

# WILLS AND ESTATES

GENERAL INFORMATION



# WILLS AND ESTATES: BASIC REQUIREMENTS

- What is a Will?

A Will is ...

a legal document that says how you want your estate to be divided once you die. Your estate includes what you own (called assets) and what you owe (called liabilities). An up-to-date will can help your estate representative deal with your estate when you die.

- Provinces and territories set the laws for estates.

# WILLS AND ESTATES: BASIC REQUIREMENTS

- Assets that do not become part of the estate, or that “bypass the Will”:
  - ✓ Life Insurance proceeds
  - ✓ RRSPs
  - ✓ Pensions
  - ✓ Assets that are registered, and owned jointly with another person who is alive

# WILLS AND ESTATES: BASIC REQUIREMENTS

- Essential information to include in a Will:
  - 1) Will maker's full legal **name** (and aliases, using "a.k.a." and **address**;
  - 2) Who do they want to handle/manage their estate (executor(rix)) – their full legal name, address and relationship to the Will maker;
  - 3) Who does the Will maker want as an **alternative executor**;
  - 4) What does the Will maker want done with their **assets**; and
  - 5) Provisions for the Will maker's **spouse** or **children**.

# WILLS AND ESTATES: BASIC REQUIREMENTS

- Must be **signed** by the Will maker and **witnessed by 2 people**, (and the witnesses must also sign the Will)
- **Witnesses** must not *directly* or *indirectly* benefit from the Will
- Witnesses **do NOT have to see the contents of the Will**, only that the Will maker signed it

# WILLS AND ESTATES: COMMON ISSUES

- Wills cannot but **conditions** on distribution/gifts
- Wills cannot **explicitly exclude someone**, but they can list who is to receive benefits (which generally has the same effect)
  - Wills that try to exclude spouses or children can be subject to litigation (as it may be against s.60 of the Wills Estates and Succession Act (WESA))

# WILLS AND ESTATES: COMMON ISSUES

Wills Estates and Succession Act, s. 60:

## **“Maintenance from estate**

**60** 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.”

# WILLS AND ESTATES: COMMON ISSUES

- **Undue influence** – could occur if the Will maker is financially or physically dependent on one of the beneficiaries
- **Competency/Capacity** – must be able to understand what a Will is/does and what their assets are
- **Complicated instructions** – such as:
  - Lots of specific items for specific people (percentage distribution is better in my opinion)
  - Custody/guardianship terms in contest family matters
  - Distributing complex assets (such as shares in corporation or a family trust)



# WILLS AND ESTATES: SIMPLE WILL INSTRUCTIONS

- The simplest instructions to put in a Will, which are least likely to lead to confusion or litigation could include:
  - ✓ Close friend or family member, who lives in B.C., named as an executor and as an alternate;
  - ✓ 100% of the residue of the estate (after debts are paid off) to spouse if they survive the Will maker; and
  - ✓ Equal distribution to children if Will maker's spouse pre-deceases them (if 2 children, 50% to both)

# WILLS AND ESTATES: SAMPLE WILL (1 OF 8)

## LAST WILL

1. This is the last Will of me, *Name*, of address, in the City of \_\_\_\_\_ in the Province of British Columbia, Canada.

### **Revocation of Prior Wills**

2. I revoke all my prior wills and codicils.

### **Definition and Interpretation**

3. In this Will:

(a) “Articles” means all items of personal, domestic, and household use or ornament, and includes automobiles and boats, and accessories to them, that I own when I die;

(b) “decide” or “decides” means, when referring to a decision of any person, a decision made in that person’s discretion;

(c) “discretion” means sole and uncontrolled discretion to the extent permitted by law; and

(d) “Trustee” means both the executor of this Will and the Trustee of my estate and any reference to my Trustee includes all genders and the singular or the plural as the context requires.

4. Headings are inserted for convenience only and do not affect how this Will is interpreted. Where the word “includes” or the word “including” is followed by a list, the contents of the list are not intended to limit the generality of the expression preceding the word “includes” or the word “including”, as the case may be.

# WILLS AND ESTATES: SAMPLE WILL (2 OF 8)

## **EXECUTOR AND TRUSTEE**

### **Appointment**

5. (a) I appoint my wife, *Name* (“*Alias*”), of Address, Vancouver, BC, PC, to be my Trustee.
- (b) If *NAME* is unwilling or unable to act or to continue to act as my Trustee, I appoint *Name* (“*Alias*”), of Address, Vancouver, BC, PC, to be my Trustee.

## **ADMINISTRATION OF MY ESTATE**

### **Trustee to Administer My Estate**

Last Will and Testament of CLIENT NAME

Initial of CLIENT NAME \_\_\_\_\_ Initial of WITNESSES \_\_\_\_\_

6. I give my Trustee all my property of every kind and wherever located to administer as I direct in this Will. In administering my estate, my Trustee may convert or retain my estate as set out in paragraph 10 of this Will.

# WILLS AND ESTATES: SAMPLE WILL (3 OF 8)

7. I direct my Trustee to hold that property on the following trusts:

## **Debts to Be Paid from My Estate**

(a) to pay out of my estate:

(i) my debts, including income taxes payable up to and including the date of my death;

(ii) my funeral and other expenses related to this Will and my death; and

(iii) all estate, gift, inheritance, succession, and other death taxes or duties payable in respect of all property passing upon my death, including:

A. insurance proceeds on my life payable as a consequence of my death (but excluding the proceeds of insurance upon my life owned by any corporation or owned by any partnership of which I am a partner);

B. any annuity, registered retirement savings plan, registered retirement income fund, pension, or superannuation benefits payable to any person as a result of my death;

C. any gift made by me in my lifetime; and

D. any benefit arising by survivorship,

and my Trustee may pay these taxes whether they are imposed by the law of this jurisdiction or any other and my Trustee may prepay or delay payment of any taxes or duties.

# WILLS AND ESTATES: SAMPLE WILL (4 OF 8)

## RESIDUE OF ESTATE

(b) to give the residue of my estate to NAME, if she survives me for 30 days;

(c) if NAME does not survive me for 30 days, to divide the residue of my estate into as many equal shares as there are of my children who are alive at my death, except if any child of mine

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Initial of CLIENT NAME \_\_\_\_\_ Initial of WITNESSES \_\_\_\_\_  
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has died before me and one or more of his or her children are alive at my death, that deceased child will be considered alive for the purposes of the division, and:

(i) with respect to the share created for any child of mine who is alive at my death, hold that share for that child, and:

A. pay so much of its income and capital as my Trustee decides is necessary or advisable for the care, maintenance, education, and benefit of that child until he or she dies or reaches 25;

B. add any income not paid in any year to the capital of that child's share;

C. when that child reaches 21, give that child *one-half* of what remains of his or

# WILLS AND ESTATES: SAMPLE WILL (5 OF 8)

D. when that child reaches 25, give that child what remains of that child's share;

E. if that child dies before reaching 25 and leaves one or more children surviving him or her, divide what remains of that child's share equally among those of his or her children alive at his or her death;

F. if that child dies before reaching 25 and leaves no child surviving him or her, divide what remains of that child's share equally among the other shares created under the provisions of paragraph 7(e) of this Will;

(ii) with respect to the share created for any child of mine who died before me and left one or more of his or her children alive at my death, divide that share equally among those children of that deceased child;

## **POWERS OF TRUSTEE**

### **Trust Terms for Those Who Are Under 19**

8. If anyone becomes entitled to any part of my estate, is under 19, and I have not specified terms in this Will on which my Trustee is to hold that part, I direct my Trustee to hold that part, and:

(a) pay as much of the income and capital as my Trustee decides for that person's benefit until that person reaches 19;

(b) add any unused income to the capital of that person's part of my estate and then pay the

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Initial of CLIENT NAME \_\_\_\_\_ Initial of WITNESSES \_\_\_\_\_



# WILLS AND ESTATES: SAMPLE WILL (6 OF 8)

capital to that person when he or she reaches 19, but if that person dies before reaching 19, I direct my Trustee to pay that person's part of my estate to that person's estate; and

(c) regardless of paragraphs 8(a) and 8(b) above, and at any time my Trustee decides, pay some or all of that part of my estate to that person's parent or guardian, to hold and if that parent or guardian decides apply some or all for that person's benefit.

## **Payment to Parent or Guardian**

9. When my Trustee makes any payment for the benefit of any person under 19, my Trustee may make that payment to that person's parent or guardian. When the parent or guardian receives that payment, my Trustee is discharged for that payment and need not inquire about how it is used.

## **Convert, Keep, or Invest**

10. When my Trustee administers my estate:

(a) my Trustee may convert my estate or any part of my estate into money or other form of property or security, and decide how, when, and on what terms;

(b) my Trustee may keep my estate, or any part of it, in the form it is in at my death and for as long as my Trustee decides, even for the duration of the trusts in this Will. This power applies even if:

(i) the property if not an investment authorized under this Will;

(ii) a debt is owing on the property; or

# WILLS AND ESTATES: SAMPLE WILL (7 OF 8)

## Allocate Assets of My Estate

11. (a) When my Trustee divides or distributes my estate, my Trustee may decide which assets of my estate (including, without limitation, money, or other property, real or personal) to allocate to any share or interest in my estate and the value of each of those assets. Whatever value my Trustee attributes to those assets will be final and binding on everyone interested in my estate.

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Initial of CLIENT NAME \_\_\_\_\_ Initial of WITNESSES \_\_\_\_\_  
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(b) My Trustee should consider allocating, to any share of my estate that I have given to any charity or charities, publicly traded securities owned by me at my death and having a fair market value at my death greater than their cost base to me or acquired by my Trustee after my death but having a fair market value at the time of distribution greater than their cost base to my estate.

## Income Tax Elections

12. (a) My Trustee may make any allocations, elections, and distributions my Trustee decides are in the best interests of my estate as a whole, including any allocations and elections under the Income Tax Act of Canada.
- (b) My Trustee may make those allocations or elections, in whatever manner and proportions my Trustee decides, among the beneficiaries of my estate and any one or more of them to the exclusion of any others.
- (c) Any election that allocates any portion of the income of my estate to any person for the purposes of the *Income Tax Act* will not be regarded as a decision by my Trustee to allocate, in fact, that income to that person nor will that decision give that person any right to that income.
- (d) As a result of any of those allocations, elections, or distributions made in good faith, my Trustee will not be considered to have breached any duty to maintain an even hand among the beneficiaries and my Trustee will not be liable for any loss to my estate or any beneficiary of my estate.

## Deal with Business

13. If my estate holds any interest in any business, incorporated or otherwise, my Trustee, subject to any contrary provisions in this Will, may deal with that interest and may exercise any rights, powers, and privileges in connection with that interest to the same extent as I could if I were alive and the only owner of that interest.

## Further Powers Dealing with Property

14. My Trustee, with respect to any property (personal or real) forming part of my estate, subject to any contrary provisions in this Will, may exercise any rights, powers, and privileges in connection with that property to the same extent as I could if I were alive and the only owner of that property. My Trustee's powers, which may be exercised how, when and on whatever terms my Trustee decides, include:

(a) selling any of that property;

Last Will and Testament of CLIENT NAME

Initial of CLIENT NAME \_\_\_\_\_ Initial of WITNESSES \_\_\_\_\_  
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(b) managing any of that property; and

(c) insuring any of that property against whatever risks my Trustee decides;

## Receipts

15. When my Trustee makes any payment to any organization, society, foundation, association, or corporation, my Trustee may accept the receipt of any person purporting to be the secretary or treasurer or other officer or officers, as the case may be, of that beneficiary. The receipt will discharge my Trustee for that payment and my Trustee need not inquire about how that payment is used.

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# WILLS AND ESTATES: SAMPLE WILL (8 OF 8)

## Remuneration

16. My Trustee may claim reasonable remuneration for acting as Trustee. Such remuneration will be in addition to any gift or benefit I give to my Trustee in this Will or any Codicil to it.

## FUNERAL WISHES

17. I request my executor hold a wake in the event of my death, but hold no other funeral services. I would also request my body be *enter wish here*.

18. I have signed this Will on \_\_\_\_\_.

We were both present, at the )  
request of *Testator's Name*, )  
when he/she signed this Will. We then )  
signed as witnesses in his/her presence )  
and in the presence of each other )  
)

\_\_\_\_\_  
Signature of Witness )

\_\_\_\_\_  
Printed Name )

\_\_\_\_\_  
Address )

\_\_\_\_\_  
City )

\_\_\_\_\_  
Occupation )

\_\_\_\_\_  
Signature of Witness )

\_\_\_\_\_  
Printed Name )

\_\_\_\_\_  
Address )

\_\_\_\_\_  
City )

\_\_\_\_\_  
Occupation )

\_\_\_\_\_  
*Testator's Name*

# WILLS AND ESTATES: *OTHER* ADVANCED PLANNING OPTIONS

- Powers of Attorney
  - Provides another individual with the power over **legal** and **financial affairs**
  - Enduring, springing, and limited powers
- Representation Agreements
  - Provides another individual with the power over **health** and **personal care** decisions
  - s.7 or s.9
  - Refer to Nidus
- Advanced Directives
  - Specific wishes about medical care
  - Refer to Nidus

# WILLS AND ESTATES: PROBATE VS. ESTATE ADMINISTRATION

- Probate = there is a Will (Grant of Administration **With** Will Annexed)
- Administration = there is no Will (Grant of Administration **Without** Will Annexed)

# WILLS AND ESTATES: RESOURCES/REFERRALS

## **Access Pro Bono (Wills Clinic Project)**

- Telephone: 604-424-9600
- Website:  
<https://www.accessprobono.ca/our-programs/wills-clinic>
- Draft and execute Wills, Representation Agreements, and enduring Power of Attorney for seniors and people with terminal illnesses that have low/modest incomes.

## **Society of Notaries Public of British Columbia**

- Telephone: 604-681-4516
- Website: <https://find.notaries.bc.ca/>
- Wills, power of attorneys, representation agreements and advance directives

# WILLS AND ESTATES: RESOURCES/REFERRALS

## **Access Pro Bono's Summary Legal Advice Program**

- Telephone: 604-482-3195
- Toll-Free: 1-877-762-6664
- Website: [www.accessprobono.ca](http://www.accessprobono.ca)
- Volunteer lawyers provide up to a half-hour of free legal advice to clients at summary legal advice clinics

## **Access Pro Bono's Lawyer Referral Service**

- Telephone: 604-687-3221
- Toll-Free: 1-800-663-1919
- Website:  
<https://www.accessprobono.ca/our-programs/lawyer-referral-service>
- Consultation with a lawyer for up to 30 minutes for free. Any legal assistance will require paying the lawyer's regular fees

# WILLS AND ESTATES: RESOURCES/REFERRALS

- **Law Students' Legal Advice Program**

- Telephone: 604-822-5791
- Website: [www.lslap.bc.ca](http://www.lslap.bc.ca)
- Free legal assistance through appointments for low-income individuals in the Greater Vancouver area, including representation, document drafting, summary advice, and referrals
- Help with criminal law (summary offences), tenancy, employment, small claims, welfare, human rights, immigration, and more
- No family law, personal injury, supreme court, business law, real property, or criminal law where there is a risk of jail time

QUESTIONS?