.

At its end, a letter must be signed, and here are examples:

If signed by the lawyer:

Yours [very] truly,

JOE DOE AND COMPANY

JOE P. DOE
JPD/jh

cc: Mr. and Mrs. Soandso

If signed by the legal assistant on behalf of the lawyer:

Yours [very] truly

JOE DOE AND COMPANY

JANET HILLS
Legal Assistant to JOE P. DOE

JPD/jh or: /jh

cc: Clients

LETTER FORWARDING DRAFT WILL TO CLIENT FOR APPROVAL

General Notes

If a Will is complicated or contains involved drafting or unusual clauses, send a copy to the client for approval. A sample letter is set out opposite.

Preparation

If two Wills are being mailed out (e.g. for a husband and wife), make the appropriate changes.

Processing

Diarize the file for two weeks and follow up if you have not received a reply.

LETTER REQUESTING AN APPOINTMENT

General Notes

When the Will is ready for signature, and several attempts have been made by telephone to reach the client, it is often more expedient (and generally prudent) to send a letter to the client requesting an appointment. A sample letter is set out opposite.

Preparation

If two Wills are being mailed out (e.g. for a husband and wife), make the appropriate changes.

Processing

Diarize the file for two weeks and follow up if you have not received a reply.

**LETTER FORWARDING DRAFT
WILL TO CLIENT FOR
APPROVAL**

File No. _____

Date: _____

PERSONAL AND CONFIDENTIAL

{name and address of client}

Dear: _____:

Re: Your Will

As instructed, we enclose (a) draft[s] of your Will[s] for your review.

Please telephone the writer to discuss any necessary changes or, should it be satisfactory, please contact us to arrange for an appointment to sign your Will[s].

Yours truly,

File No. _____

Date: _____

**LETTER REQUESTING
AN APPOINTMENT**

PERSONAL AND CONFIDENTIAL

{name and address of client}

Dear _____:

Re: Your Will

As instructed, we have prepared your Will[s], which is/are now ready for your signature.

Please telephone the writer for an appointment at your earliest convenience.

Yours truly,

LETTER FORWARDING WILL TO CLIENT FOR EXECUTION

General Notes

Most lawyers do not encourage the execution of a Will outside the law firm. Unless the lawyer attends on the Will's execution, the lawyer cannot accept any responsibility for the validity of such a Will.

In certain cases, it is impossible to have the client attend at the law office to sign the Will and it must be sent to the client for execution. Opposite is an example of a letter setting out the instructions for the execution of a Will outside the law firm.

Preparation

If two Wills are mailed for execution (e.g. for a husband and wife), make the appropriate changes.

Processing

Diarize the file for two weeks and follow up if you have not received a reply.

File No. _____

Date: _____

PERSONAL AND CONFIDENTIAL*{name and address of client[s]}*

Dear _____:

Re: Your Will[s]

In accordance with your instructions, we enclose the original[s] of your Will[s] for signature. Although we prefer that you make an appointment to sign your Will[s] at our office, you have indicated that such an arrangement is inconvenient, and you intend to sign your Will[s] outside of our office. Unless [a] Will[s] is/are executed in the presence of the writer, or another lawyer of this firm, we are unable to accept any responsibility for its/their validity.

Please follow carefully the sequential steps set out below:

1. Read the entire Will[s] to ensure that it/they accurately express[es] your wishes.
2. Obtain two independent adult witnesses (over 19 years of age) who are not beneficiaries or spouses of beneficiaries under the [either] Will. It is important that each witness be independent because a testamentary gift to a beneficiary who signs as a witness or whose spouse signs as a witness will be void.
3. Ensure that both witnesses are present with you, in the same room, at the same time, and that you can all see each other throughout each of the following steps.
4. Any alterations or corrections must be made before the Will[s] is/are signed, and each correction or alteration must be initialled in the margin or near the correction.
5. Insert the date on which you are signing your Will[s] in the blank space on the last page and initial under the date at the insertion point.
6. Initial each page (except the last page) in the bottom left corner just under the last typed text on each page.
7. Using your normal signature, sign the Will[s] in ink where indicated on the last page in the presence of both witnesses.
8. Have both of the witnesses in turn:
 - (a) initial each page next to your initials;
 - (b) initial any corrections in the margin or near the correction;
 - (c) initial under the date on the last page;
 - (d) using their normal signatures, sign their full name where indicated on the last page; and
 - (e) print their full name, resident address, and occupation under their signature.
9. **SIGN ONLY YOUR ORIGINAL WILL[S].**

Please return the executed Will[s] to our office for safekeeping, either by double registered mail or personal delivery. We shall notify the Wills Registry of the Vital Statistics Agency in Victoria, BC, that you have made [a] new Will[s] and confirm the details of its [their] date and location.

If you have any questions or wish to make any changes, please telephone the writer. We will be pleased to explain any provisions in the Will[s] or make any revisions which you consider necessary.

Yours truly,

LETTER REPORTING TO CLIENT ON EXECUTION OF WILL

General Notes

This is an example of a basic reporting letter. Consult with the supervising lawyer regarding any additions or changes.

After you have ascertained the fees and disbursements, prepare an account and process it in the manner required by the law firm. We are not providing an example of account, as each law firm has its own specific procedure for billing.

Preparation

If the report refers to two Wills (e.g. for a husband and wife), make the appropriate changes. The precedent on the accompanying CD has both options (singular and plural).

- ❶ If the original of the Will is forwarded to the client, change this sentence to read:

“We enclose the original of the Will {and any other documents} for safekeeping at {address}.”

- ❷ Omit this paragraph if there were no previous Wills in existence.

- ❸ If any other documents were prepared at this time, attach copies. For example:

“... Power of Attorney in favour of {Names} which document cannot be used until it has been signed and sworn by the Attorney appointed.”

“... Representation Agreement”.

Continued...

File No. _____

Date: _____

PERSONAL AND CONFIDENTIAL

{name and address of client}

Dear _____:

Re: Your Will

We enclose a ❶ copy of your Will, the original of which is held in our office for safekeeping. We are notifying the Vital Statistics Agency advising them of the date of execution and of the location of your new Will.

❷ We confirm that, pursuant to your instructions, your prior Will dated *{date of previous Will}* has been revoked and destroyed.

We also enclose copies of ❸, the originals of which are also held in our office for safekeeping.

Pursuant to your instructions we have not:

1. made any enquiries to verify your ownership of the assets intended to be disposed of under your Will and the manner in which such assets are held or registered, that is: in your name alone or jointly with any other person;
2. investigated nor changed any beneficiary designations in insurance policies, Registered Retirement Savings Plans, Registered Retirement Income Funds, Tax Free Savings Accounts, or other benefit plans, and we confirm that, if applicable, you will be arranging for all necessary changes in this regard; nor
3. provided any tax advice regarding your estate planning, and we confirm our recommendation that you consult your accountant in this regard.

You should be aware of Part 4, Division 6 [Variation of Wills] of the *Wills, Estates and Succession Act*, and more specifically, section 60, which provides:

“Despite any law or enactment to the contrary, if a will-maker dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in a proceeding by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.”

The definition of “spouse” includes a person who is living with another person in a marriage-like relationship, and who has lived with each other in that relationship for at least two years.

Continued...

LETTER REPORTING TO CLIENT ON EXECUTION OF WILL

Preparation (Continued)

- ❶ Adapt this paragraph to suit the particular client if that is deemed necessary. It is important to include as many examples as possible to ensure the client is aware of what is meant by a changed marital situation.



The legal assistant may prepare a draft letter to give to the supervising lawyer with such additions and changes flagged, so the lawyer can decide to include, delete or reword them.

- ❷ If there are no infant children (and no guardian is appointed), delete this paragraph.
- ❸ Include this sentence if you are attaching a *Power of Attorney*.

Processing

Attach to the letter a copy of the Will and any other documents (such as a **Power of Attorney** and a **Representation Agreement**) – ensuring that there is a backing sheet.

If you are sending to the client any originals of documents, send this letter either by registered mail, courier, or have it picked up by the client. In all cases, have the client acknowledge receipt on a copy of the letter. Make a copy of the letter and attach it. Print the following on the copy:

RECEIPT OF THE WILL OF {NAME OF WILL-MAKER}
dated the _____ day of _____, 20__ *{and – list
any other documents attached}* is hereby acknowledged.

(Signature)

(Print name)

Diarize the file for two weeks and follow up if you have not received payment of the statement of account.

{date}

{name [s]}

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We recommend that you review your Will every two years. In conducting such a review, you should consider the following questions:

1. Have your family or financial circumstances changed?
2. ❶ Has your marital situation changed (for example, have you married, entered into a marriage like relationship, divorced, separated, or ceased to be a spouse) since your Will was signed?
3. Has there been a death in your family?
4. Are you satisfied with your choice of Executor and is that person, or those persons, still able to administer your estate?
5. ❷ Are you satisfied with your choice of Guardian for any minor children?
6. Has there been any change in the value of your assets?
7. Have there been any recent changes to legislation that may provide you with tax and probate relief?

If you determine that changes to the Will are necessary, these can be accomplished by a Codicil or a new Will. Please note that a Will can be revoked at any time and that a change in your circumstances may affect certain provisions in the Will. There may also be changes to existing laws that make revising your Will necessary.

❸ Until revoked in writing, we confirm your standing instructions to our firm that, at the request of any attorney named in the Power of Attorney, we are to deliver the original Power of Attorney to the party making such request.

In order to ensure that our records are kept current, please advise us of any change in your contact information (residential address, telephone number or email).

We thank you for your instructions, and enclose our statement of account.

Yours truly,

LETTER FORWARDING ORIGINAL EXECUTED WILL TO CLIENT

General Notes

In some instances, clients request that their Wills be sent to them for safekeeping. Such requests must be in writing, and the supervising lawyer must authorize such delivery.

Preparation

If you are sending out two Wills (e.g. for a husband and wife), make the appropriate changes. The precedent on the accompanying CD has both options (singular and plural).

- ❶ Include this paragraph if this request is, in fact, the law firm's standard procedure.
- ❷ See **Fees – Helpful Information** to determine the fee for filing the *Wills Notice*.
- ❸ Make a copy of this letter and attach it to the letter. Print the following on the copy:

<p style="text-align: center;">RECEIPT OF THE WILL OF {NAME OF WILL- MAKER} dated the _____ day of _____, 20__ is hereby acknowledged.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><i>(Signature)</i></p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><i>(Print name)</i></p>
--

Processing

Attach a blank *Wills Notice* to the letter.

Mail the letter by registered mail or arrange to have it delivered by courier.

Update all records kept by the law firm regarding the location of the Will to show its new whereabouts.

Make a diary notation to ensure that you receive back the acknowledgement of receipt of the Will.

File No. _____

Date: _____

REGISTERED MAIL

PERSONAL AND CONFIDENTIAL

{name and address of client}

Dear _____:

Re: Your Will

As requested, we enclose the original of your Will dated *{date}*.

A Wills Notice was filed with the Vital Statistics Agency in Victoria advising that your original Will was located at our law firm.

① In view of your removal of this document from our office, you should ensure that, in due course, a new Wills Notice is prepared and filed. For your assistance, we enclose a form of such Notice which you should complete and mail, together with your cheque in the amount of \$② to:

Vital Statistics Agency
PO Box 9657 Stn Prov Govt
Victoria, BC
V8W 9P3

Kindly acknowledge receipt of your Will by signing and returning the enclosed copy of this letter.

We trust that you will find the foregoing to be in order. If you have any questions, please contact the writer.

Yours truly,

③

LETTER FORWARDING ORIGINAL EXECUTED WILL TO ANOTHER LAWYER

General Notes

In some instances, clients request that their Wills be sent to another law firm for safekeeping. Such request must be made in writing by the client, and the supervising lawyer must authorize such delivery.

Preparation

- ❶ Delete this paragraph if you did not file a Wills Notice.
- ❷ Make a copy of this letter and attach it to the letter. Print the following on the copy:

<p style="text-align: center;">RECEIPT OF THE WILL OF {NAME OF WILL- MAKER} dated the ____ day of _____, 20__ is hereby acknowledged.</p> <p style="text-align: center;">_____</p> <p>Lawyer for: _____</p>
--

Processing

Mail the letter by registered mail or arrange to have it delivered by courier.

Update all records kept by the law firm regarding the location of the Will to show its new whereabouts.

Make a diary notation to ensure that you receive the acknowledgement of receipt of the Will back.

File No. _____

Date: _____

REGISTERED MAIL

(or:)

DELIVERED

{name and address of lawyer}

Dear _____:

Re: Will of {name of Will-Maker}

As requested, we enclose the original of the Will[s] of *{Name[s] of Will-Maker[s]}* dated *{date}*.

Kindly acknowledge receipt of the Will by signing and returning the enclosed copy of this letter.

① The enclosed Will[s] is/are forwarded to you on your professional undertaking to file [a] Wills Notice[s] with the Vital Statistics Agency, Victoria, advising the Agency of the change in the location of the enclosed Will[s].

We trust that you will find the foregoing to be in order. If you have any questions, please telephone the writer.

Yours truly,

②

cc: client

