

WILLS AND ESTATES PLANNING

Estate planning is the process of deciding how your property will be distributed when you die. Although it typically involves making a will, it may be more advantageous for you to distribute your property in other ways. In order to determine the best way to distribute your property, you may wish to seek legal advice.

This help sheet is designed to provide general legal information only. It is not designed to provide specific legal advice and cannot be relied on as any definitive statement of the law. For information specific to your personal circumstances, please seek legal advice.

Preparing a Will

A will is a legal document outlining what you want done with your assets when you die. These assets in your estate typically consist of real estate, money, investments, and other personal or household belongings, such as jewelry and books. A will does not cover all property; for example, it may not cover property you share with another person, such as a house owned in joint tenancy, or a joint bank account, nor will it cover a life insurance policy or Registered Retirement Savings Plan (RRSP) for which you have already designated a beneficiary.

Preparing a will is an important step in end of life planning. For many, it is a way of looking after their loved ones and leaving a legacy. You can set up a trust for a minor child, or make a gift to a charity important to you. A will also allows you to choose an *executor* who will be responsible for administering your estate. An executor can be a family member, a friend, or a professional, such as a trust company.

The executor

An executor is a person you name to carry out the instructions in your will. They will gather up your property, pay your debts, file your final tax return, and divide what remains of your property among the people and/or charities named in your will.

It is helpful to name an executor who is a good bookkeeper and communicator. If you have a complex estate or need someone to take over the operation of a company after your death, it is a good idea to name a professional executor, such as a trust company.

You may also appoint multiple individuals to act as co-executors, and you may also appoint an alternate executor in case the primary executor dies or is unable to carry out their duties.

Probate fees

The executor of your will is tasked with submitting it to the BC Supreme Court to confirm that it is legally valid. This process is called probate, and certain costs apply depending on the size of the estate. Probate fees in B.C. are as follows:

- Estates under \$25,000: no fee
- Estates over \$25,000: \$200 administration fee
- Estates from \$25,000 to \$50,000: \$6 per every \$1,000 of the estate
- Estates over \$50,000: 1.4%, or \$14 per every \$1,000 of the estate

Legal advice

Regardless of the size of your estate or the complexity of your will, it is always best to seek legal advice to ensure that it is legally valid. A lawyer can help you follow the necessary formalities for will preparation, and advise you on which assets fall within and outside of your estate. Legal advice is also valuable for those looking to save money for their beneficiaries. End of life planning can be difficult and emotional, but the support of a legal professional can help give you peace of mind.

If you are thinking of leaving a spouse or child (even a self-sufficient adult child; not including step-children) out of your will, or giving them less than what they might reasonably expect, be sure to consult with a lawyer. If your will does not adequately provide for your spouse or children, they can make a claim under Part 4 Division 6 of the *Wills, Estates and Succession Act (WESA)*. The Supreme Court has the power to change your will in order to give your spouse or children a share of the estate where, in its opinion, it is just and equitable to do so.

Tax

Although there is no inheritance tax in British Columbia, some assets may be subject to capital gains tax. In this case, your executor will have to pay those taxes before administering the remainder of the estate to the people named in your will. If you have an RRSP or Registered Retirement Income Fund (RRIF) and it is not designated to a spouse, it will be subject to income tax. It will be deemed to be sold on the date of death, and tax will be payable. Taxes may also apply to assets such as company shares. An experienced lawyer may be able to help you reduce or eliminate some of these taxes.

Minor children

Children under the age of 19 should be appointed a guardian to look after them. This is especially important for single parents, to avoid having your children assigned a court-appointed guardian against your wishes.

If you are separated or divorced, and your ex-spouse will look after your children, you may additionally appoint a trustee to look after the funds passing to your children. If you do not have a will, the Public Guardian and Trustee of BC will hold the money for your minor child and give it to them when they reach 19 years of age.

Dying without a will

If you die without making a will, the task of administering your estate may fall on a family member, such as your spouse, who will be required to get permission from the court to administer your estate and distribute your property.

In the absence of a will, your estate will be divided in accordance with the procedure set out in the *WESA*, S.B.C. 2009, chapter 13. Although the procedure for the distribution of assets is very complicated and beyond the scope of this helpsheet, a person's property will generally be shared by his or her spouse and children. The spouse has the right to purchase the family home and receives the first \$300,000 if the deceased's children are also the spouse's children; if the deceased has other children from a previous relationship, then the spouse's share is reduced to \$150,000. The balance of the estate is divided, with one half being given to the spouse and the other one half being divided equally between the deceased's

children. If the deceased has no spouse and no children or grandchildren, then the estate goes to parents; if the parents have predeceased, then to brothers and sisters. There are other rules to determine the next of kin, but after the fourth degree of relationship your estate will then go to the provincial government.

Other Methods for Distributing Property

A person may be able to reduce or eliminate taxes and probate fees by distributing property outside of a will. By disposing of assets in other ways, a person may also be able to protect themselves against a *wills variation claim*, which is an appeal to the court by a child or spouse who is disappointed by the provisions of the deceased's will. Although anyone can dispose of assets outside of a will, this is especially important for those with a large estate or a complicated tax or financial situation. A few of the most common ways to distribute property outside of a will are outlined below.

Joint tenancy

If you own property with one or more persons as *joint tenants*, your share in the property will pass to the other owners when you die. For example, if you own a home with your spouse, your share of the house will pass to your spouse. In this case, no probate fees will be payable, and if the house is your principal residence, you may not be required to pay tax on the transfer.

Some jointly owned assets may not be transferred to those other than your spouse or minor children, so it is important to obtain legal advice. For example, if you and your adult son open a bank account together, and you want the money to go to your son when you die, you should leave a written declaration to that effect. Otherwise, the money may be included as part of your estate.

In other circumstances, the joint tenancy can be severed, in which case your share in the property will be included as part of your estate. A joint tenancy can be severed where the joint owners reach an agreement to that effect, or where a joint owner transfers property to himself or another person.

Designated beneficiaries

In some cases, a person can designate a beneficiary to receive a particular benefit, such as the proceeds of a life insurance policy or an RRSP. If a valid designation is made, the benefit will not form part of the estate, and probate fees will not be payable, although there may still be some tax consequences.

Trusts

Depending on the size of your estate, you may want to establish a trust before your death. Property that forms part of a trust does not pass through your estate, and probate fees will not be payable. However, there may be other fees and expenses associated with establishing a trust, and you should seek legal advice on whether it is worthwhile.

Reviewing Estate Plans

As a general rule, you should review your Will and estate plan every five years, as well as following any changes to your family. A person who has had a change in marital status, a change in their financial situation, or a birth or death in the family, should review their estate plan. For example, if you prepared a will when your children were young, and named your parents as guardian and executor, you will no longer need the guardian clause, and you may want to make one of your children (or a sibling) the executor.

Donations to Parkinson Society British Columbia

A charitable donation in your will can reduce your tax liability on death. If you choose to do so, ensure that the correct name of the organization is used in your will to avoid the expense and inconvenience of an application to the court for advice and directions. If you would like to make a donation to Parkinson Society BC, donations should be made out to “**Parkinson Society British Columbia**”.

Additional Resources

Healthcare Decision Making | Helpsheet | bit.ly/pdadvancecareplan

Leaving Your Legacy | Brochure | bit.ly/psbclegacygiving

Power of Attorney | Pamphlet | bit.ly/pdpowerofattorney

Representation Agreements | Pamphlet | bit.ly/pdrepresentationagreement

Wills and Estates Webinar | Video | youtu.be/yPLvh7BfvZo

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