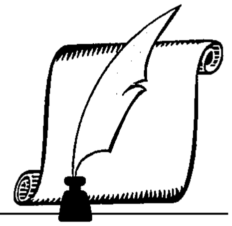
# POWER OF ATTORNEY/ESTATE PLANNING [INC.WILLS]



**NOTE – THIS IS <u>NOT</u> A LEGAL DOCUMENT <u>NOR</u> SHOULD IT BE CONSIDERED AS IMPARTING ANY LEGAL ADVICE; RATHER IT IS A BRIEF SUMMARY OF SOME OF THE MAIN POINTS REGARDING THE ABOVE TOPIC. FOR THIS REASON, WE STRONGLY ADVISE YOU TO CONSULT A LAWYER* TO PROPERLY DISCUSS AND DOCUMENT YOUR NEEDS IN THIS AREA.**

## POWERS OF ATTORNEY ["POA"]

- Can be used to ensure that your wishes regarding your financial <u>AND/OR</u> health affairs will be handled properly should you ever be declared unable to look after yourself;

- There are usually 2 kinds
  - Continuing POA – for the management of your (financial) property
  - Personal Care POA (also referred to as a "Living Will") – for decisions re: your health

- Some things to consider
  - Everyone should draw up a POA years before they actually need it – perhaps consider doing so when creating/revising your Will
  - Will the person(s) so appointed agree to act … and can you trust them to handle, say, a "life-support" decision affecting you and/or your Spouse?

## ESTATE PLANNING [inc. WILLS]

It is <u>not only</u> the wealthy who should take the time to draw up such a document; and by not having one you give up the right to choose your Estate's Beneficiaries, make gifts to close friends, name an Executor of your Estate and/or designate a guardian for your children/dependents.

Moreover, your Estate might pay more in income taxes and probate fees if there is no written document to specify how your Assets are to be divided.

### Definitions

- ***Estate*** – *The Personal and Real property of a person (the "Testator"); and the Net Value of an Estate is the value following the payment of all charges, debts, funeral expenses, administration and probate fees;*
- ***Executor*** – *The person charged with executing your wishes, as specified in your Will;*
- ***Intestate*** – *Dying without having made a Will;*
- ***Issue*** – *Includes all lineal descendents of the ancestor;*
- ***Probate*** *(Court) – A specialized Provincial Court designed to handle the management of Wills, Estates without Wills etc.*

### Common questions

1. **Are hand-written / pre-printed Wills valid?** *Yes – if they contain the required provisions, comply with the Wills Act <u>and</u> are signed by the testator and two valid witnesses.*

2. **Do all Wills have to be witnessed?** *Yes – but neither the Executor nor a Beneficiary should be one of these witnesses [unless the Executor is neither a Beneficiary nor married to one]. Moreover, if a Beneficiary does act as a witness, then any gift to that person [and/or to the Beneficiary's Spouse] is deemed to be invalid.*

cope 378
July 2011

3. **Can a Will be changed?** *Yes – but a separate document [a "codicil"] is then signed, witnessed (x 2) and appended to the original document.*

4. **How often should I review my Will?** *Usually at least every 4-5 years; but more frequently as circumstances dictate.*

5. **If my Will has already been prepared** and **my marital status changes, what do I do?** *Your original Will is automatically revoked when you marry– unless it contains wording to the effect that it was drafted with marriage in mind. However, on divorce, the situation regarding an already-written Will is more complicated and legal advice should be sought to ensure that all parties' rights are protected.*

6. **If no Will exists (i.e. if the person dies "intestate") or the Will is declared "invalid" – what happens?** *You should refer to* *http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96122_01 for guidance under the provisions of BC's* Estate Administration Act.

*In general, in situations of intestacy, the Spouse and children (i.e. the "Issue") share the Estate. However, in their absence, the Estate will then go to the grandchildren, if any. Furthermore, If there are none of the afore-mentioned, the Estate then goes to the parents followed in line by the nearest relatives.*

***Common scenarios re the allocation of a person's Estate are as follows***

**A.** *Intestate leaving Spouse but no Issue*
*- The person's Estate goes to the Spouse.*

**B.** *Intestate leaving Issue*
*- Subject to the rights of a Spouse (if any), the person's Estate will be allocated to his/her Issue on a "per stirpes" basis [i.e. on the basis of "right of representation"].*

**C.** *Intestate leaving Spouse and Issue*
*-If the Net Value of the Estate is less than $65,000 – the Estate goes to the Spouse.*
*-If the Net Value is greater than $65,000 – the Spouse gets $65,000*
*AND*
*-The Excess is then divided as follows –*
- *50.00% goes to the Spouse (if there is a Spouse and one Child);*
- *33.33% goes to the Spouse (if there is more than one Child).*

**Life Insurance and Pension Plan Death Benefits**
By designating specific and separate Beneficiaries under these arrangements – and indeed under specific individual Insurance Policies and Plans such as RRSPs that you may also have – you can ensure that distributions to the named Beneficiaries are not affected by any disputes and/or undue delays regarding the distribution of your Estate.

## TO DO ASAP

- Choose the Executor of your Estate NOW.
- Consider choosing your Beneficiaries for Insurance/Pension/RRSPs NOW.
- Choose your dependents' guardians NOW.
- Choose who should receive your Assets (in the most tax-advantageous fashion) after your death.
- Consider consulting a lawyer and/or review helpful materials offered by the BC Branch of the Canadian Bar Association at: Vancouver (604) 687-4680, Toll-Free 1-(800) 565-5297 or through www.dialalaw.org