

About Wills & Estates



BRITISH
COLUMBIA

Ministry
of Justice

Court Services Branch

*This booklet
provides general
information about
wills & estates.*

*It defines the more
common words and
phrases used in legal
documents; it answers
many of the questions
you might have
about wills, probate,
administration and
estates. It also lists
additional sources of
help and information.*

The Probate Registry

Each Supreme Court Registry in B.C. has a Probate Division to receive, verify and process applications for probate and applications for administration.

An application for probate applies to the court to prove a will by confirming it as valid under the laws of British Columbia. Applications for administration are usually necessary when a person has died without leaving a valid will (intestate).

The Probate Registries do not provide forms, give legal advice or assist in preparing wills, applications or affidavits.

Definition of Terms...

Administrator: the person who applies to and is appointed by the court to take charge of an estate, in accordance with the Estate Administration Act. This can occur when there is no valid will, or if there is a will and no executor is named or able to take charge of the estate.

Beneficiary: a person who, under the terms of the will, receives a benefit — a specific item or sum of money, a life interest in the assets of the estate or a share of the residue.

Bond: a bond insures the value of the estate and protects the interest of beneficiaries and creditors.

Codicil: a document signed by the testator and two witnesses that changes the original terms of the will.

Estate: all assets/possessions left by a person after his or her death.

Executor: the person named in the will to take charge of disposing or distributing the estate according to the directions left by the testator. One of the primary duties of the executor is to apply, when necessary, for a Grant of Probate to allow for the transfer of assets from the estate to the beneficiaries.

Grant of Letters of Administration: the grant issued by the court officially naming someone, usually a spouse or relative, as the administrator of the estate.

Grant of Letters of Administration with Will

Annexed: the grant issued by the court appointing an administrator, usually a beneficiary, when there is a valid will but no executor.

Grant of Letters of Probate: official confirmation given by the court that the person named as executor is the proper person to settle the estate. Financial institutions, when they hold any of the estate's assets, and ownership registries, like the Land Title Office or the Motor Vehicle Branch, will generally require this confirmation before allowing the transfer of assets.

Heir(s)-At-Law: the person who, by law, inherits the estate of a deceased person.

Intestate: when a person dies without leaving a will, or dies leaving a will that is considered invalid by the laws of British Columbia.

Life Interest: the interest on the assets of the estate, but not the assets themselves, over the lifetime of the beneficiary.

Personal Representative: the person, usually either an executor or an administrator, who is considered to represent the deceased in all matters concerning his or her estate.

Residue: the balance of the estate after all specific gifts have been distributed and all debts have been paid.

Right of Survivorship: the right of a surviving joint owner to total ownership of an asset after the other joint owner's death.

Testator: the person who has made the will.

Will: a document, conforming to the requirements of British Columbia law, that contains directions for the disposal or distribution of a person's assets after his or her death.



About Wills . . .

Are hand-written wills valid in B.C.?

Yes, if they are signed by the testator and two witnesses in compliance with the Wills Act.

Are pre-printed will forms valid?

Yes, if the directions are followed precisely and if the directions comply with the Wills Act.

Do all wills have to be witnessed?

Any will made in British Columbia must be signed by the testator and two witnesses with the exception of personnel in the military forces or someone who is a mariner. The two witnesses must see the testator sign, and the testator must then see those two witnesses sign.

What about wills made outside B.C.?

If you are not sure whether a will made outside this province is valid here, contact a lawyer familiar with British Columbia probate laws.

Does every will have to name an executor?

No, but it is recommended. If an executor is not named, someone may have to apply to the court as administrator to handle all probate issues.

Can the executor witness the will?

Yes, provided he or she is not also a beneficiary, or married to a beneficiary.

What happens if a beneficiary witnesses the will?

The will is still valid, but the gift left in the will for the beneficiary (or the beneficiary's spouse) is considered invalid.

Can a will be changed?

No, but you may make a separate document, called a codicil, which must be signed and witnessed like the original will. Do not erase, cross out or otherwise alter the original will. If you want to make major changes, it may be best to make an entirely new will.

What happens to my will if I get married or divorced?

Your will is automatically revoked when you get married, unless it states that it is being made in contemplation of marriage. If you leave something in your will to your spouse or appoint your spouse as executor, and are subsequently divorced, the will stands; however, the gift or appointment to your spouse will lapse, and the will will be read as if the spouse predeceased the testator.

What if I want to contest a will?

If you are considering such an application, consult a lawyer promptly as the application may be time sensitive.

About Probate and Administration . . .

Do all wills and estates have to be probated or administered?

No, estates may be carried out without a Grant of Probate when all assets (for example, real estate and bank accounts) are jointly held with another person. RRSPs, pensions and insurance policies with a named beneficiary do not form part of the estate and will usually transfer directly to the survivor or named beneficiary. The need for probate is determined by the policy of the agency or financial institution which holds the asset.

When do estates need Letters of Administration?

A person may apply to be named an administrator when the deceased has died intestate (without leaving a valid will) or, if there is a valid will, when:

- the testator did not name an executor,
- the executor has died since the will was made and no alternate executor was named,
- the executor has renounced the right to apply to the court for probate, or
- the executor resides outside B.C. and appoints someone to apply in his or her place.

Letters of Administration, or Letters of Administration with Will Annexed, may then be issued by the court, appointing that person to act as administrator.

If I am named as an executor, but do not wish to be one, may I appoint someone else in my place?

No, unless the will specifically states that you may.

If you have any doubts about taking on the duties and responsibilities of an executor, you should consider renouncing your right to apply to the court for probate before you assume control of the estate. Only then can the alternate executor, if one is appropriately named in the will, or an administrator begin to act in your place.

Why would the Public Guardian and Trustee become involved with an estate?

The Public Guardian and Trustee becomes involved in estates when there is a minor or mentally disordered beneficiary or heir-at-law.

The Office of the Public Guardian and Trustee is required to review the process in order to ensure that the rights of those people are protected.

Why is an administrator sometimes required to post a bond?

An administrator may be required to post a bond when a beneficiary is a minor or a mentally disordered person. A bond may also be required where an estate's unpaid creditors or persons with a prior or equal right to the grant refuse to consent to the application without a bond.



About Estates . . .

If there is no will, or the will is deemed invalid under B.C. law, who shares in the estate?

The Estate Administration Act sets out details regarding the distribution of an estate under these circumstances.

Generally, the spouse and surviving children, natural and adopted, share the estate. In the absence of a spouse or children, the estate goes to the grandchildren. In the absence of spouse, children and grandchildren, the estate goes to the parents, or in the absence of parents, to the next nearest relatives. An estate goes to the government only if no relatives are known or they cannot be found, and if all time limits set by the law have passed.

There are special provisions in the Act to govern the rights of separated and common-law spouses.

What are the duties of an executor or administrator?

While the responsibilities of an executor or administrator may vary as needed, the basic duties include:

- completing an inventory and a valuation of all assets and debts;
- gathering names and addresses of all beneficiaries or next-of-kin;
- cancelling subscriptions and charge cards, redirecting mail and winding up all other personal matters;
- taking control of all assets, including the transfer of ownership registrations and the collection of any debts owed to the estate;
- paying all valid or proven debts left to the estate (the executor or administrator may be held personally liable for these debts if a valid creditor remains unpaid after the distribution of the estate);
- filing tax returns for the deceased and for the estate;

- selling assets as necessary and distributing the estate;
- preparing and obtaining approval from the beneficiaries, heirs-at-law or the court for accounts showing assets, receipts, disbursements, and distribution of the estate.

If an executor or administrator entitled to be paid for his or her work?

Yes. In most cases, an executor or administrator is entitled to a fee for his or her time and trouble. The maximum fee is 5 per cent of the value of the estate.

When the executor or administrator prepares accounts to be approved by the beneficiaries, heirs-at-law or the court, an application for compensation should be included. After the accounts are approved, the executor or administrator may then pay him or herself the approved amount.

If the executor is also a beneficiary, he or she may apply for a fee unless the will states that the bequest to the executor includes the executor's fee.

If I am named as an executor or administrator, must I hire a lawyer?

No, but a lawyer can make your work much easier. A lawyer may assist you to locate and collect assets, prepare any necessary applications to court, assist with transfer assets into your name as executor or administrator, prepare accounts, obtain releases and file tax returns.

Legal fees are considered a proper expense and (subject to the approval of the beneficiaries, heirs-at-law or the court) may be paid out of the estate funds.

The services of a lawyer are recommended when questions about the validity or interpretation of a will arise, and an application to court becomes necessary.

May I administer an estate on my own?

Yes, but you will need to be well organized and prepared to do a lot of paperwork. We recommend that you buy a self-help guidebook in addition to the necessary estate forms. Forms and guidebooks are available from stationery stores and other retail outlets.

Additional Information and Assistance...

The following sources can provide additional information. Most can assist you in preparing a will or an application to court for probate and administration:

- Lawyers
- Notaries public
- Self-help guide books, available from stationery stores and other retail outlets
- Clicklaw:
 - **www.lawlink.bc.ca**
- Dial-A-Law:
 - in Vancouver **604 687-4680**
 - or outside Vancouver **1 800 565-5297 toll-free**
 - **www.dialalaw.org**



Please Note:

This brochure provides general information only. It is not a legal document and does not contain legal advice. The relevant statutes and regulations should be consulted for all purposes of interpreting and applying the law. Information in this brochure is subject to change in 2013, when the Wills, Estates and Succession Act comes into force.

Please feel free to photocopy this brochure and distribute it wherever you think it might be useful.

Court Services Publications

This pamphlet, and other court services publications, are available on the provincial government website, under “B.C. Courts.”

www.gov.bc.ca/ag

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