WILLS, ESTATES & PERSONAL PLANNING

1. WILLS

You need a Will to ensure that on your death your property and assets will be distributed according to your wishes, by the person you trust to perform that important task. Further, if you have children under the age of 19, you should appoint someone as their guardian. Please read the commentary under "Upcoming New Laws" in conjunction with this discussion, as effective March 31, 2014 very significant legislation and regulatory changes will (finally) be made. At Mountain Law Corporation we can help you, so ask for your no obligation/no charge detailed questionnaires to get you started. Currently our price structure for most wills is $395.00 for one person, and $495.00 for a couple (including HST).

Dying without a Will

Dying "intestate" (without a legally valid Will) means that someone must apply to the court to be appointed as your personal representative ("administrator"). Such an appointment can often be complicated and time-consuming (and certainly more expensive), especially if that person, usually a next-of-kin, lives outside of B.C. If no-one comes forward, then a branch of B.C.'s Ministry of the Attorney-General, called the Public Guardian & Trustee, will intervene.

That office's mandate is to protect the assets and legal claims of deceased persons where there is no personal representative. (It also handles similar matters for persons with mental difficulties and children under the age of 19).

If there is no valid Will, then your minor children may not be placed in the custody of your preferred choice of person; further, your surviving spouse will usually be obliged to apply to the Public Guardian & Trustee each time that administrator wishes to spend any capital of funds held for minor children.

Distribution

If there is no valid Will and no surviving next-of-kin, then the provincial government will receive all the deceased's assets. They will not go to a favourite charity or group of friends who could have been beneficiaries if there have been an enforceable Will.

Under current intestacy laws, if indeed there are next-of-kin, then the surviving spouse (who has not been separated for more than one year) receives all household furnishings as well as a life estate in the matrimonial home (for as long as he/she wishes to remain there). Further, currently, the first $65,000.00 of assets goes to the surviving spouse, and the remainder is split equally between that person and the one child (if there is more than one child, the split is one-third to the spouse, and two-thirds equally among the children).

Should there be no surviving spouse or children (natural or adopted), or grandchildren, then the deceased's parents receive the estate equally, or the survivor on his/her own. Absent any surviving parents, then siblings of the deceased are next in line (though the children of a deceased sibling receive what their parent would have received, and if no children but grandchildren, they would be the ones entitled). From there on, the degree of consanguinity dictates the order of entitlement, next being living nephews and nieces, followed by first cousins, and so on.

Note that even if there is a valid Will, certain assets may not necessarily be included for distribution under your Will and are considered separate from your "estate". Examples would be property held with right of survivorship as "joint tenants" (subject to exceptions), or held as a trustee, or insurance or registered savings plan with a designated beneficiary, or property subject to a third party claim (for instance, under matrimonial law).

Executor

One of the principal reasons for making a Will is to name the personal representative the court can confirm is able to obtain legal title of the deceased's assets, so those assets can be determined, debts paid, and the distribution set out in the Will can occur.

You should choose someone (or more than one) who is reliable, aged 19 or older, and preferably resident in B.C. One or more alternates should be carefully considered as well.

The Executor notifies those named in the Will (and otherwise) as beneficiaries about the death and provides information of the extent of their entitlement. There are numerous other duties for the Executor, such as selling assets, filing tax returns, renewing insurance, etc. Sometimes a corporate trustee such as a trust company may be a preferred choice (though often considered impersonal and expensive, usually charging the full 5% of the gross value of the estate for administration fees).

Unless the Executor is also a beneficiary of a specific gift under the Will (in which case there must be specific mention of entitlement to executor fees), that person can charge up to the 5% mentioned, though it is much more usual to charge between 2 - 3% (depending on the degree of difficulty of the estate and how much work is required).

Requirements

Wills must be in writing (either hand-written or typed) and also must be signed and witnessed according to the rules set out in B.C.'s *Wills Act*.

Under current legislation it is almost impossible to have a Will recognized that doesn't comply with those strict requirements. Even if a Will witnessed outside this province is validly signed there, it is of no effect in B.C., if not witnessed according to the formalities here.

Besides setting out the names of one or more personal representatives, guardian(s) if there are minor children, and beneficiaries with the applicable distribution, a Will can also contain many other provisions such as restrictions on the powers of Trustees handling or investing any trust monies, and also funeral wishes.

Someone who is not “of sound mind” who signs a Will will most likely have the validly of that Will successfully challenged. Currently, when you marry, all Wills made prior to marriage are revoked by law (unless specifically made “in contemplation of marriage [to the person actually married]”). Further, if the maker of the Will becomes divorced, or separated by court order, then the appointment of that spouse as executor and any gifts in the Will to that spouse in the Will are void.

The Lawyer’s Role

With the increasing prevalence of legal documents available on the internet and through “do-it-yourself” services, the role of the lawyer in preparing Wills and advising on estate matters has never been more important. While initially only a small fraction of the cost of hiring a professional, this “penny-wise, pound-foolish” self-help process could easily go badly awry. The very substantial costs, both psychological and financial, for your personal representatives and the intended beneficiaries, should be avoided by receiving proper professional advice.

Many Will-creation documents and kits do not take into account B.C. specific laws and rules (for instance, those specific ones mentioned earlier regarding the formalities of witnessing). They do not set up properly the various ways of distributing assets, such as setting up life-interests, creating trusts, or how correctly to leave property to charities.

Experienced lawyers ensure that a Will is flexible enough to address future events which may take place before the Will is effective (on death), such as marriage breakdown or the deaths of executors or beneficiaries. With other professionals such as accountants and financial planners, lawyers can provide advice and can draft specific provisions to take advantage of strategies for reducing taxes on death.

Intelligent and comprehensive estate planning dictates that a Will not be treated in isolation, but that strong consideration also be given to the other personal planning documents of powers of attorney, representation agreements, powers of attorney, nominations of committee and trusts (at least). Our legal fees for preparing these documents, except trusts, are generally under $300.00 for each.

2. REPRESENTATION AGREEMENTS

Though available as a legal tool for planning since 2000, many rules governing the making and use of Representation Agreements (“RA’s”) were changed on September 1, 2011. The changes do not affect pre-existing RA’s. However, an RA for financial affairs can now only be made for “routine” management of such matters, thereby increasing the importance of Powers of Attorney (be sure to read our discussion about Powers of Attorney carefully in conjunction with this explanation).

An RA gives someone you name the legal authority to assist you to decide or to represent you regarding decisions you can no longer make on your own. As mentioned above, you can make a reasonably simple RA for routine financial matters or health care decisions under s.7 of the revised *Representation Agreement Act*, or a more complex one covering your personal care and health only, under s.9 of that Act.

As with Powers of Attorney, anyone at least 19 years old in B.C. can make an RA, unless incapable. However, note that a s.7 RA can be made even if an adult cannot manage his or her own affairs. An RA can be effective as soon as it is signed by you and all your representatives, unless specified otherwise. Regardless of its effective date, under the law you are presumed to be capable and can continue to make decisions until incapable.

Naming the Representative

Anyone 19 years old or more can be a Representative, and it is usual to select a family member or trusted friend. The new rules prohibit anyone from being named who is paid to provide personal care or health services to you, and that includes employees working at a facility where you reside (except if that person is your spouse, child or parent).

Duties of Representatives

As with appointments under the *Power of Attorney Act*, the representatives must act honestly and in good faith, exercise the care, skill and diligence of a reasonably prudent person, only make decisions which they are authorized to make, and must keep good records of decisions made.

You should discuss frankly with your representatives your expectations, and be sure that they are comfortable with both your plans and their statutory obligations. More than one representative can be appointed (a dispute resolution mechanism is then recommended as they must act together), and one or more alternates should be carefully considered for back-up purposes (though the precise circumstances when they act should be outlined).

You can give different people authority to make different decisions with an RA. You can also make more than one RA if wanting to keep wishes for different matters separate. Note that all representatives are entitled to be reimbursed for their proven reasonable expenses, but a representative or monitor (discussed hereafter) cannot be paid for making health care decisions for you. The RA can spell out remuneration for any other areas, which must be approved by the courts.

Formalities of an RA

In order to be effective, an RA needs to be signed and witnessed according to the new Act. Though two witnesses are normally required, if a lawyer or notary is the witness, that person alone will fulfill the requirements. Each representative must also sign (though that can be done at a different time), and unlike Powers of Attorney, these signatures do not need witnessing.

As with Powers of Attorney, your representative cannot be a witness, and a witness cannot be the representative's spouse, child or parent. Additional certificates will need to be signed for a s.9 RA.

Termination of an RA

Like a Power of Attorney, your RA continues to be effective until you revoke it or die. Some other ways that the RA will no longer be valid is if your marriage (or marriage-like relationship) ends and your representative is your "spouse", unless the RA states otherwise; your representative and all alternates are unwilling or unable to act or are disqualified; a condition set out in your RA occurs, or a court orders it. Note that an RA is suspended and the representative cannot act if the RA is for management of routine financial affairs under s.7 and the Public Guardian & Trustee is appointed Committee under a Certificate of Incapability.

The above also holds true if a monitor is required and that monitor and any backup is no longer able or willing to act. However, the Public Guardian may be able to appoint one so that the representative can continue to act.

Monitor

A monitor is sometimes appointed in an RA and has the power to ensure the representative is fulfilling his or her duties, and if not, the monitor is expected to inform the Public Guardian.

For a s.7 RA, a monitor must be appointed unless there are two representatives who must act together, or your representative is a spouse, a trust company, credit union or the Public Guardian.

3. POWERS OF ATTORNEY

A new *Power of Attorney Act* came into effect on September 1, 2011, and it is that legislation which allows for the creation of two different types of Power of Attorney. The first is called a "general Power of Attorney", which permits the appointment of someone you trust to handle your financial and legal affairs as you direct or on your behalf if you are not available. It can also be "limited" in terms of being specific to a particular task, matter or time period.

Unlike the second type, called an "enduring power of attorney" ("EPA"), a general power of attorney ends when the maker is incapable.

An EPA survives mental or physical infirmity, but can also be effective when you are capable. You can set out when and under what circumstances that authority can be triggered. You must be 19 years of age to make one, and capable of understanding the nature and consequences of the document (using the criteria set out in the new Act). However, as with the general power of attorney, it does not address health or personal care issues (see our discussion under "Representation Agreements").

Powers of Attorney made before September 1, 2011 are still valid, but the rules surrounding their preparation, execution and use are now very different. As a consequence, the attorney (or donee) may no longer be able to fulfil all of your wishes. For example, unless the EPA specifically outlines it, your attorney is restricted from making loans, gifts and donations. Additionally, there are new duties for attorneys, and the procedures for revoking EPA's have changed.

Naming the Attorney

Though the word “attorney” is used interchangeably with the word “lawyer” in the United States, that is not the reference here. Normally you would choose a family member or friend, though the person named could also be your lawyer or other professional advisor. If the person is not yet 19 years of age then that person cannot act until that time.
The new rules dictate that you cannot choose someone who is paid to provide personal care or health care services to you, including any employees at a facility where you live which provides those services. The exception is if the person you name is your spouse, child or parent. If you choose a trust company you would normally need to set out compensation levels, so be sure to ask beforehand.

Duties of Attorneys

Attorneys must act honestly and in good faith. They must exercise the care, skill and diligence of a reasonably prudent person, and keep careful records. Not only must they follow your directions as set out in the EPA and elsewhere, but also the rules set out in the new Act. There are restrictions on making or changing your Will or beneficiary designations in investment vehicles, such as insurance policies and RRSP’s.

You should discuss frankly with your attorneys your expectations, and be sure that they are comfortable with both your plans and their statutory obligations. More than one attorney can be appointed (a dispute resolution mechanism is then recommended as they must act together), and one or more alternates should be carefully considered for back-up purposes (though the precise circumstances when they can act should be outlined).

Most attorneys will not wish to be paid, but if you wish to do so then that power must be set out in the EPA. Note that all attorneys are entitled to be reimbursed for their reasonable proven expenses.

Formalities of an EPA

To be effective, an EPA needs to be signed and witnessed according to the new Act. Though two witnesses are normally required, it a lawyer or notary is the witness, that person alone will fulfill the requirements. Now each attorney must also sign (though that can be at a different time), and have their signature witnessed.

Note that if the EPA is to be used for real estate, then a lawyer or notary must be the witness for you and the attorney (though not necessarily the same lawyer or notary). Further, your attorney cannot be a witness, and a witness cannot be the attorney’s spouse, child or parent.

Termination of EPA

Your EPA continues to be effective until you revoke it or die. Some other ways that the EPA will no longer be valid is if your marriage (or marriage-like relationship) ends and your attorney is your “spouse”, unless the EPA states otherwise; your attorney and all alternates are unwilling or unable to act or are disqualified; a condition set out in your EPA occurs, or a court order ends it. Note that if you have a post September 1, 2011 EPA, it is suspended and

the attorney cannot act once the Public Guardian & Trustee is appointed Committee of the Estate.

Again, if your Power of Attorney is not determined to be an “enduring” one (that is, one that survives your mental or physical incapacity), then when you become incapable it will end.

4. NOMINATIONS OF COMMITTEE

Many people choose to create a “Nomination of Committee”, as part of their personal planning documents. This legal document sets out your preference for someone to be strongly considered as your Committee in the future, if required. It is signed and witnessed in the same way as Wills.

Committees are persons who are court appointed to handle the financial affairs of adults who are incapable of managing their affairs. If the incapable adults are also not able to handle themselves, then the appointment may extend to give power to make personal and health care decisions.

Generally, the courts follow the nomination which had been preferred by the now incapable adult, though that nominated person needs to demonstrate his/her willingness and suitability. Sometimes the Public Guardian and Trustee is appointed, if the nominated person is deemed inappropriate and no one else steps forward.

5. PROBATE & ADMINISTRATION

Executor/Administrator’s Duties

Administration of any estate principally involves the collection of the deceased’s assets, the payment of debts and claims against the deceased (as well as the expenses of administration), and the distribution of the balance of the estate amongst those entitled.

If the deceased died with a Will and appoints an executor (if female, an executrix), it is the person so appointed who is responsible for the administration of the estate. The appointment of the executor is confirmed by the Supreme Court by a Grant of Letters Probate. Probate is the court procedure by which the Will is proven to be the valid last Will of the deceased. Note that if the person so appointed does not wish to accept that responsibility, he or she may renounce the appointment.

If the deceased died without a Will, if the Will does not appoint an executor, or if the person appointed has predeceased or renounced the appointment, then the Supreme Court must appoint an administrator (if female, an administratrix), by a Grant of Letters of Administration, to be responsible for the administration of the estate.

In the performance of the Executor’s or Administrator’s duties you must act in good faith and for the benefit of the beneficiaries or next-of-kin. You will be expected to conduct the administration of the estate in the same manner as an ordinary prudent person of business would conduct his or her own affairs. Therefore, if you make mistakes and cause loss to the estate, unless the court finds that you acted honestly and reasonably, you will be personally liable and will be obliged to make good that loss out of your own pocket.

Executor's Fees

In British Columbia, the *Trustee Act* provides that an Executor may be allowed a fee not exceeding 5% of the gross aggregate value (capital and income) of the assets. If there is more than one Executor, the Executors must share the above fees.
The fees prescribed by the *Trustee Act* are maximum fees and are not necessarily the actual fees that will be allowed an Executor for administering a particular estate. Several factors are usually taken into consideration especially the size and complexity of the estate.

If the beneficiaries or next-of-kin are not prepared to approve your fees, you will be required to "review your accounts" before a Registrar of the Supreme Court of B.C.

Probate Fees

The value of the estate's assets determines the probate fees payable. Besides the initial court filing fee of $200.00 (waived if the estate is worth less than $25,000.00), what is payable before a Grant is issued is the sum of $6.00 for every $1,000.00 by which the estate value exceeds $25,000.00 up to $50,000.00, and $14.00 for every $1,000.00 by which the estate value exceeds $50,000.00. Land and other "hard assets" outside B.C. are not included in the calculation, and mortgages on land reduce the probate fee payable.

Lawyer's Role

Generally, the lawyer advises the Executor/Administrator on all legal matters in connection with the administration of the estate and assists that person in making proper decisions.

Specifically, the legal work in the administration of an estate involves first making the search of B.C.'s Vital Statistics Agency for a Wills Notice. The Wills Search Certificate which is received back will state the location of any Will and must be filed with the Court. The lawyer reviews the Will and advises as to its validity and effect. If the deceased died without a Will, the lawyer advises as to who are the next-of-kin and apparent beneficiaries.

The lawyer usually arranges the advertising for creditors and advises as to claims which are to be disputed. The lawyer also conducts title searches for any real properties in the estate and advises as to the state of title.

From the information provided to the lawyer by you, including the inventory of the deceased's assets and liabilities, the lawyer prepares the Affidavits and other court documents required to be filed on the Application for a Grant of Letters Probate or of Letters of Administration. The lawyer attends on the execution of these documents by you and the filing of them in the Probate Registry of the Supreme Court. If necessary (though increasingly rare), the lawyer appears in Supreme Court Chambers on the hearing of the Application.

After the Grant is received, the lawyer prepares the documents necessary to transmit the assets of the deceased from the deceased's name to your name as Executor/Administrator attends upon the execution of these documents by you and files them with the transfer agents (in the case of securities) and the Land Title Office (in the case of real property). Once the assets are in your name, you may then transfer them to the beneficiaries or the next-of-kin.

The lawyer prepares the documents for the transfer of real property, attends upon their execution by you, and files them for registration in the Land Title Office.

The lawyer assists you in preparing your accounts and prepares Releases for the beneficiaries or next-of-kin to execute. By executing the Releases, the beneficiaries or next-of-kin acknowledge receipt of their respective shares of the estate, approve your accounts, and release any claim that they may have against you or the estate. If it is necessary to pass your accounts as mentioned above, the lawyer prepares and files in the Supreme Court Registry the necessary Affidavits and court documents, and attends in Supreme Court Chambers and at the hearing before the Registrar.

Lawyer's Fees

The fees which the solicitor may charge for the above services were formerly prescribed by the tariff under the Supreme Court Rules which was as follows and continues often to be a benchmark:

Aggregate Value of Estate	Fee (Maximum)
On the first $500,000	2%
On the next $1,500,000	1%
On the next $8,000,000	1/4%
On amount which exceeds $10,000,000	1/8%

If the estate is of modest value or if you wish the lawyer to do not only the legal work in the administration of the estate, but also to perform all or some of your work as Executor/Administrator, the lawyer may agree to provide legal services on an hourly charge or on a percentage for the legal work plus an hourly charge for your work. If you are not satisfied with the lawyer's bill for fees when it is rendered, you may require the lawyer to have his of her bill reviewed before the Registrar of the Supreme Court, who will determine if it is reasonable.

6. ESTATE PLANNING

Elsewhere, we have reviewed "Succession Planning" under our Business Law section. The focus there was on the business but in this case it is about the family.

As is clear from the topics covered in the rest of this section, comprehensive planning is a necessary tool to address the many uncertainties and challenges life presents to you and your family.

By investing the time and spending some money on professionals now, you can minimize the anxiety and cost for your family later. Contact us at Mountain Law Corporation so that we can assist you in this process.

7. WILLS VARIATIONS

It has become increasingly difficult to disinherit a spouse or child in a Will by leaving that person a token dollar! The *Wills Variation Act* of B.C. provides that a spouse (including common-law and same-sex) or child (including adopted but not step) of the deceased can apply to the courts to vary the Will's terms to provide adequately and fairly for the applicant. Factors to be taking into consideration by the courts will be the standard of living enjoyed by the applicant while living with the deceased, the size of the estate, the relative needs of all parties involved, and any special circumstances (such as gifts made to the claimant during the deceased's life-time). The test for adequate and proper maintenance and support under the *Wills Variation Act* was recently summarized by the B.C. Supreme Court as an objective analysis of whether the deceased was "acting in accordance with society's reasonable expectations of what a judicious parent [spouse] would do in the circumstances by reference to contemporary community standards".

There is a strict time limit in the Act for commencing an action for contesting a Will, being within six months after probate (so long as prior notice of the application for probate was given). Each individual case will be decided on its own merits, and even experienced lawyers can not be sure of an end result in most cases. Generally though, the obligations owed to a spouse are given greater weight and will be addressed by courts in priority to obligations of adult children who are not dependent.

It does help, sometimes considerably, to set out in writing at the time of making a Will the reasons for the disinheriting decision. Be sure to get expert legal advice though, because recent court decisions have overruled the deceased's reasons if they are inaccurate or if they are contrary to public policy (such as disinheriting a child due to his/her sexual orientation).

8. TRUSTS

A trust is created when someone (a "settlor") transfers ownership (legal title) or property to someone else (called a "trustee"), usually with directions as to how that property is to be used for the benefit of a third party (the "beneficiary"). Note that the settlor and trustee are frequently one and the same. The trustee is the legal owner of the property covered by the trust and controls the management decisions and files tax returns for the trust. In short, the trustee has a duty to act in the beneficiaries' best interests. Testamentary trusts in Wills are only effective on death; inter-vivos or living trusts are created when one is alive.

Inter-Vivos / Living Trusts

There are many good reasons to set up these trusts. They include the benefit of confidentiality, ensuring funds are used specifically for education (RESP's are an example), taking advantage of tax benefits (such as charitable remainder trusts, which give an instant tax credit from assets to be donated to charities at a later time), protecting assets from matrimonial claims, minimizing probate fees payable on death, and initiating an "estate freeze".

The last-mentioned is an extremely effective way for business people to reorganize their share capital so that the gain on existing shares is frozen, allowing future growth to accrue to new shares, for example benefiting other family members. Through the trust the new shares can be held by the business owner, while still controlling the business.

There are disadvantages though, in that such trusts are taxed as if they were distinct legal entities, at the top marginal tax rate.

Testamentary Trusts

Trusts created by a Will, however, get much more preferential tax treatment after probate fees are paid. They are most commonly specified in a Will whereby a parent desires to give property to a child setting out terms and conditions governing that transfer. For example, the trust can stipulate how and when the child receives the property or money; also, how much can be spent on educational, medical and other expenses.

Persons under 19 years of age are characterized as being under a “legal disability” and therefore any property or money left to them may need to be paid to the Public Guardian & Trustee of B.C. to be managed until they are “of age”, when everything gets transferred or paid into their names. However, Wills can allow for the naming of a trustee to administer the property or money, thereby avoiding that procedure.

Very favourable income splitting can be achieved by the drafting of multiple testamentary trusts, that is, created for more than one beneficiary (adult or minor). A graduated tax regime allows for the income generated by a deceased’s estate to be taxed separately from the income of the beneficiaries, thereby taking advantage of lower tax brackets.

Testamentary trusts are also used by parents to ensure their children inherit their estates eventually, but only after spouses (of these parents) have benefited during their lifetimes. Other uses include creditor-proofing, seeking protection from matrimonial claims and for persons with reduced mental capacity.

Note that under Canada’s *Income Tax Act*, a trust is deemed to have disposed of its property 21 years after it was set up. That means that the advantages of tax deferral can not last forever, because after the 21 years tax is then payable as if the trust had sold its assets at fair market. Various strategies can be implemented to mitigate this drastic consequence, such as rolling the property into another trust vehicle, or distributing the property to the beneficiaries before the expiry of the 21 years. The latter option results in a delay of the tax payment until the death of each beneficiary.

News Bulletin

On June 3, 2013, Canada’s Department of Finance issued a consultation document describing proposed measures to eliminate graduated rate taxation for trusts and certain estates. If the proposals are legislated, then testamentary trusts would be subject to flat top rate taxation.

9. PROPOSED NEW LAWS

Significant and long-awaited changes to Wills and Estates legislation in B.C. have now been officially announced for enactment on March 31, 2014. The new *Wills, Estates and Succession Act* ("WESA") will change many laws which have remained in place for almost a century despite considerable societal changes. The new Act consolidates the existing *Estate Administration Act, Wills Act, Wills Variation Act, Probate Recognition Act,* and certain sections of the *Law and Equity Act* and of the *Survivorship and Presumption of Death Act*. Note that the new statute will generally apply to all new applications for probate and administration regardless of when someone died.

The following are just a few of the more important changes WESA will make to existing law:

1. The courts will have greater powers in ensuring a deceased's last wishes are followed. For example, if the deceased left notes or some other record of desiring changes to his/her Will (even if not signed), a court may decide that there was the required testamentary intention and allow the changes. Also, courts will be able to correct errors in the formal execution of Wills.

2. Smaller estates (under $50,000.00, rather than the current $25,000.00 threshold) will be much easier and quicker to wrap up, though a court application will still be required.

3. If challenged, recipients of gifts in Wills will need to prove that they did not exert undue influence over a deceased regarding that gift.

4. Should a deceased die without a Will, the life estate in the spousal home will no longer exist (though the surviving spouse will be able to choose to take the spousal home as part of his/her share). Also, the current preferential share received by a spouse of the first $65,000.00 in assets will be increased to $300,000.00 (though that figure will be only $150,000.00 if all the deceased spouse's children are not that surviving spouse's children).

5. For simultaneous deaths, the younger person will no longer be presumed to survive the older; instead, each person will be considered as having survived the other. Where property is held as a "joint tenants" (with right of survivorship) and there are simultaneous deaths, the property will be treated as if held as "tenants in common". Note that if a person does not survive the deceased by 5 days, that person will be deemed to have died before the deceased for all intents affecting the estate.

6. The marriage of a person will no longer revoke that person's Will. Also, any gift to a person who witnesses the Will is no longer void, with court approval. Further, there will be a reduction in minimum age from 19 to 16 years for the makers of Wills.

7. The *Wills Variation Act* is relatively unchanged, though the definition of "spouse" will include both marriages and marriage-like relationships of at least 2 years, including same-gender relationships, which will bring the definition in line with other B.C. laws.

8. Under WESA, the new distribution regime where there is no Will will change from one based on degrees of kinship to a “parentelic” one. That is, instead of counting upward from the deceased to the closest common ancestor and then down to the closest relative (where the deceased had no spouse or children), the estate will pass to the parents of the deceased and their descendants (and if none, then to the grandparents and their descendants). In this manner, a more even division will exist between the two sides of the deceased’s family.

It is important to conclude that WESA will not invalidate any wills made before the new legislation is enacted. However, the new laws will impact all wills regardless of when they were made.

Mountain Law Corporation provides the above for informational purposes only. No legal advice on any issue is to be construed from the contents contained herein. In addition, it is understood that no content should be interpreted as the basis for a solicitor-client relationship. Please contact one of our lawyers if you wish to obtain legal advice.