

THE Guardian

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WILL AND ESTATE PLANNING: CHANGES COMING

In September 2009, the Wills, Estates and Succession Act (WESA) was introduced, and subsequently received Royal Assent in October of that year. It is expected to be proclaimed and in-force in mid 2011.

The legislation will repeal and consolidate four significant statutes (Estate Administration Act, Probate Recognition Act, Wills Act and Wills Variation Act). The intent of WESA is to make Wills, Estates and Succession legislation in British Columbia more cohesive and easier to understand.

The new legislation will not invalidate any Wills prior to it coming into effect. However, some of the changes may impact the interpretation of your Will, so it would be wise to review this with your lawyer.

The proposed changes introduced by WESA are extensive. We review below, some of the most notable.

- The new minimum age to make a Will is 16; previously it was 19. Interestingly, WESA dictates that a witness to a Will must be 19.
 - The definition of spouse remains the same. Specifically, opposite sex and same sex marriage or marriage-like relationships of at least two years. What changes under WESA is the definition of when persons cease to be deemed spouses in a common-law relationship. Specifically, WESA dictates this occurs when one or both persons “terminate the relationship”. As one could imagine, this definition potentially leads to all sorts of interpretation, starting with “when the front door slammed shut” and beyond. The definition of when persons cease to be deemed spouses in a marriage does
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not change. It remains as having lived separately and apart for at least two years and one or both have intention to live separate and apart permanently. Alternatively, when a triggering event under the Family Relation Act takes place, such as completion of a formal written separation agreement.

- Previous Wills dictated that in the event of simultaneous death, it was presumed that the younger person survived the older person. This dictated that the older person's estate would pass to the younger person with the combined estates being passed as dictated by the younger person's Will or other means of estate distribution.

Under the new rules, each spouse is deemed to have survived the other. This effectively severs joint ownership with rights of survivorship arrangements, as those assets would now effectively pass to each of the deceased's estate.

- The courts will have greater powers to ensure a deceased person's last wishes will be respected, even if the document outlining the intention does not meet the formal requirements of a Will. This includes any "record, document, writing or marking on a Will". Note that "record" is broadly defined and includes electronic data that can be read and re-produced.

It takes little imagination to visualize the potential difficulties with this. Notes made by a Testator outlining possible changes to a Will or discussions with Estate planning specialists summarized in writing or electronically, could be interpreted as intended last wishes, when in fact they may have been nothing more than ideas ultimately dismissed prior to the Testator's passing.

- Currently, a Will is revoked by marriage. While this will not be the case under WESA, the courts may make an order that a Will is revoked, depending upon circumstances.

- The courts will have expanded powers to rectify mistakes and misunderstandings in the Will-drafting process. This makes sense and will reduce instances where a poorly drafted Will results in an unintended distribution of the estate.

- Intestacy rules (where the deceased did not have a Will) in circumstances where there is a spouse and children, have changed as outlined in the chart below.

Current	WESA
<ul style="list-style-type: none"> • First \$65,000 to spouse and 50% of the residue if there is one child (1/3 of the residue to spouse if more than one child). 	<ul style="list-style-type: none"> • Household furnishings to spouse. • If children are those of both the deceased and spouse, first \$300,000 to spouse. if not; first \$150,000 to spouse. • Spouse receives 50% of the residue.
<ul style="list-style-type: none"> • Spouse entitled to life estate in matrimonial house. 	<ul style="list-style-type: none"> • Spouse has right to acquire the spousal home within 180 days of the grant.*
<p>* If spouse cannot afford to purchase, courts may grant the home to spouse in certain circumstances.</p>	

- The existing presumption of undue influence in regard to gifts made while living will now apply to gifts made under a Will. This means that the recipient of a gift must, if challenged, prove that he or she did not exert undue influence over a deceased, whether the gift was made during a deceased's lifetime or through a Will.

- The settlement of smaller estates will be simplified. Though not fully clarified, the definition of a small estate will be increased from \$25,000 to \$50,000 and can avoid the formality of probate or letters of administration.

- Under WESA, secured debt will pass with gifted assets. Previously the asset passed to the beneficiary while the estate was responsible for the debt.

- The Wills Variation Act remains largely unchanged. Specifically, a spouse or child has the right to commence a claim within six months of the granting of probate or letters of administration.

The above provides only a partial outline of the changes introduced under WESA. Once the act comes into effect we expect further clarification on some of the provisions. We reiterate that the changes introduced by WESA will not invalidate your Will, but a discussion with your estate lawyer is recommended to ensure the ultimate distribution of your estate is just as you intended.

**REGISTERED RETIREMENT INCOME FUND (RRIF)
STATUTORY MINIMUM MONTHLY INCOMES BASED ON \$100,000
COMMENCING ONE MONTH FROM ISSUE**

Best Current Rate: 3.95%

Age	1st Year	TOTAL PAYMENTS	A R.R.I.F. can also be structured to pay a level income for a shorter period. Based on current interest rates, \$100,000 will produce the following monthly income. For 5 years:\$1811.00 For 10 years:\$1008.00 For 15 years:\$701.00
		TO AGE 100	
55	\$239.00	\$233,114.00	
60	278.00	209,110.00	
65	334.00	189,908.00	
71	616.00	152,586.00	

**MONTHLY ANNUITY INCOMES COMMENCING
ONE MONTH FROM ISSUE BASED ON \$100,000**

Age	LIFE (Payments cease at death)		LIFE 10 Year Guarantee		JOINT LIFE 10 Year Guarantee
	MALE	FEMALE	MALE	FEMALE	MALE & FEMALE
	55	\$521.24	\$480.01	\$511.83	\$476.45
60	573.77	520.71	557.28	514.08	471.59
65	650.11	574.99	617.01	561.97	511.74
71	790.46	670.27	706.58	635.79	579.89

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