

**WILL INSTRUCTIONS**

DRAFT FOR DISCUSSION PURPOSES ONLY

Date: \_\_\_\_\_ Lawyer: \_\_\_\_\_ Appointment: \_\_\_\_\_

**Complete the three page Will Instructions, return to Buckley Hogan and make an appointment.**

**Please read the Will handout before completing the rest of this form.** It will tell you a number of important things, including that your Will can be challenged by your spouse and children, and that some things will not be included in your estate and your Will (such as things you own in joint tenancy, or things where you can name a beneficiary directly such as life insurance policies, RRSPs and pensions).

**INFORMATION ABOUT YOU**

Full Legal Name: \_\_\_\_\_ (also known as: \_\_\_\_\_)

Birth Date: \_\_\_\_\_ Birth Place (city, country): \_\_\_\_\_

Marital Status: \_\_\_\_\_ Name of Previous Spouse: \_\_\_\_\_ Occupation: \_\_\_\_\_

Full Legal Name: \_\_\_\_\_ (also known as: \_\_\_\_\_)

Birth Date: \_\_\_\_\_ Birth Place (city, country): \_\_\_\_\_

Marital Status: \_\_\_\_\_ Name of Previous Spouse: \_\_\_\_\_ Occupation: \_\_\_\_\_

Address: \_\_\_\_\_ email: \_\_\_\_\_

Phone: home: \_\_\_\_\_ work: \_\_\_\_\_ cell: \_\_\_\_\_

Children's Full Legal Names	Birth Dates	Child of
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Include (and identify) any adopted children, step-children or biological children.

Check if you require a translator \_\_\_\_\_. If so, what language: \_\_\_\_\_

Where do you intend to keep your original Will (you will be given a copy to keep at home)

\_\_\_\_ Buckley Hogan (no charge), or

\_\_\_\_ Safety Deposit Box located at: \_\_\_\_\_

**WHO IS YOUR CHOICE FOR EXECUTOR/TRUSTEE**

(INCLUDE FULL LEGAL NAMES AND RELATIONSHIP TO YOU):

- (1) Each other \_\_\_ or \_\_\_\_\_ Relationship: \_\_\_\_\_
- (2) Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

**WHO IS YOUR CHOICE FOR GUARDIAN OF YOUR CHILD OR CHILDREN:**

(INCLUDE FULL LEGAL NAMES AND RELATIONSHIP TO YOU):

- (1) Each other \_\_\_ or \_\_\_\_\_ Relationship: \_\_\_\_\_
- (2) Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

**WHO DO YOU WISH TO RECEIVE YOUR ASSETS:**

- (a) To each other, then to children \_\_\_\_\_; or
- (b) As stated below (NOTE: if you have a young family or if you travel together, you should consider who you would want to receive your estate in the event something happens to all of you - INCLUDE FULL LEGAL NAMES AND RELATIONSHIP TO YOU)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you are excluding a spouse or child or treating them differently, please provide your reasons

**Shares to be held in trust for children until age:** 19 \_\_\_ 21 \_\_\_ 25 \_\_\_ Other \_\_\_

Your Executor can release monies early for the children’s monthly support, education or other expenses, as your Executor decides is appropriate.

**POWER OF ATTORNEY** to each other Yes \_\_\_ or No \_\_\_

**The name on the Power of Attorney must be exactly the same as the name on the title to the land.**

If you wish to have a second Power of Attorney (ie: to one of your children) there is an additional cost of \$75.00 plus taxes, and we require the following information:

Full legal name: \_\_\_\_\_

Address: \_\_\_\_\_

**REPRESENTATION AGREEMENT:** see page 5 of About Wills & Estates form.

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To ensure that we discuss any potential complications or issues that may effect your Will or your estate, please checkmark if any of the following apply so that we can discuss them with you. **YOU ARE ADVISED TO CONSULT WITH AN ACCOUNTANT OR A TAX OR ESTATE PLANNER IF ANY OF THE BELOW, OR OTHER POTENTIAL COMPLICATIONS APPLY**

\_\_\_\_\_ Do you have a blended family with children from different relationships?

\_\_\_\_\_ Does your spouse, children or other beneficiaries have an issue (substance abuse problem, disability) which may affect their ability to manage their inheritance?

\_\_\_\_\_ Are there disputes with or between any of your spouse, children or other family members that may cause problems for your estate?

\_\_\_\_\_ Are any of your assets held by a company or through a trust? Do you own a business, have company shares or own commercial, rental or recreational property? Do you have complicated financial circumstances?

\_\_\_\_\_ Are you, your spouse, executors or beneficiaries non-Canadian residents or have dual or non-Canadian citizenship? Do you own assets outside BC or Canada?

\_\_\_\_\_ Are there any agreements, contracts or other documents which may effect your estate: marriage, separation, custody, trust, shareholder, court orders or other? If so, please bring copies of those to your appointment

\_\_\_\_\_ do you have any assets in joint names with your children or others? Have you made a written document about your intention - is that asset to belong to that child on your death or are they only managing that asset and holding it in trust for your estate or other beneficiaries.

\_\_\_\_\_ If you have an existing Will, are there significant changes between that Will and the one you wish to make now? Have you changed your Will more than once in the past 5 years. If possible, please bring your old Will to your appointment.

\_\_\_\_\_ Do you have an existing estate plan made with the help of an accountant or lawyer.

\_\_\_\_\_ Have you been diagnosed with, or are you showing any symptoms of, dementia, Alzheimer's Disease or similar condition.

\_\_\_\_\_ Do you have any other health or medical condition which may affect your ability to give instructions for a Will, Power of Attorney or Representation Agreement?

\_\_\_\_\_ Do you have any cryogenically stored reproductive material.

\_\_\_\_\_ Are there any other issues that may effect your estate or that you either should or want to discuss during your appointment (please attach notes/comments/questions)

**What Does A Will Do?**

A Will says who is to receive your property after you die. There are two other ways to give property on your death without a Will:

- (a) Where you own something with your spouse as **joint tenants** (ie. land, bank accounts). This does not include where you only share ownership with another person, as a partner or tenant-in-common. It may also not apply if you hold an asset in joint tenancy with an adult child or other person (see the Note below).
- (b) Where you can **directly name a beneficiary**, such as with insurance policies or an RRSP or pension.

**NOTE:** if you hold an asset in joint tenancy with an adult child or someone other than your spouse, there is a presumption for estate purposes that the person is holding that asset in trust for you or for your estate.

**You must document your intention in writing** whether you intend that asset to belong to the survivor on your death or whether that person is holding the asset in trust for you during your lifetime and for your estate or your beneficiaries on your death.

There are also potential tax consequences (capital gains etc) and risks of putting a home or other asset in joint tenancy with a child (marriage breakup, creditor problems, fallout with child etc). You may also lose control over the asset once ownership is shared. Get advice before placing an asset in joint tenancy and document your intention.

**The 2014 Wills & Estate Succession Act (WESA)**

The law dealing with Wills and Estates changed on March 30, 2014. Any Wills made previous to that date should not need to be updated if done properly, but should be reviewed by a lawyer if there are any concerns or questions. Contact us if you need information on the law prior to WESA.

**Do I Need A Will?**

You should definitely have a Will if you have substantial assets or if you have children. While WESA will divide your estate among family if you die without a Will, it may not do so in the way that you would like it to be done.

## **Can I Do A Will Myself?**

You can, but you shouldn't. Wills are very technical in how they are worded and how they are signed. You should get professional advice from a lawyer in preparing or reviewing your Will. There is usually a lot of strife and emotion after someone has died. A Will that may be challenged can cause even more distress. It is safest to avoid "book store form Wills". By saving a few dollars in making a Will yourself, you (or your estate) may end up paying many thousands of dollars in a fight over a contested Will.

## **What If I Die Without A Will?**

If you have no Will, your estate is divided between your spouse and children. Read below for the rules about when someone qualifies as a spouse or child.

The surviving spouse receives the first \$300,000 (if all of the deceased's children are also children of the surviving spouse) or the first \$150,000 (if the deceased had children that are not the children of the surviving spouse). The balance is then divided with 50% to the spouse and 50% to children. The spouse also receives the household furnishings and an option to purchase the family home.

If you have a spouse but no children, the spouse receives your estate. Similarly the children will inherit if you have no spouse. If you do not have either spouse or children, then the estate is divided between next of kin according to rules set out in WESA.

## **Spouse & Children**

"Spouse" includes both a married spouse and someone in a "marriage like" relationship of at least two years prior to the date of death. A person is not a spouse if the couple is separated at the date of death.

A gift in a Will to your spouse, and an appointment of the spouse as Executor, are revoked on a separation - even if you later reconcile. If you and your spouse have separated - even if only temporarily - you should seek advice as to whether you need to have a new Will prepared.

"Children" refers to biological children or adopted children, but not children of your spouse or former spouse (ie step-children), unless you specifically include them in the Will. The definition also includes children born within two years following the person's death (ie from cryogenically stored reproductive material).

## **What If I Already Have A Will?**

You should review your Will every few years or where there has been a major change (ie: Executor dies, you change your mind about the Guardian; you marry or separate).

WESA allows the court to cure or rectify Wills that have defects or problems by referring to written or electronic records or other evidence. This could create problems if the person who made the Will later writes on their Will or a copy of it (or creates some other document, record or email) that indicates an intention to cancel or change a Will or to make a gift to someone as part of their Will or Estate. If you want to make changes to your Will, you should have a new one professionally prepared. If you wish to make non-binding suggestions to your Trustee and beneficiaries, you should always qualify those suggestions to say that they are not intended to change or cancel your Will, as on the Suggestion form at the back of this Will Kit.

### **Estate Planning & Tax Issues**

If any of the items on page 3 of the Wills Instruction Form applied to you, you are advised to review your finances and estate plan with an accountant as well as to discuss those circumstances with your lawyer. If circumstances or finances change in the future, you should review your Will and estate plan with both your accountant and lawyer.

Your estate will have tax issues where you have commercial, rental or recreational property; or where you have an executor, beneficiary or assets that are not in BC or Canada

If you name adult children as beneficiaries of your RRSP, RRIF or another taxable asset, your estate is responsible to pay taxes- not the beneficiary. Similarly your estate may have capital gains or other taxes payable on your death that you need to take into consideration for your estate plan. Your estate may have to sell property or assets to pay taxes. You may want to consider options such as gifts to charities, life insurance or setting aside funds or assets to deal with tax issues.

If you have joint assets or have named beneficiaries on your assets, you need to consider how that affects the distribution of your estate and document whether it is your intention to give that person a gift in addition to their share in your Will, or whether you want to adjust the division of the assets passing through your Will to take those joint or named beneficiary assets into account.

### **Multiple Wills**

You make one Will that deals with assets both inside and outside BC. However, if you have assets in another country or Province, you may want to do a Will in BC that deals only with your assets here and do separate Will in the jurisdiction where you have other assets. Get advice from a lawyer and an accountant in the other jurisdiction on their estate and tax laws.

If you hold shares in BC based companies, the BC Business Corporations Act allows directors of a company to transfer those shares without probate (at the discretion of that company) so you may want to have a separate Will to deal with those shares. If you make a separate Will for shares or other assets that you want to deal with separately, you will need a different executor/trustee.

There are potential problems with having multiple Wills. The two Wills need to be coordinated (so one doesn't cancel the other; they do not overlap etc). There is a time limit for Wills to be challenged when they go through probate, but if you avoid probate for company shares, there is no time limit and they may be at risk. The law on this topic is new and not yet settled so there could be unexpected legal or tax issues. If you think multiple Wills may be appropriate, discuss with your lawyer and accountant.

## **What Do I Need To Consider?**

**Executor:** Also called the Trustee, this is the person who will look after your estate and make sure the bequests go to the right person. You should pick someone you trust and who hopefully knows how to handle money

**Beneficiaries:** These are the people that receive your assets. A typical Will for a married person normally leaves everything to the spouse and, if the spouse has predeceased, to the children. If you have a young family, you should consider who you want to give your assets to in the event of a family accident. You also need to consider what age you would like minors to receive the bulk of their inheritance. The legal age of majority in BC is 19, but you may prefer a later age, such as 25. You may also want to consider a discretionary trust for any beneficiary who is on disability or other government assistance or someone who has substance abuse problems.

**Guardian:** This is the person(s) who will raise your children. Consider their lifestyle, religion, education and other factors you feel are important.

Make sure you talk to your Executor and Guardian and that s/he agrees to accept the responsibility. You can use family or friends for either. Try to choose different people for Executor and Guardian so there is no conflict of interest where one person is responsible for both the money and the children. Between the two, they can decide what are reasonable expenses for your child. If you can't think of two people, you can have one person do both.

## **Who Can Challenge My Will?**

You should also be aware that your Will can be challenged by your spouse and children and a Court can change the terms of your Will on an application by them. No one else can challenge your choice of beneficiaries. The only other challenges that can be raised are as to whether the Will was properly made, or if there are records or evidence of a subsequent intention to cancel or change the Will.

If you are excluding a spouse or child from your Will or treating them unequally, the Will should include some explanation of your reasons so that it is clear that you had not just forgotten to include them. You should also prepare a longer, separate written document with further detailed reasons. This separate document would only be used if the Will is challenged in court.

## **How Much Does A Will Cost?**

We offer Will and Power of Attorney packages at a cost of \$399 for two simple Wills and mutual Powers of Attorney (plus taxes and the cost for filing a Notice in Victoria). You need to pick up our Wills Kit and complete the Will Instructions sheet before your appointment. If you drop off the form with all the necessary information, we can prepare the documents before your appointment and then make the final revisions and have you sign in one appointment. We keep the cost down by having one appointment. For more complicated Wills or where multiple appointments are needed, the cost may be higher.

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## Power of Attorney

A Power of Attorney allows another person to look after your finances and assets. Typically, a couple would give each other a general, enduring Power of Attorney, which means the other person can do anything on the other's behalf and can continue to act even if the person giving the Power of Attorney later becomes mentally incompetent. If you are seniors or have health problems, you may wish to have a second, alternate Power of Attorney to a relative or friend. If you wish to have a second Power of Attorney, there is additional charge

## Representation Agreement

A Representation Agreement allows another person to make medical and health care decisions for you. You may want to have an agreement if you want to designate someone other than your immediate next of kin to make those decisions or if you have family issues and want to ensure that you can choose who makes the decisions to the exclusion of other family members. If you wish to have a Representation Agreement also, there will be an additional cost of \$150.00 plus taxes and we will need you to provide the following information:

Name of Alternate Representative: \_\_\_\_\_ dob: \_\_\_\_\_

Representative address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

## Acting for Joint Clients

In the event that we are preparing joint Wills for two or more persons, the Law Society requires us to advise you that we are not able to treat any information as confidential between the clients and if there is a conflict, we may be unable to act for either. If one person later retains us for other matters, including changing or revoking the Will, we may be unable to act if it creates a conflict of interest. However if we do act for one person later, any communication is confidential to that person.

### **Buckley Hogan Law Office**

*#200 - 8120 - 128<sup>th</sup> Street*

*Surrey, BC V3W 1R1*

**Telephone: 604-635-3000**

**Fax: 604-635-3311**

**email: lawyers@buckleyhogan.com**

These materials prepared June 5, 2019





## Estate Information

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*To Assist Your Executor*

### General Information

Name: \_\_\_\_\_

Birthdate & Place: \_\_\_\_\_

Name: \_\_\_\_\_

Birthdate & Place: \_\_\_\_\_

Marriage Date & Place: \_\_\_\_\_

Children's Names & Birthdates:

_____	_____
_____	_____
_____	_____
_____	_____

Date of Will/Codicil: \_\_\_\_\_

Location of Will: \_\_\_\_\_

Date this form prepared/updated: \_\_\_\_\_

### People To Contact

### Phone Numbers

Executor: \_\_\_\_\_

Doctor: \_\_\_\_\_

Minister: \_\_\_\_\_

Lawyer: \_\_\_\_\_

Accountant: \_\_\_\_\_

Employer: \_\_\_\_\_

Pension: \_\_\_\_\_

Insurance: \_\_\_\_\_

Other: \_\_\_\_\_

\_\_\_\_\_

---

**Location of Assets and Information**

List any banks or financial institutions you deal with:

Name	Location
_____	_____
_____	_____
_____	_____
_____	_____

**Location of Important Papers**

Where do you keep documents that your Executor will need:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**List of Significant Assets**

Are there particular assets that you want your Executor to be aware of (property address, jewellery, stocks/bonds, collections) or debts either owed to you or by you.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Funeral Arrangements**

If you have made any funeral arrangements or have any wishes, list them below, but also advise your Executor personally as this may not be read until afterwards.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

