

WILLS, ESTATES & SUCCESSION ACT (WESA)

This new legislation is slated to be proclaimed in force March 31, 2014. Here are some of the important changes that this new Act will make to B.C. Wills & Estates practice:

1. A new small estate procedure with simplified application and accounting requirements has been created. The limit of “small” is anticipated to apply to estates under \$50,000. However, this is not set to come into force on March 31, 2014, however it may be proclaimed in the not-too-distant future.
2. Survivorship rules will change. Under the current legislation, in a common accident where it is impossible to tell who died first, the younger person is deemed to have died after the older person. Under *WESA*, each person is deemed to have survived the other. In the case of joint tenancy, then the asset is deemed to be held instead as tenants in common and will not pass to the survivor. If a person fails to survive the deceased by 5 days, they are deemed to have died before the deceased.
3. Intestacy rules (where a person dies without a Will) shall change:
 - a. The spousal life interest in the matrimonial home is to be abolished under *WESA*. Instead, the spouse will have the right to purchase the matrimonial home or elect that it be considered part of his or her share of the estate. The spouse must elect this option within 180 days from the grant of letters of administration. There is a new procedure to determine the home value.
 - b. The distribution of assets has changed where there is spouse (the current spousal share is \$65,000). Now the surviving spouse receives the first \$300,000 of the estate, but if there are children from a prior relationship, the surviving spouse only receives \$150,000.
 - c. There can be more than one spouse: e.g. deceased is not divorced and has not been living separate for more than two year, but had been living common-law with another person and is in that relationship for at least two years immediately prior to date of death. In this case, there are two spouses and each will have to apply to share as a “spouse.”
 - d. There will be a different distribution scheme where there are no spouses or children based on “parentelic” relationships not consanguinity, i.e. now based on closeness to a parent rather than just closeness in blood relations.
4. The probate procedure to have the court validate a Will or appoint an administrator where there is no Will, shall change significantly as result of the new legislation:
 - a. new probate rules and forms – eg. a specific Notice form is required to send to all beneficiaries, intestate heirs or persons entitled to claim under the *Wills Variation Act*. The form will contain more information so that parties will have more information earlier in the process. There is a 21 day waiting period from the date the Notice is sent.

- b. The mandatory estate Submission and Affidavit forms are set out in the Probate Rules. They are designed to be completed by lay persons.
 - c. As a first step, a person may apply to get court authorization to obtain information in order to make an application for probate/administration.
5. Wills:
- a. Testamentary intent: with the changes, it may be possible for a document which is not duly signed and completed to supersede an older Will which is properly made under the old Act. i.e. the court will have power to declare that a document which does not meet the formality requirements of a Will, to be effective as a Will.
 - b. There will be additional powers to “fix” a Will that has errors, including power to the court to rectify a Will after a grant of probate has been issued.
 - c. Marriage will no longer revoke a prior Will.
 - d. Anyone over the age of 16 shall be able to make a Will.
 - e. Where a witness to a Will is also a beneficiary, the gift to the witness is still considered void, but the gift may be saved by the Court on application.
6. Many applications are now to be made within the probate proceeding file; for example: to interpret a Will, prove the Will in solemn form, determine spousal shares and valuations of spousal homes. The Court may give directions for the evidence and procedure to deal with the application.
7. Changes to challenging grants of probate/administration. The old probate Caveat is now a Notice of Dispute. Only one Notice of Dispute can be filed and it only lasts for one year; however, it may be amended and or renewed by court order. An application to court can be made to cancel it.
8. Challenging a Will based upon Undue Influence. The onus has shifted from the opposing party having to prove undue influence directly, to the beneficiary (usually a caregiver) who is claiming the Will is valid, to prove that undue influence was not exerted.
9. Passing of Accounts and personal representative remuneration. Similar affidavits and forms are specified, but this procedure may now be forced by an interested party or the executor. The Court may summarily pass the accounts.