

## Dying Without a Will

### What is the purpose of THIS fact sheet?

This fact sheet gives general information only. It explains who has legal authority to settle an estate and gives examples of how an estate must be distributed, **if someone dies without a Will.**

The legal terminology for this is **Intestate Succession**. Intestate means dying without a Will; Succession refers to the rules about how the estate of the deceased (the person who died) is divided and who may inherit.

Nidus encourages everyone to make a Will. However, there are some situations where an individual may be considered not mentally capable to make a Will. Even in such cases, as the examples show, people may make a Representation Agreement section 7 (RA7) to help with decisions about their quality-of-life, until the end of their life.

### Why concerns if no Will?

Since a Will is a legal document that appoints a person—the executor—to settle the deceased's estate, it raises questions about the procedures if there is no Will.

The deceased's estate consists of property the individual owned at death.

**NOTE:** Property is defined very broadly (when discussed from a legal perspective) and includes real estate, bank accounts, investments, personal effects, and vehicles.

### What law in BC governs estates?

The **Wills, Estates, and Succession Act (WESA)** is the law in BC that sets out the rules for making a valid Will. It also outlines what happens if someone dies without a Will. This law may not be applied in the same way for indigenous peoples, see page 10 for information.

**NOTE:** WESA allows the Supreme Court of BC to decide if an incomplete Will-type statement can be treated as a valid Will. The deceased must still have met the requirements of 'Who can make a Will' (see headings in next column).

### When did WESA come into effect?

WESA came into effect March 31, 2014. It governs how Wills are made on and after that date. Valid Wills made before that date remain valid.

If someone died before March 31, 2014, their estate is settled according to the previous legislation, which had different rules. If someone dies on or after March 31, 2014, WESA rules apply.

Nidus strongly recommends making a Will if you meet the requirements (see next headings). Click for the Nidus fact sheet on [Tips for Making a Will](#), or see Resources on page 10.

### Who can make a Will?

According to WESA (BC law), anyone who is 16 years of age or older and who is 'mentally capable' can make a Will.

**NOTE:** Different laws have different requirements about mental capability and age. Do not apply the same requirements for making a Will to other documents or actions, such as making a Representation Agreement or getting married.

### What does it mean to be 'mentally capable' of making a Will?

WESA does not define 'mentally capable.' Lawyers refer to a court case from 1870 (Banks v. Goodfellow), which suggests a person must:

- Understand the nature and effect of making a Will;
- Have a sense of what they own and who may expect to inherit (such as a spouse and children); and
- Be free of mental delusions.

Judges have been clear that a medical assessment is not the same as and does not override a legal determination of capability to make a Will.

Making a Will is voluntary. No one can make or change a Will on someone else's behalf.

### What happens if an individual is incapable of making a Will?

If an individual is considered not mentally capable to make a valid Will (and did not make one when considered mentally capable), their estate must be settled according to the 'succession' rules outlined in WESA for dying 'intestate' — without a Will.

### What are the steps if there is no Will?

Following are possible key steps to take.

1. Arrange for cremation or burial.
  - > Check for pre-arrangements and existence of a Will. See pages 2 & 3 for more details.
2. Estimate the value of the deceased's estate.
  - > See page 3. Do not start acting until you are the recognized administrator.
3. Select administrator; apply for Grant if needed.
  - > See page 3 and procedures on page 8.
4. Administer/settle the estate by the rules.
  - > See page 4 and examples on pages 6 to 8.

### What is the definition of spouse?

WESA defines spouse as two individuals who, at the time one of them died:

- Were legally married, or
- Lived in a marriage-like relationship (common-law) for at least two years.

WESA sets out conditions for when a couple are no longer considered spouses. Being separated, due to relationship breakdown, for more than a year is one example but there are others.

**NOTE:** *Different laws have different definitions. For example, spouse is defined differently in health care consent legislation; there is NO time requirement that common-law spouses have to be together.*

REMINDER: A next-of-kin (a child, other descendants, a parent, or other relative) **MUST** be related to the deceased by **birth or adoption**.

## BURIAL OR CREMATION ARRANGEMENTS

### Who can decide about burial or cremation if there is no Will?

In BC, the **Cremation, Internment and Funeral Services Act**, section 5, lists who can make decisions about burial and cremation.

If there is a Will, the executor decides. Be sure to check for a Will. See page 9 on searching for a Wills Notice. You can also check the Nidus Registry.

If there is no Will the right to decide about burial or cremation, in order of priority, goes to the:

1. Spouse of the deceased (spouse defined above);
2. An adult child of the deceased;
3. An adult grandchild of the deceased;
4. A parent of the deceased;
5. An adult sibling of the deceased;
6. An adult nephew or niece of the deceased; or
7. An adult next of kin of the deceased, such as grandparent, aunt, uncle, cousins.

If more than one person is eligible for a category listed above, they can come to an agreement on who will take responsibility. If, for example, there are three adult children and they cannot agree, the priority goes to the eldest of them.

If no one above is able or willing, the right goes to:

8. The Minister responsible for the Employment and Assistance Act, or
9. The Public Guardian and Trustee (PGT, a government official) if they are going to be administrator of the estate, or
10. An adult with a personal connection to the deceased, such as a close friend.

**NOTE:** *The age of adulthood in BC is 19 years. (In some provinces it is 18 years.)*

*Often the police, hospital, care facility or coroner may refer the deceased and their estate to the PGT Estate and Personal Trust Services because there is no known family. The PGT tries to locate family. If there is no one available, the PGT may decide to act as administrator, see page 9.*

### Who pays for the burial or cremation?

The costs for burial or cremation come out of the deceased's estate. Expenses may include obituary notices as well as the funeral or memorial service. Expenses usually include one or more Death Certificates (see next heading).

Following are common ways these costs are paid:

- A spouse or family member may pay the bill(s) out of their own pocket and get reimbursed later, from the estate. They will submit proof of payment to the administrator (see heading on page 4 about administration).
- If no one can cover the costs out of their own pocket, and if the deceased has enough funds in their bank account, the deceased's financial institution will usually pay the funeral home bill out of that bank account. Do NOT pay the bill and then ask the financial institution to reimburse you. Take the unpaid invoice to the financial institution.
- If no one can wait to be reimbursed, and the deceased does not have funds, the PGT website lists some options, see page 10 for link to PGT FAQs.
- Sometimes, even if they did not make a Will, the deceased may have pre-paid some funeral services or joined the Memorial Society of BC. The problem is that survivors often do not know about these arrangements and may end up paying twice or not getting a discount.
  - Nidus recommends using **the Personal Planning Registry** to keep track of these things. Read more on pages 9 to 10.

**NOTE:** *Funeral homes often give out information about next steps. This may include instructions to notify the deceased's financial institution and stop any income such as Old Age Security, Canada Pension, or other government benefits. The financial institution can be helpful in returning funds that have been received in the deceased's account by direct deposit.*

*When you tell the financial institution about the death, the institution will change the bank account to 'the estate of ...' and the funds will be 'frozen.'*

*Frozen means that some other steps must be taken before the financial institution will allow access to the deceased's money. This is to protect the rights of those who are entitled to inherit.*

### How many Death Certificates to order?

The funeral home will usually ask the person handling burial or cremation how many Death Certificates they want.

Times have changed. In the past, everything was done with paper (hard copies) and by regular mail. This required getting a number of Death Certificates. There is a fee for each one as they are originals. Today, you may only need a couple of originals as you may be able to use fax or scans for some purposes. In other cases, like a financial institution, you can present the original and they will make a true copy for their own files.

Never give away your last original. You might need to get certified copies—a true copy of an original. This is sometimes called 'notarization'—when a legal professional puts their signature and stamp on a photocopy they made from an original.

### ESTIMATING THE VALUE OF THE ESTATE

#### How much is the estate worth? Is a Grant of Administration required?

Nidus suggests trying to get a general idea of how much the deceased's estate might be worth. The purpose of this step is to determine the need to apply for a Grant of Administration. Do NOT start paying debts or distributing benefits.

You may run into difficulties with this step. An institution may say they require a Grant of Administration first. You can apply to Court to order banks to provide the information.

You must apply for a Grant of Administration if:

- The deceased's estate includes any real estate or a fishing license registered with the federal Department of Fisheries, or
- The gross value of the estate is over \$25,000.00. This is a policy—it is not in law. Different institutions may have different policies.

Generally, you do not have to apply if the gross value of the estate is less than \$25,000.00 (this used to be 'less than \$10,000.00'). The Death Certificate and next-of-kin details may be enough.

When determining the value, check for property owned in and out of BC, such as:

- Money—bank accounts, investments, cash;
- Real estate; vehicles;
- Other items & personal effects—artwork, tools, jewellery, musical instruments, books, stamp and coin collections, mobile devices.

Some property may not be counted in the estate.

- For example, if the deceased, when capable, designated a beneficiary on an RRSP, Tax Free Savings Account, or life insurance policy, the funds will go directly to the person designated.

- If any real estate or vehicles are owned as joint tenants with right of survivorship, they will not count as part of the deceased's estate.
- Joint bank accounts may or may not be part of the estate depending on the intent when the deceased set it up. See the Nidus fact sheet on [Cautions About Joint Ownership](#).

**NOTE:** Anyone can do a Land Title search to see if the deceased's real estate is owned jointly with someone else. There is a fee. One option for a search is to use [www.ltsa.ca](http://www.ltsa.ca)

### BECOMING ADMINISTRATOR

#### Who can be the administrator?

If there is no Will, then there is no executor. Instead, someone will act as the administrator. In WESA both roles are referred to as the 'personal representative.'

Sometimes the administrator of the estate is the same person who handled the burial or cremation, although this does not have to be the case. See the next heading for a list.

Not everyone is suited to the role of administrator — it requires time, comfort with paperwork, and attention to detail. If there is no need to apply for a Grant of Administration (the formal court procedure), then the administrator is usually someone who volunteers and that others on the list and the beneficiaries, do not want to formally oppose.

#### Who can apply for a Grant of Administration?

WESA says the following people can apply, in order of priority, for a Grant of Administration (and to be administrator):

1. Spouse of the deceased;
2. Someone nominated by the spouse;
3. Child of the deceased;
4. Other relative of the deceased; or
5. If no relatives are able or willing to apply, the Public Guardian and Trustee (PGT) might do it.

It is recommended that an applicant be pro-active and get written consent from others listed at the same level and higher levels of priority.

**NOTE:** At this stage, the deceased's spouse and children might agree to contract a lawyer, a Trust Company or an accountant to apply for the Grant and to be the administrator. This can be especially helpful if the estate has a high value or if there are complexities such as a number of real estate properties or businesses or creditors, tenants, a blended family, or existing conflicts.

### Can there be two administrators?

Yes, there can be more than one administrator for the estate. If a Grant of Administration is being submitted, all who wish to be administrator must apply. Having multiple administrators can involve more time and effort.

### What is the procedure to apply for a Grant of Administration?

The individual who applies for the Grant of Administration will need to complete a number of required forms and submit these to a Supreme Court of BC Registry. See page 8.

A notice of application must be given to:

- Anyone entitled to inherit,
- Creditors of the deceased (if the creditor's claim is over \$10,000.00), and
- The PGT if a minor or an adult who is considered not capable to manage finances is entitled to inherit.

If the application is complete and not opposed, the registrar will issue a Grant of Administration. If there is opposition, this may simply require more information or it may require legal help.

**NOTE:** *Someone may apply to be administrator and then hire a professional to assist with specific tasks. However, the administrator is ultimately responsible for the work and their duties.*

### Can the administrator receive a fee?

Yes. The BC Trustee Act, section 88, provides that an administrator, who receives a Grant of Administration, is allowed a fee related to the value of the estate as well as an annual fee and a maintenance fee. Fees are taxable.

Those entitled to inherit (as long as they are adults and capable of consent) can agree on the administrator's fee. Otherwise the administrator must apply to the Supreme Court of BC.

## ADMINISTRATION OF THE ESTATE

### What are the duties of an administrator?

The duties of an administrator (whether a Grant of Administration is required or not) may include:

- Locating and notifying those entitled to inherit;
- Notifying the surviving spouse of their right to acquire and purchase the deceased's interest in the spousal home (if applicable);
- Identifying and notifying creditors who may be owed compensation from the deceased;
- Identifying and valuing items the deceased owned, and protecting these until they are needed to pay debts and for distribution;
- Paying the deceased's debts and, if necessary, selling items the deceased owned to do this;

- Applying for the Death Benefit (if applicable);
- Filing tax returns;
- Paying expenses related to administration including legal fees and accounting fees;
- Distributing estate to those entitled to inherit;
- Keeping a record of all activities related to administration of the estate. You may need to report and provide an accounting to those entitled to inherit or to the court.

Administration of an estate may take two or more years. Generally, the estate cannot be distributed to those who are entitled to inherit until 210 days after the Grant of Administration is issued.

**NOTE:** *One reason settling an estate takes time is because most administrators (like executors) will wait until the Canada Revenue Agency (CRA) issues a 'clearance certificate' before distributing the estate. This certificate from CRA indicates no more tax is owing and the file is closed.*

### Who is entitled to inherit if no Will?

WESA outlines the rules for succession — how an estate is distributed among the spouse, descendants, and/or other relatives — when someone dies intestate (without a Will). **The rules of intestate succession cannot be changed or waived.**

Descendants refers to children, grandchildren and great-grandchildren of the deceased. Other relatives refers to parents, siblings, nieces/nephews, grand-parents, aunts/uncles, cousins.

When considering who inherits, if there is no Will, you first check for a spouse and then descendants (children, grandchildren...)

**NOTE:** *WESA does NOT require that those who are entitled to inherit under the intestate rules must have been in contact with the deceased or have no dispute with the deceased in order to inherit.*

If anyone entitled to inherit is a minor (under 19 years of age), their inheritance will be managed by the PGT until they become an adult, unless the Supreme Court of BC orders differently.

### How is the estate divided if there is no Will and ONLY a surviving spouse?

The rules of intestate succession are complex as they have to apply to many circumstances, including blended families. This fact sheet uses simple examples on pages 6 to 8.

If there is **only a surviving spouse** and no living descendants of the deceased, then the entire estate will go to the spouse (even if there are other living relatives).

### How is the estate divided if there is a spouse AND living descendants?

If there is no Will, but there is a surviving spouse and living descendants, **the spouse gets priority** of the deceased's estate.

The surviving spouse is entitled to:

- A preferential or priority share of the estate (if the net value of the estate is the same or more than the preferential share);
- The household furnishings (of the spousal home); and
- Half of the remainder of the net value of the estate (after the preferential share and household furnishings are distributed).

#### Preferential/priority share for spouse

If the living descendants (for example, the children) are related, by birth or adoption, to BOTH the surviving spouse and the deceased, the preferential share to the surviving spouse is \$300,000. See second example on page 6.

If the living descendants are related, by birth or adoption, to ONLY the deceased, the preferential share to the surviving spouse is \$150,000.

If the net value of the estate is less than the preferential share, the surviving spouse inherits the entire estate. For example, if the estate is only \$75,000, the surviving spouse gets it all.

#### Calculating Net Value of the Estate

Net Value of Estate equals (=) the Fair Market Value of what the deceased owned minus (-) the Household Furnishings minus (-) the Expenses.

*Expenses may include: cremation/burial costs, debts, Grant of Administration fee, administration fees, legal fees, taxes, other expenses.*

#### Spousal home

A spousal home is where the deceased and their spouse ordinarily lived. Check for two things:

1. Is the spousal home part of the estate?
2. If yes, what are the rights of the surviving spouse to the spousal home?

The spousal home is part of the deceased's estate, if the home is not leased to another person, and the deceased:

- Was the only registered owner of the home; or
- Was registered as a 'tenant-in-common' owner; or
- Lived in a manufactured home that was sitting on land not owned by the owner of the manufactured home.

**NOTE:** *If the house is owned as joint tenants with right of survivorship (typical for spouses), it is NOT part of the deceased's estate. Ownership goes directly to the other owner(s) listed on the title.*

If the spousal home is part of the deceased's estate, only a surviving spouse has the right to acquire or purchase the deceased's interest. They have up to 180 days to decide—from the time the Grant of Administration is issued. They can ask the Court for an extension due to hardship.

- If the value of the surviving spouse's share of the estate is greater than the value of the spousal home, the spouse may acquire ownership of the home as part of their share; or
- If the value of the spouse's share of the estate is less than the value of the spousal home, the spouse has the right to purchase the remainder of the deceased's interest in the home.

The spouse is responsible for occupancy costs while living in the spousal home until it is acquired.

There are many rules regarding a spousal home, such as requirements for giving written notice to others entitled to inherit. If there is a dispute about the fair market value of the spousal home, a Court can decide. Getting legal advice is proactive and could be helpful.

#### Examples of intestate succession

Following are two fictional examples to explain how an estate would be distributed for common family arrangements, if there is no Will.

1. The first example is about **Mary**. Her estate is discussed next showing what happens if she has a spouse and descendants.
2. The second example is about **Bruce**. His estate is discussed on pages 7 to 8 showing what happens if he has no spouse or children.

The following examples are for discussion and may not take into account all factors. The focus is on understanding the rules of WESA, rather than on specific amounts or realistic expectations about life expectancy for descendants or relatives.

#### Examples of Estate Distribution for Mary

Mary put off making a Will and then her dementia advanced to a stage where she was considered not mentally capable to make a Will.

##### VALUE AND CONTEXT OF MARY'S ESTATE

The value of Mary's estate, after expenses, is \$500,000. She and her spouse sold their home when Mary was first diagnosed with dementia. They invested the proceeds from the sale and lived together in an assisted living residence. Later, Mary needed more personal care and moved to a facility that provided 24/7 services.

Although Mary was not capable to make a Will, she was able to make a Representation Agreement section 7 (RA7 All) so she had help with decisions affecting her quality-of-life.

VARIOUS EXAMPLES FOR MARY	IF NO WILL, THE RULES OF INTESTATE SUCCESSION DETERMINE WHO INHERITS AND HOW MUCH
<p><b>Mary Example #1</b> Mary dies and is survived by her spouse, John. They had no children.</p>	<p>John inherits the entire estate of \$500,000.</p>
<p><b>Mary Example #2</b> Mary dies and is survived by:</p> <ul style="list-style-type: none"> <li>• Her spouse, John, and</li> <li>• Their two children, Anne and Tom, and</li> <li>• Three grandchildren – Anne has two children, Tom has one child.</li> </ul>	<p>John (as the spouse) inherits:</p> <ul style="list-style-type: none"> <li>• The household furnishings,</li> <li>• A preferential share of \$300,000 (as he and Mary are both parents of their children, Anne and Tom) and</li> <li>• Half of the rest of the estate = \$100,000.</li> </ul> <p>Anne and Tom inherit:</p> <ul style="list-style-type: none"> <li>• Half of the rest of the estate, divided equally – <math>\\$100,000 \div 2 = \\$50,000</math> each.</li> </ul> <p>The three grandchildren inherit:</p> <ul style="list-style-type: none"> <li>• Nothing, because their parents (Mary's children) are still alive.</li> </ul> <p><i>(If John was not the biological or adoptive parent of Anne and Tom, John's preferential share would be \$150,000. Being related only by marriage, as a step-parent, does not count. John would still get half of the remaining estate and Anne and Tom would divide the other half.)</i></p>
<p><b>Mary Example #3</b> Mary dies and is survived by:</p> <ul style="list-style-type: none"> <li>• Two children, Anne and Tom, and</li> <li>• Three grandchildren – Anne has two children, Tom has one child.</li> </ul> <p>Mary's spouse, John, pre-deceased her.</p>	<p>Anne and Tom inherit:</p> <ul style="list-style-type: none"> <li>• Mary's estate, divided equally – <math>\\$500,000 \div 2 = \\$250,000</math> each.</li> </ul> <p>The three grandchildren inherit:</p> <ul style="list-style-type: none"> <li>• Nothing, because their parents (Mary's children) are still alive.</li> </ul>
<p><b>Mary Example #4</b> Mary dies and is survived by:</p> <ul style="list-style-type: none"> <li>• Son Tom, and</li> <li>• Three grandchildren – Anne had two children, Tom has one child.</li> </ul> <p>Mary's spouse, John, and daughter, Anne, pre-deceased her.</p>	<p>Tom inherits:</p> <ul style="list-style-type: none"> <li>• Half of Mary's estate = \$250,000.</li> </ul> <p>Anne's two children inherit:</p> <ul style="list-style-type: none"> <li>• Half of Mary's estate, divided equally – <math>\\$250,000 \div 2 = \\$125,000</math> each.</li> </ul>
<p><b>Mary Example #5</b> Mary dies and is survived by:</p> <ul style="list-style-type: none"> <li>• Three grandchildren – Anne had two children, Tom had one child.</li> </ul> <p>Mary's spouse, John, her daughter, Anne, and her son, Tom, pre-deceased her.</p>	<p>Tom's child inherits: Half of Mary's estate = \$250,000.</p> <p>Anne's two children inherit:</p> <ul style="list-style-type: none"> <li>• Half of Mary's estate, divided equally – <math>\\$250,000 \div 2 = \\$125,000</math> each.</li> </ul> <p><i>(Even if Anne made a Will to say that when she dies everything goes to her spouse, Mary's estate does not go through Anne's Will or to Anne's spouse. Since Mary had no Will, under the rules of intestate succession, Anne's share of Mary's estate goes to Anne's children—because they are related to Mary. The same applies for Tom.)</i></p>

**NOTE:** Following are some key facts related to Mary's story:

- The same division and distribution of the estate would apply if Mary and John were legally married or if they were living common law for at least two years. See definition of spouse on page 2.
- The same division and distribution of the estate would apply if it was Mary's estate and she had a same-sex spouse, Eileen. See first bullet above regarding definition of spouse.

If Mary did not have a spouse or children and therefore no other descendants, her parents would be the next who are entitled to inherit her estate. If the parents pre-deceased her, then it would be Mary's siblings (children of her parents by birth or adoption) and then the children of Mary's siblings (her nieces and nephews). WESA puts a limit on the generation of relatives that may inherit, see Bruce Example #7 on page 8.

**Examples of Estate Distribution for Bruce**

Bruce is an adult with a disability from birth. He was considered not mentally capable to make a Will. Although he did not communicate in a traditional way, Bruce had an active and full life. He made a Representation Agreement section 7, which allowed the people who knew and cared about him to help him access benefits and participate in activities for his quality-of-life. For example, they helped him pursue his interest in photography (buy and use a digital camera). The idea is for Bruce to use HIS money while alive.

**VALUE AND CONTEXT OF BRUCE’S ESTATE**

With the help of his representative, Bruce set up an Registered Disability Savings Plan (RDSP). It gave him extra funds for things like vitamins, dental work and regular physiotherapy treatments as he aged. It also covered the cost of a special mattress that provided extra comfort and protection from bed sores when he was dying and bedridden. The value of Bruce’s estate, after expenses, is \$6,000—from money in his bank account (after returning government benefit income) and in his RDSP (after taxes).

VARIOUS EXAMPLES FOR BRUCE	IF NO WILL, THE RULES OF INTESTATE SUCCESSION DETERMINE WHO INHERITS AND HOW MUCH
<p><b>Bruce Example #1</b>                      Bruce dies and is survived by:</p> <ul style="list-style-type: none"> <li>• His parents, June and Sven, and</li> <li>• His brother Henreich, and sisters Gwen and Linda.</li> <li>• His nieces &amp; nephews - Henreich has 3 children, Gwen has 4 children and Linda has 2 children.</li> </ul> <p>Bruce did not have a spouse or children.</p>	<p>June and Sven (his parents) inherit:</p> <ul style="list-style-type: none"> <li>• Bruce’s estate, divided equally - <math>\\$6,000 \div 2 = \\$3,000</math> each.</li> </ul> <p><i>(The distribution would be the same if Bruce’s parents are divorced from each other or if one or both were estranged from Bruce.)</i></p>
<p><b>Bruce Example #2</b>                      Bruce dies and is survived by:</p> <ul style="list-style-type: none"> <li>• His mother June, and</li> <li>• His three siblings, Henreich, Gwen and Linda.</li> <li>• His nieces &amp; nephews - Henreich has 3 children, Gwen has 4 children and Linda has 2 children.</li> </ul> <p>Bruce’s parent, Sven, pre-deceased him.</p>	<p>June inherits:</p> <ul style="list-style-type: none"> <li>• Bruce’s entire estate of \$6,000.</li> </ul>
<p><b>Bruce Example #3</b>                      Bruce dies and is survived by:</p> <ul style="list-style-type: none"> <li>• His three siblings, Henreich, Gwen and Linda.</li> <li>• His nieces &amp; nephews - Henreich has 3 children, Gwen has 4 children and Linda has 2 children.</li> </ul> <p>Bruce’s parents (both) pre-deceased him.</p>	<p>Henreich, Gwen and Linda inherit:</p> <ul style="list-style-type: none"> <li>• Bruce’s estate, divided equally - <math>\\$6,000 \div 3 = \\$2,000</math> each.</li> </ul> <p><i>(Bruce’s parents may have set up a Discretionary Trust in their own Wills for Bruce’s inheritance.) When they died, Bruce receives money from the Trust. When Bruce dies, any remaining funds in the Trust likely do not go to Bruce’s estate, the Trust has its own terms for what happens to any money that remains after Bruce’s death.)</i></p>
<p><b>Bruce Example #4</b>                      Bruce dies and is survived by:</p> <ul style="list-style-type: none"> <li>• His two siblings, Henreich and Gwen.</li> <li>• His nieces &amp; nephews - Henreich has 3 children, Gwen has 4 children and Linda has 2 children.</li> </ul> <p>Both of Bruce’s parents pre-deceased him as well as his sister, Linda.</p>	<p><i>(Bruce’s estate = \$6,000. One-third is <math>\\$6,000 \div 3 = \\$2,000</math>.)</i></p> <p>Henreich and Gwen inherit:</p> <ul style="list-style-type: none"> <li>• Two-thirds of Bruce’s estate, divided equally - <math>\\$4,000 \div 2 = \\$2,000</math> each.</li> </ul> <p>Linda’s two children inherit:</p> <ul style="list-style-type: none"> <li>• One-third of Bruce’s estate, divided equally - <math>\\$2,000 \div 2 = \\$1,000</math> each.</li> </ul>

**NOTE:** Parents often appoint a guardian in their Wills. This only applies to minor children (under 19 years of age). This is why Bruce needed to make a Representation Agreement (RA7) to help him with decisions after he turned 19. It has also been common for parents to set up a Discretionary Trust in their Wills to provide for an adult with a disability. Trusts are complex and require a lawyer specialized in this area. See page 10 for a link to Nidus’ fact sheet *Tips on Making a Will*.

**Examples for Bruce continued...**

Following are examples that **assume Bruce is an only child**. Foster parents, home share providers, and their family members do not inherit. Only Bruce’s relatives by birth or adoption are entitled to inherit.

**NOTE:** As an example, let’s say Bruce’s parents, June and Sven divorced when Bruce was a minor. June’s new spouse, Lee, adopts Bruce as a minor. Under WESA, June and Lee are entitled to inherit from Bruce’s estate. Sven is no longer Bruce’s parent and is not entitled to inherit.

VARIOUS EXAMPLES FOR BRUCE IF AN ONLY CHILD	IF NO WILL, THE RULES OF INTESTATE SUCCESSION DETERMINE WHO INHERITS AND HOW MUCH
<p><b>Bruce Example #5</b></p> <p>Bruce dies and is survived by:</p> <ul style="list-style-type: none"> <li>• His four grandparents (parents of his biological and adoptive parents).</li> </ul> <p>Bruce had no children or siblings. His parents (both) pre-deceased him.</p>	<p>Bruce’s four grandparents inherit:</p> <ul style="list-style-type: none"> <li>• Bruce’s estate, divided equally – <math>\\$6,000 \div 4 = \\$1,500</math> each.</li> </ul>
<p><b>Bruce Example #6</b></p> <p>Bruce dies and is survived by:</p> <ul style="list-style-type: none"> <li>• His aunt (mother’s sister).</li> <li>• Two cousins (his aunt’s two children).</li> </ul> <p>Bruce had no children or siblings. He is pre-deceased by parents and grandparents.</p>	<p>Bruce’s aunt inherits:</p> <ul style="list-style-type: none"> <li>• Bruce’s entire estate of \$6,000.</li> </ul> <p>Bruce’s first cousins inherit:</p> <ul style="list-style-type: none"> <li>• Nothing, because their parent (Bruce’s aunt) is still alive. If Bruce’s aunt pre-deceased Bruce, the two cousins would each inherit \$3,000 (one-half of Bruce’s estate).</li> </ul>
<p><b>Bruce Example #7</b></p> <p>Bruce dies and is survived by:</p> <ul style="list-style-type: none"> <li>• No known descendants and no other relatives within the definition of the law.</li> </ul> <p>Bruce did not have any children or siblings. Any other relatives eligible under intestate succession rules pre-deceased him.</p>	<p>No relatives to inherit as outlined in WESA for intestate succession:</p> <ul style="list-style-type: none"> <li>• Bruce’s entire estate of \$6,000 goes to the BC government, under the Escheat Act. The Act allows a time period within which a relative of Bruce’s (even beyond intestate rules) may apply for the estate.</li> </ul> <p><i>(No heirs means that Bruce does not have any descendants or living parents, siblings, nephews/nieces, great nephews/nieces or living grandparents, aunts/uncles, or first cousins. WESA rules for intestate succession says that the list for relatives to inherit ends with the 4th generation from the deceased.)</i></p>

**PROCEDURES & FEES FOR GRANT OF ADMINISTRATION**

Information about obtaining a Grant of Administration is not user-friendly for the public.

**Where is the request filed?**

Find the location of a Supreme Court Registry for filing the request. Click or copy link into browser <https://www2.gov.bc.ca/gov/content/justice/courthouse-services/courthouse-locations>

**What is the cost?**

Fees for a Grant of Administration are the same as for Grant of Probate. (Probate is used if there is a Will.) The fees are outlined in the BC Probate Fee Act.

**NOTE:** For a short-cut calculation, fees are approximately 1.4% of the gross value of the estate.

You must provide payment when you submit the required forms. The fee is calculated on the gross value of the estate and relates to information provided on Form P10 (Affidavit of Assets and Liabilities).

The current fees for administration in BC are:\*

- A basic court filing fee of \$200.00, plus
- ‘Probate’ fees calculated as follows:
  - \$6.00 for each \$1,000.00 (or part of \$1,000.00) of the gross value of an estate greater than \$25,000.00 and less than \$50,000.00, plus
  - \$14.00 for each \$1,000.00 (or part) of the gross value of an estate greater than \$50,000.00

For example, if gross value of estate = \$150,300.00  
 \$ 200. Basic court filing fee  
 \$ 150. ( $\$50,000 - \$25,000 \div \$1,000 \times \$6.$ )  
 \$1,414. ( $\$151,000 - \$50,000 \div \$1,000 \times \$14.$ )  
 \$1,764. TOTAL

\*There are no fees if the gross value of the estate is \$25,000.00 or less.

**What forms are required?**

Following is a list of forms required for a ‘typical’ request for a Grant of Administration. The government website lists the forms in alphabetical order.



Click or copy link into your browser to find these and other forms at <https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/probate-forms>

- Affidavit of applicant for grant of administration without Will annexed—P5
- Affidavit of Assets and Liabilities—P10
- Affidavit of Delivery—P9
- Notice proposed application in relation to estate—P1
- Submission for estate grant—P2

### How do I obtain the required certificate for a Wills Notice search?

The Wills Registry is operated by the BC government through Vital Statistics. It only registers information, not a copy of the Will. As part of the Grant of Administration procedure, you must provide proof that you checked for the existence of a Will. It does not matter if you know there is no Will. You can do the search by mail or in-person. Scroll down at <https://www2.gov.bc.ca/gov/content/life-events/death/wills-registry>

## FREQUENTLY ASKED QUESTIONS

### Am I personally liable as administrator?

As an administrator, you are not personally liable (responsible) to pay the debts of the deceased. As long as you act honestly and reasonably, you are less likely to be held responsible for a small mistake in the course of following your duties, even if it causes a loss to the estate. It is when you ignore or deliberately act against your duties that you may be held personally liable.

### What happens if there is a Will but the executor is unable or unwilling to act?

If the Will is still valid but the executor has died or refuses to act, there is no need to apply the rules of intestate succession. If there is an alternate executor named in the Will, they can act as executor. If not, someone who is eligible (see the list on page 3) can apply to the Supreme Court of BC Registry for a **Grant of Administration with Will Annexed**. The administrator follows the existing Will.

### When would the Public Guardian and Trustee (PGT) administer the estate?

The Public Guardian and Trustee (PGT) may consider administering the estate if there is no one else willing or able to do so. The PGT will only be administrator if the estimated net value of the estate will cover the costs of burial or cremation and the PGT fees-for-services.

Contact the PGT before referring an estate, phone 604.660.4444 or email [estates@trustee.bc.ca](mailto:estates@trustee.bc.ca)

### I thought a surviving spouse could live in the spousal home until their death?

WESA changed the rules for what happens to the spousal home if there is no Will. (See page 5 for examples of when a spousal home is considered part of the deceased's estate.) The changes are designed to make things better.

The old law gave the surviving spouse a right to live in the spousal home until their death, but many banks would not recognize this right when the mortgage needed to be changed or renewed. A sale was often forced on the spousal home.

### What if the deceased pre-paid for a funeral or joined the Memorial Society?

It can be difficult to know if the deceased pre-paid for burial or cremation, unless others know about it or have a copy of the 'pre-need contract.' Pre-paying does not cover all costs; there will be additional charges at the time. It is important to remember that pre-pay arrangements will ensure the company's interests are met, regardless of future circumstances. One has to consider the risks and benefits of this practice for the public.

**Consumer Protection BC** (a government program) has information about prepaying costs and about the funeral industry in general. Go to [www.consumerprotectionbc.ca](http://www.consumerprotectionbc.ca)

Another practice among seniors has been to join the non-profit **Memorial Society of BC** — [www.memorialsocietybc.org](http://www.memorialsocietybc.org) Members are encouraged to fill out an 'Arrangements Form' and file it with the Society. The form is not a legal document and is not legally binding. Membership includes 10% off the cost of burial or cremation as negotiated by the Memorial Society with funeral service providers. Getting this discount relies on someone contacting the Society immediately after the death of the deceased. It is not clear if the Society checks whether they are dealing with someone who has legal authority to make the arrangements for burial or cremation. As a start, consider storing a copy of your Memorial Society membership card in the Nidus Registry and sharing viewing access with others who may need to know.

The **Nidus Personal Planning Registry** is designed to keep track of and enable speedy communication of time-sensitive plans.

The Registry provides secure storage with 24/7 access. **You are in control of privacy** and who has access to the information. The Registry is operated by the Nidus Resource Centre, a non-profit charitable organization. See the next page for details.

## RESOURCES & ACKNOWLEDGEMENTS

### Don't forget to register your plans!

Nidus operates the online **Personal Planning Registry**. The Registry provides secure storage of important information and documents in ONE central place. YOU stay in control of who has access:

- You can grant access to others who may need to know in times of a health crisis or a disaster (such as wildfire, flood or earthquake).
- You have 24/7 access to your own record, during and after a crisis or disaster.

Read more details at [www.nidus.ca](http://www.nidus.ca) > click Registry tab (top blue menu bar) > [Instructions](#)

### Where to get more information?

The following are sources that may be helpful for information on dying without a Will. Some information has legal jargon.

- **Dial-a-Law** (a service of the BC lawyer's association) — see script 177 under Wills & Estates. Go to [www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Wills-and-Estates](http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Wills-and-Estates)
- **PGT website FAQ** — Go to [www.trustee.bc.ca/faq/Pages/estate-and-personal-trust-services-faq.aspx](http://www.trustee.bc.ca/faq/Pages/estate-and-personal-trust-services-faq.aspx)
- Some differences in law for indigenous peoples are discussed in the Dial-a-Law script 237 under Your Rights > **Aboriginal Law** [www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Your-Rights/237](http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Your-Rights/237)
- **Nidus** has information including *Tips on Making a Will* at [www.nidus.ca](http://www.nidus.ca) > click Information (top blue menu bar) > [Estate Planning](#)

### How do I find a lawyer?

To find a lawyer for this topic, see the legal advisors listed under acknowledgments. You can also contact the **Lawyer Referral Service** (operated by the BC lawyer's association). You can consult with a lawyer for up to 30 minutes for \$25.00. Go to [www.cbabc.org/For-the-Public/Lawyer-Referral-Service](http://www.cbabc.org/For-the-Public/Lawyer-Referral-Service)

### Where do I get more information and forms on Representation Agreements?

This fact sheet discusses what happens after death. It is also important to consider making arrangements for BEFORE death—in case of incapacity, for end-of-life, and other support needs. Nidus calls this 'Personal Planning.'

Nidus is the expert on **Representation Agreements** and provides information and **free legal forms** for self-help and personal use.

Go to [www.nidus.ca](http://www.nidus.ca) — click on the photo/heading at the home page that matches the situation.

REPRESENTATION AGREEMENT FORMS & INFO		
<i>Helping a Relative with a DISABILITY</i>	<i>I'm planning on the FUTURE PATH</i>	<i>Caring for an Adult Who NEEDS HELP NOW</i>
<b>Helping an adult like Bruce (with a disability from birth or as child)?</b> Info & Forms for RA7 <i>Adult may make even if considered incapable to make a Will.</i>	<b>If you are considered mentally capable</b> Info & Forms for health & for financial <i>For adults capable to make a Will— plan now in case of incapacity — don't wait for a crisis!</i>	<b>Are you helping someone like Mary (capability affected in adulthood)?</b> Info & Forms for RA7 <i>Adult may make even if considered incapable to make a Will.</i>
Click <b>FIRST</b> photo	Click <b>MIDDLE</b> photo	Click <b>THIRD</b> photo

### Legislation

To view BC legislation, go to [www.bclaws.ca](http://www.bclaws.ca) > click Laws of British Columbia > Public Statutes and Regulations > select first letter of the Act.

### Acknowledgements

Legal advisors for this fact sheet:

- Jennifer Chew, Barrister & Solicitor, [DuMoulin Boskovich LLP](#) (Also supervising lawyer for Nidus pro bono law students.)
- Deirdre Herbert, Barrister & Solicitor, [McLellan Herbert](#) (Also served on the Succession Law Reform Project that made recommendations for WESA.)

Legal advisor for the Nidus webinar held March 2018.

- Gerald Sauder, Barrister & Solicitor, [Jawl Bundon LLP](#)

Reference material:

[The Law Society of BC](#), *Practice Material: Wills*, for the Professional Legal Training Course (2018).

Writing, research, editing:

- Joanne Taylor, Executive Director & Registrar, [Nidus](#)
- Stephanie John, student, UBC Allard Law School, [Pro Bono Students Canada program](#)

Research:

- [Katharine Wong](#), Barrister & Solicitor, former ProBono student volunteer

Proofreading and review:

Susanne Gray & Maureen MacDonald, volunteers, Nidus

Feedback:

Nidus listens to our users and may make changes to improve this fact sheet. Please check back at [www.nidus.ca](http://www.nidus.ca) > click Information > [Estate Planning](#)

*Thanks to Nidus donors for funds to produce this fact sheet and related education. You can help! At the website, click [DONATE NOW](#), or mail cheque to address below.*