

# Estate Planning

Estate planning is an important part of protecting your family and loved ones in the event of your death or loss of capacity. It is always a good idea to consult with a legal professional who can advise you on your rights and obligations and help you prepare your Will and incapacity planning documents. Below are some things to think about before meeting with a lawyer or notary:

1. What are your general objectives? What do you want to achieve? What do you want to avoid?
2. Who do you want to appoint as executor of your Will? This is the person who will administer your estate. Spouses are often appointed as executor since your spouse likely has the most knowledge of your assets. Naming a person as executor does not mean that person is obligated to take on the role. Consider who you would like to appoint as an alternate executor if your first choice is unable or unwilling to act as your executor.
3. Consider whether you will gift any specific assets or cash to a particular beneficiary or beneficiaries - for example, a cash gift of \$1,000 to a close friend or your jewellery to a granddaughter. Please keep in mind that assets will change over the years.
4. The residue of your estate is everything that remains after payment of debts, funeral expenses, executor's fees, taxes, legal and other expenses incurred in the administration of your estate, and

following any gifts of specific assets or cash, if any. Consider how you want the residue of your estate to be distributed. You should also consider whether you want your beneficiary or beneficiaries to reach a certain age before they receive their share of your estate. Are any beneficiaries disabled and receiving government benefits? If so, it is important to develop an estate plan that does not inadvertently disqualify the beneficiary from receiving those government benefits.

5. If your beneficiary or beneficiaries have died before you, what happens to their share? Will it go to that beneficiary's children, if they have any children alive on the date of your death? Will it go to a different beneficiary?
6. How would you like your estate distributed in the event of a family tragedy where all of your beneficiaries have died before you or at the same time as you?

In British Columbia, the *Wills, Estates and Succession Act* ("**WESA**") is the governing legislation about wills and estates. Under WESA, spouses (both legal and common law), as well as natural and adopted children, can apply to court to vary the Will of a deceased spouse or parent if the Will does not make adequate provision for his or her proper maintenance and support. The court may disregard the wishes of the deceased if the reasons for disinheritance are not rational or reasonable. The court may amend the distribution to one that it thinks is fair in the circumstances.

*Krystin Kempton, Associate*

**NIXON WENGER** LLP

LAWYERS

Nixon Wenger LLP  
301-2706 30th Avenue  
Vernon, BC V1T 2B6  
[www.nixonwenger.com](http://www.nixonwenger.com)  
250.542.5353 | 1.800.243.5353