Some Tips —Making a Will & Role of Executor

What is the purpose of THIS fact sheet?

This fact sheet gives general information only. It provides some information about making a Will and the role of the executor.

- Nidus uses the term **Estate Planning** to refer to making arrangements for after death. A Will is an essential legal document for Estate Planning.
- Nidus' expertise is on **Personal Planning** — making arrangements for while you alive but in case of incapacity, for end-of-life, and other support needs. See page 11 for more details under the Planning Continuum.

What is a Will?

A Will is a legal document that names the person you authorize—your executor—to settle your estate. A Will gives instructions for how you would like your estate to be distributed after you die. Your estate consists of property you own at death.

Property is defined very broadly (when discussed from a legal perspective) and includes real estate, bank accounts, investments, personal effects, and vehicles.

What law in BC governs Wills?

The **Wills, Estates, and Succession Act (WESA)** is the law in BC that sets out the rules for making a valid Will. It also outlines what happens if someone dies without a Will.

This law may not be applied in the same way for indigenous peoples, see page X for information.

NOTE: *After a person dies, WESA allows that someone could go to the Supreme Court of BC to see if an incomplete Will-type statement may be treated as a valid Will. The deceased must still have met the capability requirements of 'Who can make a Will' (see heading in next column). It would be risky to advise or rely on this possibility — it is best to make a valid Will.*

When did WESA come into effect?

WESA came into effect March 31, 2014. It governs how Wills are made on and after that date. Valid Wills made before that date remain valid.

If someone died before March 31, 2014, their estate is settled according to the previous legislation, which had different rules. If someone dies on or after March 31, 2014, the WESA rules apply, regardless of when the Will was made.

Nidus strongly recommends making a Will if you meet the requirements (see next heading). A Will makes things easier for those who survive you and for settling your estate. Even if your estate is very small, a Will is extremely helpful and can save money, time, and effort.

Who can make a Will?

According to WESA (BC law), anyone who is 16 years of age or older and who is 'mentally capable' can make a Will.

NOTE: *Different laws have different requirements about mental capability and age. Do not apply the requirements for making a Will to other legal documents or actions, such as making a Representation Agreement or getting married.*

What does it mean to be 'mentally capable' of making a Will?

WESA does not define 'mentally capable.' Lawyers refer to a court case from 1870 (Banks v. Goodfellow), which suggests a person must:

- Understand the nature and effect of making a Will;
- Have a sense of what they own and who may expect to inherit (such as a spouse and children); and
- Be free of mental delusions.

Judges have been clear that a medical assessment is not the same as, and does not override, a legal determination of capability to make a Will.

Making a Will is voluntary. No one can make or change a Will on someone else's behalf.

What if an individual is not capable to make a Will?

If an individual is considered not mentally capable to make a valid Will (and did not make one when considered mentally capable) their estate must be settled according to the rules outlined in WESA for intestate succession — dying without a Will.

Click link for the Nidus fact sheet Dying Without A Will or go to www.nidus.ca — click Information (top blue menu bar) — then click Estate Planning.

MAKING A WILL

Making a Will? Some Tips.

Following are tips from people's experiences. Imagine you are the executor (maybe you have been one)...what would be most helpful?

- **List your wishes about burial or cremation.**
  - These wishes are binding if in your Will.
  - Since your executor has the legal responsibility for decisions about such matters, it is helpful to make your wishes clear. This also means you have to go over the Will ahead of time with your executor. Often decisions about burial or cremation are made very quickly after death — talk to your executor about your wishes. Remember, your wishes are binding if written in your Will, not given verbally or written informally.
  - The law does not make your wishes about a funeral or memorial service binding. While it seems to be a trend for some people to say 'no service', you might want to remember that the service or celebration of life is for the survivors and their need for closure. You may be saying no due to modesty or to save money but is this your decision? Marking a death is often tied up with others' needs and you could be adding a burden by denying this opportunity. We often forget that work and community colleagues are also grieving and need a way to express this. Any kind of event, even a potluck at the beach, can allow for recognition. This may be an important and healthy step in coping with bereavement.
- **If you have minor children** (by birth or adoption), name a guardian(s) in your Will.
  - In BC, a child is considered a minor if under 19 years of age.
  - Naming a guardian in your Will does not apply to someone 19 years or older, including someone with a disability.
  - Adults (19 years and older) with a disability can make a Representation Agreement (RA7) to authorize someone to help them with decisions — see page 12 for resources on personal planning.
- **Some people set up a Trust in their Will** to manage the inheritance for a beneficiary.
  - People use a Trust when they are concerned about a beneficiary's ability to manage their inheritance or get the most benefit from it.
  - For more about Using Trusts, see page 4.
- **Be pro-active where you can and if it helps.**
  - Can you do some sorting and downsizing now to make things easier in the future?
  - We all have heirlooms and personal things to pass on to others. Make a list and keep it up-to-date. Perhaps you will decide to give your niece that pearl necklace before you die. Don't make your executor look all over for something you already distributed. You might also check if anyone really wants grandpa's shaving mug — not everyone is interested in the same things. Try not to leave too many 'unmatched' personal effects for your executor to deal with.
  - Do you remember a relative putting sticky tape with names on the bottom of furniture or china or pottery? We often joke about it, but there is some logic in terms of making things easier and clear for the executor. Also, if you encounter personal reactions when you ask people to identify items they want, you may be able to problem-solve potential disputes ahead of time.
  - Find out the policy of your financial institution(s) regarding their requirements for Probate. This is especially important if you are on low income and expect to have a very small estate. See page 9 under the heading 'How much is the estate worth?'.
  - If you have a spouse and the family home is in your name only, consider what you want to happen to the real estate when you die. Do you want your spouse to own the home? If you do not make clear arrangements, this could create more work for your executor.
  - Some seniors try to be pro-active by pre-paying funeral expenses or by joining the Memorial Society or both. But is this helpful?
    - The problem is that your executor and family often do not know about, remember, or understand these arrangements and may end up paying twice.
    - It is important to remember that pre-pay arrangements will ensure the funeral company's interests are met, regardless of future circumstances. One has to consider the risks and benefits of this practice for the public. Consumer Protection BC (a government program) has information about prepaying costs and about the funeral industry in general. Go to www.consumerprotectionbc.ca

- Joining the non-profit Memorial Society of BC — www.memorialsocietybc.org — is different from pre-paying funeral expenses.
  - Members are encouraged to fill out an 'Arrangements Form' and file it with the Society. The form is not a legal document and is not legally binding.
  - Membership includes 10% off the cost of burial or cremation as negotiated by the Memorial Society with funeral service providers.
  - Getting this discount relies on someone contacting the Society immediately after the death of the deceased, before contacting a funeral home. It is not clear if the Society checks whether they are dealing with the executor.
- If you decide to make arrangements with funeral homes or the Memorial Society, Nidus recommends using the Personal Planning Registry to upload a copy of any forms under the 'Other Documents' section and share these with your executor. More about the Registry on page 7.

- **Make sure your Will reflects your intent** — ask questions and clarify meanings so you can explain it to others. This is YOUR role as the will-maker.
  - Do you understand your Will? A good legal professional will respond to your questions and provide explanation. Sometimes legal requirements and legal conventions require certain wording in a Will. However, you still need to understand these so you can explain it to someone else – such as your executor. Unless the executor is in the room, how will they know? Later, the executor might have to use your money to hire a legal professional to educate them – that's a waste of money! There is also the risk that a different legal professional may misinterpret your wishes because they did not know your intent.
  - Make sure you talk with your executor and alternate executor. It is even better to do this before you appoint them. How would you feel to be surprised?
  - Even though the practice of making a Will seems to be shrouded in mystery and secrecy, such an approach is more likely to lead to disappointment, if not disaster. It is NO recipe for success.
- **Keep it simple!** Sometimes we over-think and complicate things.
  - Distributing your estate, for example, among 20 people is usually a lot more complex than distributing it among 3 people. Are you caught up in a never-ending 'what if…' process or are you trying to 'exercise control from the grave?' Regardless of the number of beneficiaries, you can help by compiling contact information for everyone and keeping it up-to-date.
  - Legal professionals do not need to draft long complicated Wills to justify their fees. Don't set up that expectation. It takes skill and expertise to be concise and clear in shorter form.
  - There is a lot of value in keeping things simple and understandable. It can lead to fewer questions and concerns later.
  - Executors can hire expert help if needed when exercising their duties, assuming the value of your estate makes this worthwhile. You can provide your executor with a list of professionals you trust.
- **Be realistic and practical when choosing an executor.**
  - Being an executor requires being patient and not being intimated by paperwork. Not everyone is suited to this.
  - You can appoint a spouse, family member, or friend as executor. There are also professionals, charities and private businesses who will do this job. Ask first.
  - An executor needs to have a realistic timeline. It can take up to two years or more to complete the job, even for a simple estate. This is partly due to waiting on responses from government and financial institutions. For example, it is often better to send correspondence to Canada Revenue Agency (CRA) by regular mail than deal with them by phone. It may take longer, but CRA can review it in more depth. Executors may also want to wait for a 'clearance certificate' to be issued from CRA—it is assurance that the file is closed; no taxes are owing.
  - You can help by talking with others who are not named as executor. Give them an idea of the timeline and the tasks. Things will go better, and usually faster, if there is good communication and support among everyone. Set out your expectations with the executor/alternate and others.

- **Name an alternate executor**.
  - This is about being fair to your executor, in case they become ill or injured and not able to do a good job. They may feel guilty about not being able to act, but comforted by having an alternate to rely on. And, you will have certainty about who will act in place of the executor.
  - An alternate can also be a good resource to the executor—someone to discuss things with.

What is the goal of estate planning? Everyone says 'to save probate fees.'

Making a Will is an essential document for estate planning. There are other planning procedures involved in estate planning. Some are rooted in a former context, when people did not live as long or did not have as much wealth. You need to be a good consumer when considering various planning options—what is best suited for you?

Estate planners, financial advisors, and legal professionals will likely discuss ways to minimize your estate to save on probate fees. In BC, probate fees are based on the gross value of your estate.

One of the ways to minimize your estate is to own property, such as your real estate, as joint tenants with right of survivorship. When you die, the real estate goes directly to the surviving owner and not into your estate (and is not affected by your Will).

This generally works well between spouses, but **joint ownership carries much more risk if you do it with someone other than your spouse**. It may cause more problems and other costs. Saving probate fees is NOT always the best goal. Click for the Nidus fact sheet on Joint Ownership or find it at www.nidus.ca — click Information (top blue menu bar) — then click Estate Planning

Another estate planning approach suggested for minimizing your estate and saving probate fees, is to designate someone as a beneficiary on property such as as a life insurance policy, a Tax Free Savings Account, or a private pension benefit. Again, this keeps things simple between spouses but can be more complicated if you do not have a spouse or they pre-deceased you. It can cause conflict if you have a number of children or other relatives and you are trying to treat everyone 'fairly.'

Using joint ownership or beneficiary designations is not a substitute for making a Will. Even if your spouse survives you and you both owned everything as joint tenants with right of survivorship, financial institutions often ask to see a Will to be reassured that your spouse is the 'first level' beneficiary in your Will. The institution doesn't want to deal with problems later.

What about using a Trust?

Trusts are sometimes suggested as an estate planning tool. Trusts are viewed as a better and safer way — fewer risks — than joint ownership to pass on real estate or other property to someone who is not a spouse. A Trust can come into effect only after your death. However, Trusts require funds to set up and for ongoing costs. Trusts are not feasible for everyone.

A Trust appoints one or more Trustees — this could be a corporation like a financial institution and/or an individual, such as a family member.

The Trust sets out specific terms that Trustees must follow when releasing property that is contained in the Trust. A Trust cannot give Trustees legal authority to do things outside of the Trust — for example, a Trust does not give a Trustee authority to help an adult manage their bank account or day-to-day finances.

- Some parents set up a Discretionary Trust (sometimes called Henson Trust, an Ontario term) in their Will for the inheritance of an adult child with a disability. The reason for this is to protect the child's government benefits (in BC, Person With Disability benefits — PWD), which might be cut-off if their son or daughter has too much money from an inheritance or other source.
  - The good news is that the BC government allows someone on PWD to have up to $100,000.00 in their bank account, with no effect on their benefits.
  - People with disabilities can also use the Registered Disability Tax Savings Plan (RDSP), which is also exempt for PWD benefits.
  - Be sure to check on inheritances from grandparents and other relatives – perhaps these funds can contribute to a single Trust.
- For a senior who has a spouse with dementia, a Trust in the Will or an inter-vivos Trust (in effect while you are alive) can be helpful. It is also important that the senior with dementia has personal planning documents in place so someone is available to help with finances they may receive from the Trust or other income sources.

Trusts require a lawyer with specialized and current knowledge of the laws. If you cannot find

a qualified lawyer in your community, you might contact the firm of McLellan Herbert in Vancouver at 604-683-5254. If they can't help you, they may be able to give you a recommendation.

You can also call the Lawyer Referral Service to request referral to a lawyer in your area who has this specialty. Phone 604.687.3221 or 1.800.663.1919.

It sounds like I need to make lots of lists. Can the Nidus Registry help?

As mentioned previously under the section on *Tips for Making a Will*, keeping an up-to-date list about various things will be helpful to your executor. This includes an inventory of property you own and what you owe. Consider consolidating bank accounts if you use a number of different financial institutions, or at least provide a detailed record to help your executor locate important information and documents.

You do NOT list your PIN or password for a bank account, but make a record of institutions and the account number or type of account. The executor will need to show the Will and their personal identification as proof of authority.

You also need to keep an up-to-date list of income sources, expenses, institutions, advisors and other contacts. Don't forget to list online accounts that might need to be cancelled.

- Use the Nidus Personal Planning Registry to help you keep track and to keep information up-to-date.
  - The **Personal Information Record** is a type of registration that you can complete online. Once you make this registration, you can add and delete information to keep it current.
  - You can 'share' viewing access with those appointed in your personal and estate planning documents. It helps them keep organized – for example they are reminded of any allergies or the pharmacy you deal with, they can find what financial institutions and advisors to contact. More about Registries on page 7.

Do I use gifts or percentages in my Will?

There are differences depending on whether you mention specific gifts in your Will or give percentages of your estate to your beneficiaries. Many people do both in their Will.

A gift could be a specific amount of money or a vehicle or real estate or a painting or other property. Some possible effects of using gifts:

- The beneficiary of the gift is not entitled to a 'passing of accounts' (financial accounting of the executor's work).
- The gift is received sooner than percentages.
- A gift can generate interest from one year after death.
- The amount of the gift is certain.
- The gift is paid in priority over debts.
- Read the next heading about possible risks of making specific gifts.

Using percentages is common for dealing with the residue of an estate, but can also be used instead of giving specific gifts to beneficiaries. Some effects of using percentages:

- Beneficiaries who receive a percentage are entitled to a passing of accounts.
- It takes more time to receive a percentage.
- Debts are paid in priority of a percentage.
- The amount can be uncertain until all expenses are in.

Residue of an estate is the amount left after:

- Specific gifts;
- Cremation or burial and related expenses;
- Payment of estate debts;
- Executor's fees;
- Taxes;
- Legal and other expenses.

What are the risks of being too specific about gifts in your Will?

Circumstances can change between the time you make your Will and after your death, when the Will is acted on. You may forget or may not be capable to update your Will.

- **You might need access to funds for care while you are alive.**
  - Some items you 'gifted' in a Will may need to be sold in order to support your quality-of-life needs. For example your home.
  - Sometimes specific gifts in a Will lead to unintended consequences and might create conflict or bad feelings among others.
  - The following court case is based on specific facts, including that Helen Millard died after WESA came into effect. Click on the name of the case, to read the specific reasons

Forbes v. Millard Estate 2017 BCSC 361

> Helen Millard died February 9, 2015 at age 91. She was survived by her three children. Helen made a Will on September 5, 2000 and in it she left her home to her daughter Cherie. Helen's Will also left the residue (any remainder in the estate) to be divided equally among her three children. She mentioned that she did this because one of Cherie's children had a severe disability and she wanted to be sure Cherie had a home.

Helen acknowledged that Cherie may not want to live in the home, but she could use the capital to buy a home elsewhere.

In 2004, Helen was no longer able to care for herself and was moved to a care facility. Helen's other two children were named as attorneys in Helen's Enduring Power of Attorney. They sold Helen's home to pay for her care needs.

After Helen died, Cherie went to court to enforce the gift of the home that Helen had left to her in the Will. The judge said that the attorneys acted in good faith when they sold Helen's home to pay for her care. The attorneys argued that Cherie already owns a home (mortgage free) in Victoria and since they had to sell Helen's home, any remaining money should be part of the residue (remaining funds in the estate) and divided equally among all three children.

But the judge found that WESA supported Cherie's claim and he ordered that Cherie should receive money from Helen's estate equal to the amount of the gift (the home) given by the Will.

Who can challenge a Will? Be careful about leaving someone out.

WESA allows a surviving spouse of the deceased and children of the deceased (related by birth or adoption and of any age) to challenge a Will.

The Public Guardian and Trustee (PGT) can also challenge a Will if the PGT does not believe the Will provides sufficiently for the deceased's minor children or for an adult child with a disability.

Sometimes parents leave a child with a disability out of their Will. Instead, they may give extra money in the Will to their other children (the siblings) to 'look after' the child with a disability. This does NOT work. Do NOT do this. This invites a challenge by the Public Guardian and Trustee.

Challenging a Will in court is costly and time consuming. Often the legal costs are paid by your (the deceased's) estate. If you want to leave a spouse or child out of your Will — get legal advice on an effective way to do this.

What is the definition of spouse?

WESA defines spouse as two individuals who, at the time one of them died:

- Were legally married, or
- Lived in a marriage-like relationship (common law) for at least two years.

WESA sets out conditions for when a couple are no longer considered spouses. Being separated, due to relationship breakdown, for more than a year is one example but there are others.

NOTE: *Different laws use different definitions. For example, for health care consent legislation, there is NO time requirement that common-law spouses have to be together.*

What is your excuse for not making a Will?

Sometimes people think making a Will is not necessary or doesn't matter.

Even if your estate is very small, a Will makes things easier for those who care about you. It lets them settle things more quickly and with little or no cost. It can be very satisfying and gives closure.

Other reasons people hesitate is because they have no descendants or relatives to name as beneficiaries and they can't think of someone to be an executor.

You can leave your estate, or part of it to a charitable organization.

Your gift/legacy can make a big difference, especially for smaller charities, like Nidus. Bequests from Wills are common practice for larger organizations like disease groups and animal rescue groups. You may not need the recognition – but others will be very grateful for your help. Otherwise, your estate may go into general revenues of the government.

There are businesses that specialize in being an executor. Ask your financial institution or financial advisor about such services.

How do you make a Will?

Nidus is a resource on personal planning. There is no resource like Nidus for estate planning.

Nidus provides information on its website for estate planning to help you prepare. See page 12 for other resources.

- Nidus recommends going to a legal professional to make a Will. If you want to include a Trust in your Will, you will need specialized help from a lawyer. See the heading about Trusts on page 4.
  - The knowledge about Wills is controlled by legal professionals. They have more access to continuing education on this topic and bulletins about court cases.
  - When people use a 'Will Kit' they often have questions. The self-help materials on Wills and Estates (Probate) are written by lawyers and do not always explain practical issues.
    - Don't forget that the legislation for Wills and estates is provincial-based. There are similarities among provinces but also differences. Be careful about doing research on the Internet.

- If you have a question, you will need to go to a lawyer or notary public for an answer.
- Some organizations such as People's Law School or the Law Students Legal Advice Program offer help from law students. These students are learning about law, and most will not yet have experience from being in private practice. The students are supervised by professors or lawyers and some may have specialized knowledge about Wills or Estates.

To find a lawyer, call the Lawyer Referral Service at 604.687.3221 or 1.800.663.1919. You can consult with a lawyer for up to 30 minutes for $25.00. Go to www.cbabc.org/For-the-Public/Lawyer-Referral-Service

To find a notary public near you, contact the Society of Notaries Public of BC at 604.681.4516 or 1.800.663.0343 or search www.notaries.bc.ca

Access ProBono has volunteer lawyers to help low income seniors or people with a terminal illness.
• In Vancouver: call Wills Clinic at 604-424-9600.
• Outside Vancouver: contact 1-877-762-6664

Legal professionals often have a checklist you can use to prepare for your appointment. Ask when you book the first meeting.

It is risky for service providers and health care professionals to take on the role of drafting a Will for a patient or client. It may raise questions among family members or the Public Guardian and Trustee. However, professionals can provide information and support to help patients and clients prepare for a meeting with a legal professional about a Will.

What's in a Registry? To register or not?

In today's fast paced world, communication is more important than ever. Registries are designed to help with this. As one planner said, "if there is a chance that registering will help me achieve my goals...why not?"

Registering is voluntary.

WILLS REGISTRY

The government of BC operates the Wills Registry. It is for registering information — Notice — about a Will. It does not store a copy.

You can register that you made a Will and where you plan to keep it. If you move or change the location, you will have to register a new Notice.

The government charges for registering and if the executor has to do a search after you die.

Learn more at https://www2.gov.bc.ca/gov/content/life-events/death/wills-registry

NIDUS PERSONAL PLANNING REGISTRY

Nidus built and operates the online Personal Planning Registry service.

This Registry is unique because it securely stores information as well as a COPY of your documents and video/audio files.

The Registry can accommodate registrations for personal planning but is not restricted to this. You can also use this Registry for any purpose that assists you, including emergency preparedness.

There is a one-time fee to register. The cost is $25.00 for your first registration and $10.00 for each additional registration (for the same person).

The idea of a Registry for personal planning documents was originally in the Representation Agreement Act but government decided not to implement it. Nidus established the Personal Planning Registry to meet the public's needs and vision.

The Personal Planning Registry is self-managed. For example:
- You have 24/7 access to your own record, at no cost, during and after a crisis or disaster.
- You can keep information updated, at no cost.
- You can grant (or remove) viewing access to others who may need to know in times of a health crisis or a disaster (such as wildfire, flood or earthquake). There is no cost.

Unlike the Wills Registry, the health system's electronic records, Facebook and other online services, with the Personal Planning Registry YOU stay in control of your information and who has access to it.

The Personal Planning Registry keeps track of important information and documents that are often time sensitive and needed while you are alive (unlike the Wills Registry, which is for after death). The people who care about you and want to honour your wishes will appreciate the Registry—important information and documents about you are in ONE place.

The Personal Planning Registry does not compete with the Wills Registry, however, you can store a copy of your Will in the Personal Planning Registry under 'Other Documents.' Read about how you can replace it with a more recent version, at no cost.

Learn more about the Personal Planning Registry at www.nidus.ca – click Registry (top blue menu bar) > Registry Instructions

ROLE OF EXECUTOR
Following are tasks an executor is responsible for OR needs to ensure are done

ARE YOU READY TO BE AN EXECUTOR?

If you are appointed as an executor in a Will and you do not feel able to do the job, consider **resigning**. It is best to resign before you start acting. This makes things easier for someone else to take over. If there is an alternate executor, they can act as the executor.

If there is **no one to be the executor**, WESA spells out who can become the administrator. (The administrator acts as an executor for the Will.) You will find more details about who can be an administrator on page 3 of the Nidus fact sheet on Dying Without a Will.

Whether or not the administrator has to file a formal court application depends on the same rules that require an executor to file for Probate (see page 9 about estimating the value of the estate). If there is no executor and a formal court application is needed, the administrator files a **Grant of Administration—with Will Annexed**.

How do I decide on burial or cremation?

In BC, the **Cremation, Internment and Funeral Services Act**, section 5, lists who can make decisions about burial and cremation. In the list, the executor is referred to as the 'personal representative.'

Check the Will to see if the deceased expressed their wish about burial or cremation. If so, it is binding, unless unreasonable or would cause hardship. The executor has the legal authority to carry out the wishes. If there are no binding wishes, expressed by the deceased, the executor has the authority to decide.

NOTE: The law says that wishes expressed in a pre-need contract (pre-paid cemetery or funeral contract) are also binding, unless unreasonable or would cause hardship.

How are burial or cremation costs paid?

The costs for burial or cremation come out of the deceased's estate. Expenses may include obituary notices as well as the funeral or memorial service. Expenses usually include one or more Death Certificates (see next heading).

Following are common ways these costs are paid:

- The executor, spouse, or family member may pay the bill(s) out of their own pocket and get reimbursed later, from the estate. They will submit proof of payment for the executor's accounts.
- If no one can cover the costs out of their own pocket, and if the deceased has enough funds in their bank account, the deceased's financial institution will often pay the funeral home bill out of that bank account. Do NOT pay the bill and then ask the financial institution to reimburse you. Take the unpaid invoice to the financial institution.
- If no one can wait to be reimbursed, and the deceased does not have funds, the PGT website lists some options, see page 12 for link to FAQ.
- Sometimes, the deceased may have pre-paid for some services or joined the Memorial Society of BC. The problem is that the executor may not know and may end up paying twice or not getting a discount. See the discussion on pages 2 and 3. Nidus recommends using **the Personal Planning Registry** to keep track of these things.

Funeral homes often give out information about next steps. This may include instructions to notify the deceased's financial institution and stop any income such as Old Age Security, Canada Pension or other government benefits. The financial institution can be helpful in returning funds that have been received in the deceased's account by direct deposit.

When the executor tells the financial institution about the death, the institution will change the bank account to 'the estate of …'. The financial institution will want to see an original of the Will in order to take a true copy for their files.

How many Death Certificates to order?

Times have changed. In the past, everything was done with paper (hard copies) and by regular mail. This required getting a number of Death Certificates. There is a fee for each one as they are originals. Today, an executor may only need a couple of originals as they may be able to use fax or scans for some purposes. In other cases, like a financial institution, an executor can present the original and the staff will make a true copy for their own files.

Never give away your last original. An executor might need to get certified copies—a true copy of an original. This is sometimes called 'notarization'—when a legal professional puts their signature and stamp on a photocopy they made from an original.

How much is the estate worth? Do I need a Grant of Probate?

Nidus suggests the executor try to get a general idea of how much the deceased's estate might be worth, but do not start paying debts or distributing benefits. The purpose of this step is to determine the need to apply for a Grant of Probate.

Executors may run into difficulties with this step. An institution may say they require a Grant of Probate first.

Financial institutions have different policies and it can be frustrating if the deceased used a number of different institutions. You can apply to Court to order financial institutions to provide the information.

You MUST apply for a Grant of Probate if:

- The deceased's estate includes any real estate property or a fishing license registered with the federal Department of Fisheries, or
- The gross value of the estate is more than a specific amount. The current standard appears to be 'more than $25,000.00.'
  - This is a policy—it is not in law. Different institutions may have different policies. The standard used to be 'more than $10,000.00.'
  - Generally, you do not have to apply if the estate's gross value is less than $25,000.00. However, they will want to see the Will and a Death Certificate and may ask for other information.

Check for property owned in and out of BC, such as:

- Money—bank accounts, investments, cash;
- Real estate property; vehicles;
- Other items & personal effects—artwork, tools, jewellery, musical instruments, books, stamp and coin collections, mobile devices.

Some property may not be counted in the estate. For example, if the deceased, when capable, designated a beneficiary on an RRSP, a Tax Free Savings Account, or a life insurance policy, the funds will go directly to the person designated.

If any real estate property or vehicles are owned as joint tenants with right of survivorship, they will not count as part of the deceased's estate.

Joint bank accounts may or may not be part of the estate depending on the intent when the deceased set it up. See the Nidus fact sheet on Cautions About Joint Ownership.

NOTE: *Anyone can do a Land Title search to see if the deceased's real estate property is owned jointly. There is a fee to search. One service to use is at www.ltsa.ca*

Details on applying for a Grant of Probate start on page 10.

Do I receive a fee for being executor?

Yes. The Will may provide a fee for the executor. If the Will does not state a fee, the beneficiaries can agree on a fee. As well, the BC Trustee Act section 88 allows an executor, to receive a fee related to the value of the estate as well as an annual fee and a maintenance fee. Fees are taxable.

The Trustee Act allows a maximum fee of 5% of the gross aggregate value of the estate. This is high. An amount of 2.5 to 3% is more common.

Am I personally liable as executor?

As an executor, you are not personally liable (responsible) to pay the debts of the deceased. This comes out of the estate. You are responsible for your duties related to the estate. You need to act honestly and reasonably in your role as executor and keep records.

What are my duties as executor?

The duties of an executor (whether a Grant of Probate is required or not) may include (and these are not listed in order of priority):

- Finding the current Will. Doing a search of the Wills Registry (if Probate is required);
- Locating and notifying beneficiaries named in the Will, including the spouse and children of the deceased who may challenge the Will;
- Communicating on an ongoing basis with beneficiaries so they do not have to become concerned about what is happening;
- Notifying the surviving spouse of their right to acquire and purchase the deceased's interest in the spousal home (if applicable);
- Identifying and notifying creditors who may be owed compensation from the deceased's estate;
- Distributing any specific gifts;
- Identifying and valuing items the deceased owned, and protecting these until they are needed to pay debts and for distribution;
- Applying for the Death Benefit (if applicable);

- Paying the deceased's debts and, if necessary, selling property (other than specific gifts) the deceased owned to do this;
- Filing tax returns;
- Paying expenses related to settling the estate including legal fees and accounting fees;
- Distributing the residue of the estate to beneficiaries listed in the Will (or if applicable, those entitled to inherit);
- Keeping a record of all activities related to settling the estate. You may need to report and provide financial accounting to beneficiaries (who receive percentage gifts) or to the court.

Settling an estate may take two or more years. Generally, the estate cannot be distributed to those who are entitled to inherit until 210 days after the Grant of Probate is issued.

One reason settling an estate takes time is because most executors will wait until the Canada Revenue Agency (CRA) issues a 'clearance certificate' before distributing the estate. This certificate from CRA indicates no more tax is owing and the file is closed.

What happens to the family home if it becomes part of the estate?

If the family home was only in the name of the deceased, and they did not list it as a specific gift in their Will, AND they have a spouse, the executor may have to deal with the real estate (family home) according to the WESA rules for a spousal home.

A spouse can also challenge the Will in court by arguing that the Will does not properly provide for their needs.

What does WESA say about the spousal home?

A spousal home is where the deceased and their spouse ordinarily lived. Check for two things:

1. Is the spousal home part of the estate?
2. If yes, what are the rights of the surviving spouse to the spousal home?

The **spousal home is part of the deceased's estate** if the home is not leased to another person, and the deceased:

- Was the only registered owner of the home; or
- Was registered as a 'tenant-in-common' owner; or
- Lived in a manufactured home that was sitting on land not owned by the owner of the manufactured home.

NOTE: *If the home is owned as joint tenants with right of survivorship (typical for spouses), it is NOT part of the deceased's estate. The deceased's share goes directly to the surviving owner(s).*

If the home is part of the deceased's estate, the surviving spouse may have a right to acquire or purchase the deceased's interest in the home. They have up to 180 days to decide—from the time the Grant of Probate is issued. A surviving spouse may apply to the Supreme Court of BC for an extension beyond the 180 days as well as for consideration of hardship to purchase the home.

There are many rules regarding a spousal home. Getting legal advice is pro-active and could be helpful.

How does the executor apply for a Grant of Probate?

When applying for the Grant of Probate, the executor will need to complete a number of required forms and submit these to a Supreme Court of BC Registry. See following headings.

You also have to give notice to anyone appointed as executor or alternate and beneficiaries named in the Will and all those entitled to inherit. If the application is complete and not opposed, the registrar will issue a Grant of Probate. If there is opposition, this may simply require more information or it may require legal help.

Where is the Grant of Probate request filed?

Find the location of a Supreme Court Registry for filing the request. Click or copy link into browser https://www2.gov.bc.ca/gov/content/justice/courthouse-services/courthouse-locations

What is the cost of Probate?

The fees are outlined in the BC Probate Fee Act.

NOTE: *For a short-cut calculation, probate fees are approximately 1.4% of the gross value of the estate.*

You must provide payment when you submit the required forms. The financial institution might provide a cheque payable to the government from the deceased's estate if you provide the institution with the calculation and paperwork.

The fee is calculated on the gross value of the estate and relates to information provided on Form P10 (Affidavit of Assets and Liabilities).

The current fees for probate in BC are:*

- A basic court filing fee of $200.00, plus
- Probate fees are calculated as follows:
  - $6.00 for each $1,000.00 (or part of $1,000.00) of the gross value of an estate greater than $25,000.00 and less than $50,000.00, plus
  - $14.00 for each $1,000.00 (or part) of the gross value of an estate greater than $50,000.00

For example, if gross value of estate = $150,300.00
$ 200. Basic court filing fee
$ 150. ($50,000-$25,000 ÷ $1,000 X $6.)
$1,414. ($151,000-$50,000 ÷ $1,000 X $14.)
$1,764. TOTAL

*There are no fees if the gross value of the estate is $25,000.00 or less.

What forms are required for Probate?

Following is a list of forms required for a 'typical' request for a Grant of Probate. The government website lists the forms in alphabetical order.

Click or copy link into your browser to find these and other forms at https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/probate-forms

- Affidavit of Applicant—P3
- Affidavit of Assets and Liabilities—P10
- Affidavit of Delivery—P9
- Submission for estate grant—P2

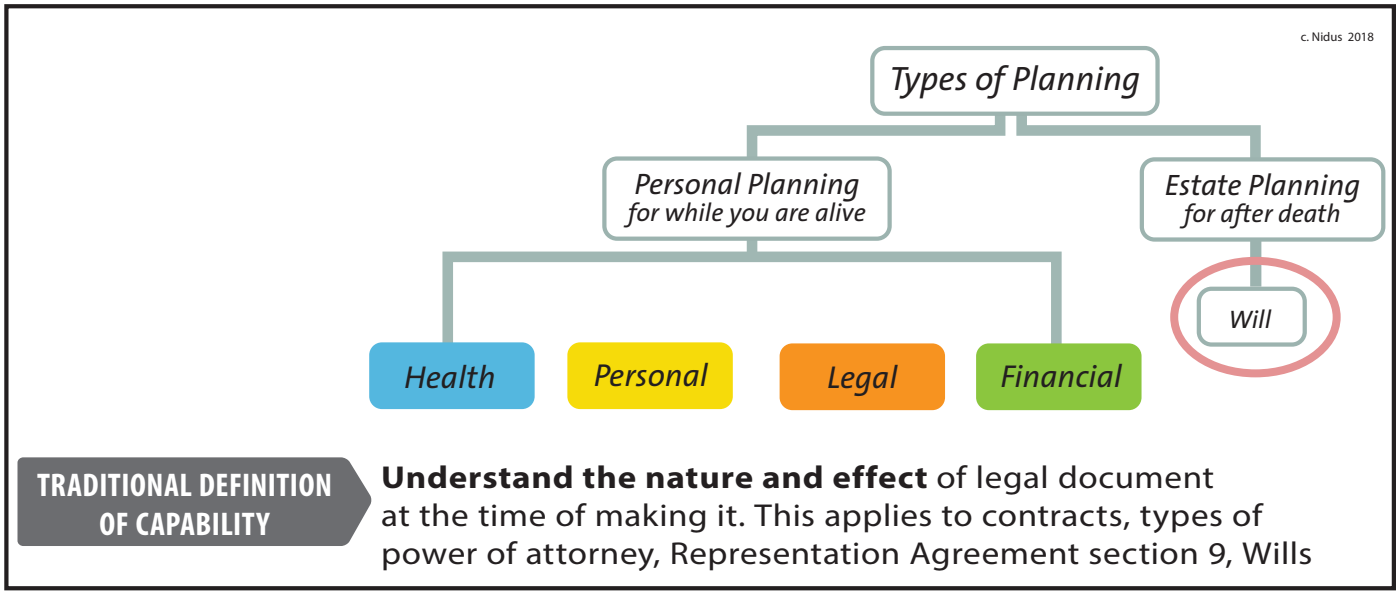
You also need to provide a Certificate of a Wills Notice Search (see next heading) and the original Will.

How do I obtain the required certificate for a Wills Notice search?

The Wills Registry is operated by the BC government through Vital Statistics. It only registers information, not a copy of the Will.

As part of the Grant of Administration procedure, you must provide proof that you checked for the existence of a Will. It does not matter if you know you have the most recent Will. You can do the search by mail or in-person. Scroll down at https://www2.gov.bc.ca/gov/content/life-events/death/wills-registry

THE PLANNING CONTINUUM



A Will is an essential document for **Estate Planning** — making arrangements for after death.

We also need to put the spotlight on **Personal Planning** — making arrangements for **while we are alive**, in case of incapacity for end-of-life, and other support needs.

There are four life areas under personal planning. There are legal documents to cover these life areas.

This fact sheet is for people who are mentally capable to 'understand' — they can make a Will for Estate Planning and the following essential documents for Personal Planning:

- A Representation Agreement section 9 (RA9) is for health and personal care.
- An Enduring Power of Attorney (EPA) for financial and legal affairs.

See the **next page** for resources on Personal Planning.

Where to get more information on Wills and Estate Planning?

The following are sources that may be helpful for Making a Will and Being an Executor. Some information contains legal jargon.

- **Dial-a-Law** (a service of the BC lawyer's association) — see script 176 & 178 under Wills & Estates. Go to www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Wills-and-Estates
- **PGT website FAQ** — Go to www.trustee.bc.ca/faq/Pages/estate-and-personal-trust-services-faq.aspx
- Some differences in law for indigenous peoples are discussed in the Dial-a-Law script 237 under Your Rights > **Aboriginal Law** www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Your-Rights/237
- Nidus has information on Estate Planning, including our fact sheet on *Dying Without a Will* at www.nidus.ca > click Information (top blue menu bar) > Estate Planning

Where to get information on Personal Planning?

Nidus is the Centre for Excellence on Personal Planning and the expert on **Representation Agreements**.

Nidus has free Representation Agreement forms on its website. There are different forms for different situations. To find the form that fits you, click to watch our Getting Started video, you can also find it at www.nidus.ca — on the homepage above the three photos.

If you are mentally capable to make a Will, click on the middle photo/heading at the Nidus website about personal planning—for someone who meets the mental capability requirements to 'understand.'

PERSONAL PLANNING DOCUMENTS		
Helping a Relative with a DISABILITY	*I'm planning on the* FUTURE PATH	*Caring for an Adult Who* NEEDS HELP NOW
Helping an adult whose capability to understand was affected at birth or in childhood? Info & Forms for RA7 *Adult may make even if considered not capable to make a Will.*	**Click here if you are considered mentally capable** Info & Forms for health & financial in case of incapacity *For adults capable to understand as for making a Will — don't wait for a crisis!*	**Are you helping someone whose capability to understand is affected in adulthood?** Info & Forms for RA7 *Adult may make even if considered not capable to make a Will.*
Click FIRST photo	Click MIDDLE photo	Click THIRD photo

Legislation

To view BC legislation, go to www.bclaws.ca > click Laws of British Columbia > Public Statutes and Regulations > select first letter of the Act.

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Reference material:
Presentation for Nidus Personal Planning Month 2017, *FAQ on Wills & Estates* by Emily Clough, Barrister & Solicitor, Clark Wilson LLP

The Law Society of BC, *Practice Material: Wills*, for the Professional Legal Training Course (2018).

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Feedback:
Nidus listens to our users and may make changes to improve this fact sheet. Always check back for the current version at www.nidus.ca > click Information (top blue menu bar) > Estate Planning

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