

Some Tips — Making a Will & Role of Executor

What law in BC governs making a Will?

The [Wills, Estates, and Succession Act](#) (WESA) is the law in BC that sets out the rules for making a valid Will.

WESA also outlines what happens if someone dies with No Will. Click to read the Nidus fact sheet on [Dying Without a Will](#).

WESA may not be applied in the same way for indigenous peoples, see page 7 for information.

NOTE: *After a person dies, WESA allows that someone can apply to the Supreme Court of BC to ask a judge if a Will-type statement may be treated as a complete and valid Will. The deceased must still have met the capability requirements of a will-maker (see heading in next column). It would be risky to advise or rely only on this possibility — it is best to make a complete and valid Will.*

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 some different rules.

If someone died on or after March 31, 2014, the WESA rules apply for settling the estate, regardless of when the Will was made.

What is a Will?

Your Will is a legal document that names the person you authorize—your executor—to settle your estate after you die.

Your Will gives instructions for how you would like your estate to be distributed.

Your Will only has legal effect after your death.

Who can make a Will?

Making a Will is voluntary.

No one can make a Will or change a Will on behalf of the will-maker. It is forbidden by law. Instructions must come from the will-maker, who must meet the following requirements.

WESA sets out two main criteria:

1. **Age** - you must 16 years or older; AND
2. **Mentally capable** - this is based on cognitive ability to understand.

What does it mean to be mentally capable to make a Will?

The current legal standard for being mentally capable to make a Will comes from a court case *Banks v. Goodfellow* (1870). A will-maker:

- Must understand the nature of what a Will covers and the effect of making one.
- Must have a sense of what they own and who may expect to inherit. (For example, the entitlements of a spouse and children)
- Must be free of mental delusions.

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

Nidus recommends going to a lawyer or notary public to make your Will.

Some people will not be capable to make a Will or to change an existing Will.

If someone is not capable to make a Will, click to read [Dying Without a Will](#).

What makes up the deceased's estate?

The estate consists of property the deceased owns at death. When making a Will, you are encouraged to estimate. Some professionals are telling will-makers to include inheritances in estimates. These need to be treated as a possibility, not an entitlement.

The deceased's estate does not include property designated to a specific beneficiary or owned joint with right of survivorship (common for spouses). See diagram on page 5 at [Dying Without a Will](#).

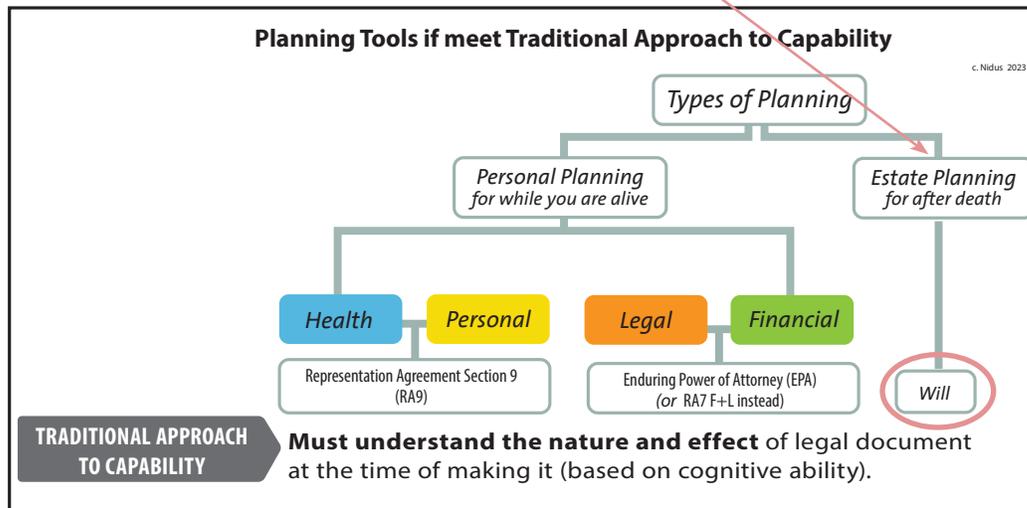
In legal terms, property is defined very broadly. It includes real estate (called real property), cash, investments, businesses, personal effects, and vehicles.

Depending on their value, mobile devices, a stamp/coin/toy/comic book collection, artwork, tools and books may be considered property and be valued separately. Items of little value might be considered personal effects.

There are two main concepts when thinking about the estate:

1. **Gross value** - this is the fair market value of the property the deceased owned at death BEFORE deducting expenses, debts, and taxes.
2. **Net value** - this is the value of the deceased's estate AFTER expenses, debts, and taxes are paid.

MAKING A WILL



Nidus' mandate and expertise is Representation Agreements and the concept of personal planning (see chart above). Nidus recommends going to a lawyer or notary public to make a Will. Following are tips to help you prepare and to keep things on track, once the Will is made.

It is risky for service providers and health care professionals to take on the role of drafting a Will for a patient or client or determining who is capable to make a Will or who is not. However, these parties can provide information and support to help patients and clients prepare for a meeting with a legal professional about a Will.

Some general tips on Making a Will

- **List your wishes about burial or cremation.**

- If you have a preference, state your wishes about burial or cremation in your Will to make your wish legally binding.
- Your executor has legal responsibility for this decision so it helps everyone if you are clear.
- However, you may want to give discretion to your executor.
 - Like other industries, funeral practices are evolving. 'Green burials' are becoming more common and more affordable and may be more climate-friendly than cremation.

- **Be realistic and practical when choosing an executor.**

- Being an executor requires skills dealing with people, institutions and paperwork. You need someone who is not easily intimidated and who has good judgement and can follow procedures and the law - regardless of

personal views. Not everyone is suited to this.

- Is it a good idea to name co-executor(s)?
 - Having co-executors doing tasks together (jointly) can cause delay. What if one of them dies?
 - Is it better to name alternate(s)?
- Legal professionals often use trustee with the term executor. This has been a long-time practice but also safeguards instances when the executor might have to take on the role of trustee. If you set up a Trust(s) in your Will you might name a different person as Trustee for that Trust.
- An executor's loyalty is to the beneficiaries named in your Will. This does not mean they will legally be able to do whatever a beneficiary wants.
- Some people advise against naming an executor who does not live in Canada.
 - This restriction is not in legislation. Legally you can name whomever you want.
 - Financial advisors (the institutions that employ them) sometimes dictate who can be your executor - this is because they don't want to deal with potential problems due to different tax systems. Be pro-active and ask their policy and rationale.
 - » Executors may also need to be pro-active. For example, if a U.S. resident is responsible for managing funds of a Canadian/BC resident, the U.S. resident must file a form called FBAR with their Internal Revenue Service.
- **Name an alternate executor.**
 - You never know when a back-up might be needed; consider naming an alternate(s).

- An alternate can be a good resource to the executor—someone to discuss things with.
- **Ask in advance if a person is willing to be executor/alternate**
 - Make sure you talk with the persons you want to name as executor and alternate and get their agreement. A surprise may backfire.
 - They may have questions. They may want to clarify your intentions and wishes. They may want to check on statements in your Will that protect the executor from liability.
 - You should also talk with others who are not named as executor.
 - Things go better, and usually faster, if there is good communication and cooperation. Discuss your expectations.
- **Go over your Will with your executor(s) and alternate executor(s):**
 - Often decisions about burial or cremation are made very quickly after death — talk to your executor about your wishes and intent.
 - Does your executor have the original of the Will? If not, let the executor know where it is located so they can retrieve it when you die.
 - Even though the practice of making a Will seems to be shrouded in mystery and secrecy, such an approach is more likely to lead to disappointment, if not disaster.
- **Make sure your Will reflects your intent**
 - Do you understand your Will?
 - Clarify meanings so you can explain your Will to others.
 - A good legal professional will respond to your questions and provide explanation.
 - Sometimes legal requirements and conventions require certain wording in a Will. You still need to understand these so you can explain to someone else.
 - Unless the executor is in the room, how will they know your intent or what the wording in your Will means?
- **Keep it simple!**
 - Sometimes a Will get complicated because the will-maker is over-thinking things.
 - Put yourself in the shoes of the executor. Distributing your estate, for example, among 20 people is usually a lot more complex than distributing it among 3 people.
 - Are you caught up in 'what if...' scenarios?
 - Are you trying to 'exercise control from the grave'?
 - It takes skill and expertise for a legal professional to draft a concise Will. It also requires you to be clear.
- Executors can hire expert help if needed. Fees for expertise beyond the executor's knowledge can be charged to the estate. You can provide your executor with a list of experts you trust.
- **Get informed**
 - Some things are covered by legislation, some are not.
 - You need to know the difference so you do not confuse matters for your executor and other survivors (like next-of-kin).
 - There is legislation (WESA) if you die without a Will or there is a Will but no executor. Click to read [Dying Without a Will](#).
 - WESA has specific definitions for spouse and children. See p.3 at [Dying Without a Will](#).
 - There is legislation if you want to be an organ donor. Go to [Transplant BC](#)
 - There is NO legislation about publishing a notice of death or obituary, but it is a common practice. It is now often done online.
 - There is NO legislation to make your wishes about a remembrance service binding.
 - Sometimes people say they do not want any service after they die. The intent may be to save fuss or money, but it may not be helpful to survivors.
 - Rather than say 'no' service, say a service is not necessary; then give some guidance as to who should have priority in deciding about any arrangements. Sometimes there is disagreement among survivors.
 - It can be very important (and good for mental health) for survivors (even work colleagues) to have a way to express their grief and bereavement.
 - The service could be a gathering on the beach or in the forest. It does not have to be a formal event. There could also be different events. Grief is hard enough without conflict about a service.
- **Name a guardian in your Will, if you have minor children** (by birth or adoption).
 - In BC, a child is considered a minor if under 19 years of age. In BC, the age of adulthood is 19 years and parental rights end.
 - Naming a guardian in your Will does not apply to your child who is 19 years or older, including your child with a disability.
 - If an adult with a disability may continue to need help with decisions and managing their affairs, it will be important that on their 19th birthday or later, they make a Representation Agreement (RA7). A Trust in your Will is not a substitute for this.

- **Some people set up a Trust in their Will** to manage the inheritance for a beneficiary.
 - There are different kinds of Trusts. See page 7 for some general information on Trusts.
 - Including a Trust in your Will requires specialized knowledge. You need a lawyer who is experienced in this area.
 - A Trust in your Will only comes into effect after your death.
 - It has been common practice to advise parents (grandparents and other relatives) to set up a Discretionary Trust (sometimes called a Henson Trust, an Ontario term) in their Will for the inheritance of an adult child with a developmental disability.
 - The reason for this practice is to protect the child's government benefits (in BC, these are Person With Disability benefits — PWD), which might be cut-off if the inheritance or other funds go directly to the child on PWD.
 - » The good news is that the BC government allows an individual who receives PWD benefits to have up to \$100,000.00 in their bank account, with no effect on their benefits.
 - » People with disabilities can also use their Registered Disability Tax Savings Plan (RDSP) for any inheritance they receive, as PWD benefits are exempt for the RDSP.
 - Setting up a Trust in your Will may also be a suitable approach if you have an adult child with a mental illness or an addiction.
 - If you have a spouse with dementia or other condition, a Trust in the Will may be helpful.
- **Spouses often make 'mirror Wills.'**
 - Each spouse has to make their own Will.
 - Spouses often put the same wording and list the same beneficiaries in each of their Wills.
 - There is also a concept of 'mutual wills' where each Will includes a statement that the spouses agree not to alter or change their Will. There are some specific requirements to make this work/valid. Ask the legal professional.
- **Be pro-active where you can; and if it is helpful.**

There are practical things you can do. The most important thing is for you to help manage expectations and show support for your choice of executor. For example, while you may think it is helpful to pre-pay funeral expenses, do not assume and do not let others assume this means all costs are taken care of.

Following are ideas (not requirements) of some things you might do.

- Compile a list of people and their contact information and keep it up-to-date.
 - Make up a '*family tree*' for your executor(s)/ alternate(s). Do this even if the 'next-of-kin' are not listed as benefactrices in your Will.
 - Organize a list of who to notify when you die. Include people from work, interest groups/activities, faith community, neighbours and friends.
 - List the beneficiaries named in your Will.
- Do some sorting and downsizing now to make things easier in the future. This is often called '*de-cluttering*.'
- We all have *heirlooms and personal things* to pass on to others. Make a list of these personal/sentimental effects and keep the list up-to-date.
 - Perhaps you gave your niece that pearl necklace before you died. Don't make your executor look all over for something you already distributed.
 - You might also check if anyone really wants grandpa's shaving mug — not everyone is interested in the same things. Try not to leave too many 'unmatched' personal effects for your executor to deal with.
- Do you remember a relative putting *sticky tape with names* on the bottom of furniture or china or pottery? Consider doing this.
 - We often joke about it, but there is some logic in terms of making things easier and clear for the executor.
 - If you encounter personal reactions when you ask people to identify items they want, you can problem-solve potential disputes ahead of time.
- Make a *list of what you own and owe* and keep it current. Don't forget to list any online accounts. This is a big help to your executor and also when making your Will. Legal professionals often have a checklist for you to complete before your appointment.
- If you have *bank accounts* at various different institutions or branches, consider consolidating them. Let your executor know the contact information.
- If you own any *property outside BC*, consider selling it or transferring it to BC. Let your executor know.
- Do you have a *private pension*? What happens to it when you die? Are there survivor benefits? Can it be designated to a specific beneficiary?

- Is there anything you can do before you die?
Make sure your executor knows if it will be part of your estate.
- Find out the policy of your financial institution(s) regarding their approach to 'small estates.' (In practice, as you can read in [Dying Without a Will](#), estates with a gross value of less than \$25,000.00 are considered small estates.) Small estates do not require your executor to obtain a Grant of Probate.
 - Talking with your financial institution is especially important if you are low income.
 - Consider introducing your executor to the manager of the financial institution. However, it is likely there will be staff turnover if not a change in policies before you die so you need to keep up-to-date.
 - Do you own *real estate*?
 - List any real estate you own and the type of ownership. Are you the sole owner? Is it owned as joint tenancy with right of survivorship? Is it owned as tenants in common?
 - If real estate you own will be part of your estate when you die, it is important to address it in the Will.
 - There seems to be a trend, especially among seniors, to *pre-pay funeral expenses* and/ or to *join the Memorial Society of BC*. This is not the end of the effort, your executor or next-of-kin will still have things to do (and fees to pay) related to funeral expenses after you die. The onus is on them.
 - The key issue for any arrangements you make in advance (including organ or body donation) is communication.
 - If your executor and family do not know about arrangements you've made, it may result in paying fees twice or paying more than necessary or confusion and conflict.
 - The term for pre-paying funeral expenses is 'pre-need contract.' No one can predict the future and there will still likely be some fees to pay.
 - » The contract will be written in favour of the institution.
 - » The law says any wishes you express about burial or cremation in a pre-need contract are legally binding, so it is important your executor has a copy of any pre-need contract you signed.
 - Joining the non-profit Memorial Society of BC is different from pre-paying funeral expenses.

- » The Memorial Society negotiates a discount on fees with certain funeral homes.
- » The executor needs to contact the Memorial Society immediately upon the death of a member to get a list of participating funeral homes and the discount.

Do I specify gifts or percentages in my Will?

One of the purposes of making a Will is so that you can specify how your estate is distributed after you die and have more flexibility on who can be a beneficiary.

There are differences depending on whether you mention specific gifts in your Will or give percentages of your estate to your beneficiaries. Many people do some of both in their Will.

• Effect of giving SPECIFIC GIFTS in your Will

- A gift could be a specific amount of money or a specific item such as a vehicle or real estate or a painting or other property. Some possible effects of listing specific gifts:
 - The beneficiary of the specific gift is not entitled to a 'passing of accounts' (financial accounting of the executor's work).
 - A specific gift is distributed sooner than percentages.
 - Specific gifts would only be affected if needed to pay debts not covered by other sources of funds in the estate.
 - A specific gift can generate interest from one year after death.
 - The amount of the specific gift gives certainty.
 - One of the risks about making specific gifts is that you cannot predict the future.
 - » Circumstances can change between the time you make your Will and after your death, when the Will is acted on. You may forget or may not be capable to update your Will.
 - » Some items you 'gifted' in a Will may need to be sold in order to support your care needs, but if you did not update your Will, the beneficiary of a specific gift may decide to pursue financial compensation.
 - » Sometimes specific gifts in a Will lead to unintended consequences and might create conflict or bad feelings.
 - » The following court case is based on specific facts. Click on the name of the case, to read the specific reasons.

Forbes v. Millard Estate 2017 BCSC 361

Helen Millard died February 9, 2015 at age 91. She was survived by her three children. Helen made a Will on September 5, 2000 and in it she left her home to her daughter Cherie. Helen's Will also left the residue (any remainder in the estate) to be divided equally among her three children. She mentioned that she did this because one of Cherie's children had a severe disability and she wanted to be sure Cherie had a home.

Helen acknowledged that Cherie may not want to live in the home, but she could use the capital to buy a home elsewhere.

In 2004, Helen was no longer able to care for herself and was moved to a care facility. Helen's other two children were named as attorneys in Helen's Enduring Power of Attorney. They sold Helen's home to pay for her care needs.

After Helen died, Cherie went to court to enforce the gift of the home that Helen had left to her in the Will. The judge said that the attorneys acted in good faith when they sold Helen's home to pay for her care. The attorneys argued that Cherie already owns a home (mortgage free) in Victoria and since they had to sell Helen's home, any remaining money should be part of the residue (remaining funds in the estate) and divided equally among all three children.

But the judge found that WESA supported Cherie's claim and he ordered that Cherie should receive money from Helen's estate equal to the amount of the gift (the home) given by the Will.

• Effect of giving PERCENTAGES in your Will

- Using percentages is common for dealing with the residue of an estate, but can also be used instead of giving specific gifts to beneficiaries. Some effects of using percentages:
 - Beneficiaries who receive a percentage are entitled to a passing of accounts.
 - » Larger charities who are given a percentage will have more staff and ability to scrutinize the accounts of the executor.
 - It takes more time to receive the percentage.
 - The amount available for percentage distribution is less certain as it depends on payment of all expenses, debts and taxes.

What is the residue?

Residue is a legal term and is the amount of the deceased's estate that is left after:

- Specific gifts are distributed;
- Cremation or burial and related expenses are paid;
- Any debts owed are paid;
- Executor's fees are paid;
- Taxes owing are paid;
- Any other expenses are paid (including for legal expertise).
- Distribution by percentages is made to named beneficiaries (if different from percentages and beneficiaries listed for distributing residue).

It is impossible to anticipate exactly what might be leftover, therefore every Will should have wording about distribution of any residue.

Who can challenge your Will?

Anyone can hire a lawyer to initiate a court challenge to a Will, however, WESA only allows certain parties — a surviving spouse of the deceased and surviving children (of any age) related to the deceased (by birth or adoption) — can argue that a Will does not adequately meet their needs for maintenance and support.

The Public Guardian and Trustee (PGT) has to be notified if a court challenge involves minor children or if the spouse or children are mentally incapable. The PGT can take part in the court case.

Sometimes parents leave a child with a disability out of their Will. Instead, they give extra money in the Will to their other children (the siblings) to 'look after' the child with a disability. This does NOT work. Do NOT do this. This like an invitation to the PGT to challenge the Will on behalf of the child with a disability.

Challenging a Will in court is costly and time consuming. Often the legal costs are paid by your (the deceased's) estate. If you want to leave a spouse or child out of your Will — get legal advice on an effective way to do this.

Other approaches for estate planning?

Making a Will is an essential document for estate planning (planning for after death).

There are other things that some people do to minimize the size of their estate. See diagram on page 5 at [Dying Without a Will](#).

Why attempt to minimize the estate? The gross value of the estate can determine if the executor must apply for a Grant of Probate and the amount of fees to be paid when apply.

As with most things, there are pros and cons.

• Joint ownership?

- Some people use joint ownership with right of survivorship to minimize the size of their estate. See diagram on p.5. On the advice of legal professionals, estate planners and financial advisors, many people transfer their ownership of real estate or bank accounts to joint ownership with others.
 - Joint ownership with right of survivorship is common between spouses (the legal term is joint tenancy) and can make settling your estate after death, easier on your executor and your surviving spouse.
 - However, joint tenancy with someone other than your spouse (such as a son or daughter) may carry more risk for you and extra costs for them.
- The Nidus Resource Centre has a fact sheet with some basic information about [Joint Ownership: the good, the bad and the risky](#).

• Beneficiary designation?

- Another estate planning approach suggested for minimizing your estate and saving probate fees, is to designate someone as a beneficiary on property such as a life insurance policy, a Tax Free Savings Account (TFSA), or a private pension benefit.
 - This can keep things simple if you can designate your spouse.
 - Designations can cause conflict or create perceptions of unfairness if you designate one of a number of children/beneficiaries.

Joint ownership with right of survivorship (WROS) and/or beneficiary designations is not a substitute for making a Will.

Even if your surviving spouse and you both owned everything as joint tenants WROS, financial institutions often ask to see a Will to be reassured that your spouse is the 'first level' beneficiary in your Will. The institution doesn't want to deal with possible conflict.

What about using a Trust?

Trusts are sometimes suggested as an estate planning tool. Trusts are viewed as a better and safer way — fewer risks — than joint ownership to pass on real estate or other property.

Trusts are used for other purposes, including financial planning and tax savings. A Trust can be set up and come into effect while you are alive.

- A Trust can be for different purposes and therefore there are different types. Trusts can be costly to set up as you may require specialized legal, tax and financial advice.

- The Trust is like a contract and may rely on the relationship between the parties involves, specific legislation or may outline specific terms and conditions for managing the funds in the Trust. A Trust may state whether a Trustee can use some of the capital or only the income for the beneficiary and what happens to any remaining funds when the Trust ends or beneficiary dies.
- To be valid, the Trust must be clear and certain about its intention to be a Trust, the content to be dealt with by the Trust and the object of the Trust.
- A Trust can be discretionary (allow the Trustee to make decisions according to current circumstances) or non-discretionary. A Trust can have elements of each.
- There are three main roles in a Trust. The same person can hold all three roles.
 - Settlor (or testator if the Trust is part of the deceased's Will) is the term for the person who provides the capital and/or income used to create the Trust.
 - Trustee is the term for the person(s) who manages the Trust.
 - » A Trust may appoint one or more Trustees — a Trustee could be a corporation like a financial institution and/or an individual, such as a family member.
 - Beneficiary is the term for the person(s) who benefits from the Trust.
- CRA has a broad definition of a Trust. Under the CRA definition, some types of Trusts - like a RRSP, TSFA or RDSP - would be set up with a financial institution or investment company. A Trust created in a Will, is done by a lawyer.
- There may be fees to create the Trust, and there may be ongoing fees.
 - Trusts are not feasible or the best approach for every situation.

A Trust cannot give Trustees legal authority to do things outside of the Trust — for example, a Trust does not give a Trustee authority to help an adult manage their bank account or day-to-day finances.

A Trust, a Will, joint tenancy and beneficiary designations are not a substitute for **personal planning** — making legal documents to give legal authority to someone while you are alive, in case of incapacity, for end-of-life, or other support needs. Nidus' expertise is in personal planning.

What's in a Registry? To register or not?

In today's fast paced world, communication is more important than ever. Registries are designed to help with this.

As one financial planner said, "if there is a chance that registering will help...why not?"

Registering is voluntary.

BC WILLS REGISTRY

The government of BC operates a [Wills Registry](#). It is for registering information — a Notice — about a Will. It does not store a copy of the Will.

You can register that you made a Will and where you plan to keep it. If you move or change the location, or make a new Will you register a new Notice.

The government charges for registering and there is a fee if the executor has to do a search after you die. (Proof of search is required when applying for a Grant of Probate.)

NIDUS REGISTRY

The Nidus Resource Centre (a non-profit, charity) built and operates the online [Nidus Registry](#) service. It is a place to securely store important information and a copy of important documents. (It can store a copy of documents that are scanned in PDF format and uploaded in your Nidus Registry Account.)

This Nidus Registry is unique because it is designed for self-management — this means after you create your Nidus Registry Account and make a registration(s), you can later log in and access your registrations. This is particularly valuable if you are evacuated during a wildfire, flood, earthquake or tsunami. You can also permit viewing access to others who may need to know.

The Nidus Registry can accommodate registrations of personal planning documents — like Representation Agreements and Enduring Powers of Attorney — but is not restricted to this. You can use the 'Other Document' section of the Nidus Registry to register and store a copy of your Will, RDSP, beneficiary designation, pre-need funeral contract, Memorial Society membership, land title or rental agreements, insurance policies, prescriptions, and more.

The Personal Information Record is a separate type of registration for entering information that may be useful in a crisis — like the name of your financial institution and branch; the contact information for the pharmacy you use, and

more. Often we freeze in a crisis and it is hard to remember details.

There is a one-time fee to register with the Nidus Registry. The cost is \$25.00 for your first registration and \$10.00 for each additional registration (for the same person/Account).

For instructions, click [How to Register with the Nidus Registry](#).

More Tips & Resources for Making a Will

Sometimes people think making a Will is not necessary or doesn't matter.

- Even if your estate is very small, a Will makes things easier for those who care about you. It lets them settle things more quickly and with little or no cost. It can give closure.
- Other reasons people hesitate is because they have no descendants or relatives to name as beneficiaries or executor.
 - You can leave your estate, or part of it to a charitable organization. The charity may also be able to act as the executor.
 - Your gift/legacy can make a big difference, especially for smaller charities, like Nidus.
 - » You will need special wording in your Will to donate to a charity. Ask the charity.
 - For a charity to benefit after your death, you need to make a Will. If you do not make a Will and have no relatives, your estate will go to the BC government.
 - There are businesses that specialize in being an executor. Ask your financial institution or financial advisor about such services.
- The legislation for Wills and estates is provincial-based. There are similarities among provinces but also some differences. Be careful about doing research on the Internet.

To find a lawyer, contact the [Lawyer Referral Service](#). You can phone 604.687.3221 or 1.800.663.1919.

To find a notary public near you, contact the [Society of Notaries Public of BC](#) at 604.681.4516 or 1.800.663.0343

A legal professional drafts the Will for you and can give you legal advice. They generally do not witness forms drafted by someone else.

ROLE OF EXECUTOR

If you are appointed as an executor in a Will and you do not feel able to do the job, consider **resigning**. The legal term is 'renounce.' It is best to renounce before you start acting.

If there is a Will but **no one to be the executor**, WESA spells out who can take on this role as the 'administrator with Will annexed.' Read about who can be an administrator on page 4 of [Dying Without a Will](#).

What are the tasks of an executor?

The executor will need to provide an accounting of your work so it is wise to set up a spreadsheet or other system for record keeping at the start.

'The executor's year' is a popular expression. It recognizes that it commonly takes about a year for the executor to identify and pay debts, expenses, taxes and other fees that are owing from the deceased's estate.

During this same time period, the executor applies for the CPP Death Benefit and compiles an inventory of all the property that the deceased owned at death.

The executor needs to assess the balance between what is owed and the value of the estate. Hopefully the amount owed is less and the executor can get ready to distribute from the estate, in this order:

1. Specific gifts;
2. Percentage gifts; and lastly,
3. The residue.

WESA says that the executor cannot distribute any of the deceased's estate until 210 days after the Grant of Probate is issued. This is to allow time for creditors to make a claim for any debts owing.

If all the beneficiaries agree, the executor can distribute before the 210 days.

- Following are common tasks of an executor not necessarily listed in order of priority.
 - Many of these topics, like the number of Death Certificates or determining the Gross Value of the Estate are discussed in [Dying Without a Will](#).
 - The big difference between having a Will versus No Will has to do with the task of distribution.
 - If there is a Will, the executor follows the distribution as set out in the Will.
 - If there is no Will, the administrator must distribute the deceased's estate only to specific people.

EXECUTOR 'TO DO' LIST

- Ensure the deceased's property is safe and secure (get special insurance coverage?).
- Obtain the Will. Is it the most current Will? You may have a copy but you will need the original.
 - You can do a search of the BC government Wills Registry as it may say where the original is located. Keep proof of the search as you may need it for the Grant of Probate.
- Did the deceased make arrangements in advance for body donation? If so, then there will be no body to bury or cremate. There can still be a service.
- Check if the deceased signed a pre-need contract (pre-paid fees for burial or cremation) with a specific funeral home or if the deceased is a member of the Memorial Society of BC (and entitled to discount for funeral expenses).
- Arrange burial or cremation. Follow any wishes about which one, if expressed in the Will or a pre-need contract.
- Arrange for death certificates.
- Communicate on an ongoing basis with beneficiaries so they do not become concerned about what is happening. Yes, give named beneficiaries a copy of the Will.
- Determine the gross value of the deceased's estate.
- Apply for a Grant of Probate (if required). Submit forms, which are related to [Part 25](#) of the Supreme Court of BC rules, and pay fee (roughly 1.4% of gross value of estate). The BC government website has a [list of forms](#). For a typical grant application use P1, P2, P3, P9, and P10.
 - The forms and procedures are not user-friendly; but the Court Registry staff are often very helpful.
 - While some forms are different, there are good tips on pp 5&6 at [Dying Without a Will](#).
- If the deceased's estate includes real estate — check if the Will addresses what happens to the real estate. If the Will does not give instructions about the real estate AND it was the spousal home, you will need to notify the surviving spouse about their right to purchase the spousal home before it is put up for sale. The surviving spouse is the only one who has this opportunity and they must decide within 180 days.

- Terminate any leases and services (electricity, phone, gas, subscriptions). Re-direct the mail. Don't forget online services and accounts.
- Locate and notify those listed in the Will as beneficiaries. Did the deceased have a 'secret' family? Is there a spouse or children of the deceased that are not mentioned in the Will?
- Identify and notify creditors who may be owed compensation from the deceased.
- Pay the deceased's debts and, if necessary, sell items the deceased owned to do this. Do not sell specific gifts (real estate or items like a vehicle or jewellery) except as a last resort.
- Apply to Service Canada for the CPP Death Benefit (if applicable).
- File a final tax return for the deceased.
- Pay expenses including legal fees, executor's's fee and accounting fees;
 - Expenses may also include obituary notices, flowers, service, Death Certificates.
- Distribute any specific gifts mentioned in the Will.
 - If the beneficiary of the specific gift is deceased, hopefully the will-maker listed an alternate beneficiary; if there is no alternate or they are deceased and the original beneficiary was a sibling or descendant of the deceased, then the specific gift goes to their descendant(s); if no one, it goes to the surviving beneficiaries listed for the residue, according to their percentage share.
- Distribute any gifts to specific beneficiaries given by percentages. Distribute residue.
 - If a beneficiary is deceased, follow same scheme for distribution as for specific gifts.
- Keep a record of all activities related to administration of the estate. These may need to be reported and an accounting provided to those entitled to inherit and/or to the Court.

Finalizing an estate may take time. It is a good idea for the executor to keep in communication with beneficiaries. Sometimes people think that if an estate is small, it can be settled quickly. This is not necessarily possible.

NOTE: *One reason settling an estate takes time is because executors may want to wait until the Canada Revenue Agency (CRA) issues a 'clearance certificate' before distributing the remainder of the deceased's estate. This certificate from CRA indicates no more tax is owing and the file is closed.*

FREQUENTLY ASKED QUESTIONS

Do I receive a fee for being executor?

Yes. The Will may provide a fee for the executor. If the Will does not state a fee, the beneficiaries can agree on a fee. The BC Trustee Act section 88 allows an executor, to receive a fee related to the value of the estate as well as an annual fee and a maintenance fee. Fees are paid before distribution of the estate. Fees are taxable.

The Trustee Act allows a maximum fee of 5% of the gross aggregate value of the estate. This is high. An amount of 2.5 to 3% is more common.

Am I personally liable as executor?

As an executor, you are not personally liable (responsible) to pay the debts of the deceased. This comes out of the estate. You are responsible for your duties related to the estate. You need to act honestly and reasonably in your role as executor and keep records.

Where to get more information on Wills and Estates?

- See **Public Guardian and Trustee website** about [Estates](#)
- Some **indigenous people** may be governed by the federal Indian Act and can get personal help with making a Will and settling an estate. Call 604-775-5100 or 1-888-917-9977 or BCestates@aandc-aadnc.gc.ca
- **Nidus Resource Centre** has free information, stories and videos at nidus.ca
 - This fact sheet is about what happens after death. There are legal documents adults can make that authorize someone to help with health decisions and finances while alive. Nidus calls this personal planning.
 - The Nidus Resource Centre also produced a fact sheet about [Dying Without a Will](#).
- **Nidus Registry** is an online service that offers a secure place to store important information and documents and make them available to others - [Sign Up](#) to set up your Nidus Registry Account.

Legislation

Click to view [BC legislation](#) > click Laws of British Columbia > Public Statutes and Regulations > select first letter of the Act > W > Wills Estates and Succession Act (you will come to a link for the Act); it is also useful to click on Regulation(s) as these are also part of the law. Tip: you might want to open some links in a 'new tab.'

Acknowledgements

Thanks to lawyers who assisted with the 2018 version of the Nidus fact sheet on [Dying Without a Will](#), which informed this fact sheet. Any errors in this fact sheet are by Nidus.

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

Reference material:

[The Law Society of BC](#), *Practice Material: Wills*, for the Professional Legal Training Course (2023).

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Nidus does not receive funding for core services such as fact sheets, the website, free Representation Agreement forms and more. Nidus relies on your donations and modest fees-for-services.

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