

MISSION LAW GROUP
WILLS INFORMATION
AND
INSTRUCTION SHEET

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DATE: _____ PERSONS PRESENT: _____

WILL-MAKER #1

Full Name of Person Making Will (must provide all name variations):

(First Name) (Middle Name) (Surname) (Occupation)

ADDRESS: _____

POSTAL ADDRESS: _____

PHONE: (H) _____ (O) _____

EMAIL ADDRESS: _____

BIRTHDATE: _____ BIRTHPLACE: _____ S.I.N.: _____

DATE AND LOCATION OF PREVIOUS WILL: _____

WHERE THIS WILL IS TO BE LOCATED: _____
(NOTE: WE WILL FILE WILLS NOTICE)¹

SPOUSE OF WILL-MAKER #1

(First Name) (Middle Name) (Surname) (Occupation)

BIRTHDATE: _____ BIRTHPLACE: _____ S.I.N.: _____

DATE AND LOCATION OF PREVIOUS WILL: (_____ Same as spouse? _____)

WHERE THIS WILL IS TO BE LOCATED: (_____ Same as spouse? _____)

PENDING DIVORCE? _____² PENDING MARRIAGE? _____ STATUS INDIAN? _____

PRIOR MARRIAGE(S)? _____ MARRIAGE/SEPARATION AGREEMENT? _____

COMMON LAW SPOUSE? _____

CHILDREN (number and age): _____

¹Although the filing of a wills notice is not mandatory in B.C., for your protection we will not prepare a will/codicil without also filing a wills notice of same in Victoria (cost: \$18.50 per will). We recommend that you leave your will in our wills vault (free of charge). Wills taken for personal storage may be lost, destroyed or rendered invalid.

²A divorce revokes a gift, appointment or power of appointment to an ex-spouse.

NEW CLIENT IDENTIFICATION (get copies):

BCDL # _____ Passport # _____ Other: _____
Birth Certificate # _____ Nexus # _____

1. **GENERAL NATURE OF A WILL**

Your Last Will and Testament provides your written instructions as to how you wish to dispose of your estate. The Will is effective only upon your death. Except for certain situations required by law, you have the ability to dispose of your estate in the manner you see fit.

IF YOU HAVE AN EXISTING WILL, YOU SHOULD NOT DESTROY IT UNTIL SUCH TIME AS YOUR NEW WILL IS PROPERLY SIGNED.

2. **DIVORCE**

If you are or become married or have a spousal relationship before or after preparing your will, and before your death you cease to be spouses, then any gift or appointment (eg. as executor or trustee) to that spouse is revoked and the will takes effect as if your spouse had predeceased you. A will is not revoked simply by making a marriage or separation agreement.

3. **EXECUTORS AND TRUSTEES**

You must name someone as Executor of your Will. For trust funds held over time, the Executor becomes the Trustee. Your spouse is usually named as the Executor/Trustee. An alternative Trustee should be appointed in the event that the named Executor predeceases you or is unable or unwilling to act. Do not appoint non-resident Trustees.

First Executor: _____

Address/Residence: _____ Relationship: _____

Discuss tax residence of trust/estate/Trustee: _____

ALTERNATE EXECUTOR(S):

Name: _____

Address/Residence: _____ Relationship: _____

REMUNERATION OF EXECUTOR/TRUSTEE

An Executor/Trustee may apply under the *Trustee Act* to be paid for his/her work in handling your estate, unless the Will sets the remuneration. If you wish to set the remuneration for your Executor/Trustee in the Will, do so clearly with a fixed fee or formula. If that person is a professional, such as an accountant or lawyer, we will include a clause permitting that person to charge his or her usual professional fees for professional services rendered to the estate, in addition to Executor/Trustee remuneration.

4. **GUARDIAN**

After the death of one parent, the surviving parent will usually retain guardianship of minor children. A person should be appointed as the legal guardian of your infant children, in the event of the death of both parents/guardians. We recommend that you speak to the proposed guardian about this role before naming that person.

Guardian (Full Name) _____ Compensation? _____

Substitute Guardian (Full Name) _____

5. **DISTRIBUTION OF ESTATE/PLANNING FACTORS**

Please complete a listing of your assets/liabilities in the attached Schedule to this instruction sheet. All of the property falls under control of your Executor named above. Generally, the Executor is authorized to us his or her discretion in the prompt conversion of your estate into cash, or in transferring assets to beneficiaries. You should consider whether the estate, or your beneficiary, should pay the cost and/or freight charges of transfer of a specific asset to that beneficiary.

- (a) If you have any article of special or sentimental value, you may wish a certain person to receive that article. The article should be clearly described and the beneficiary named in your Will. Any debt attached to a specific asset must be disclosed to us.

<u>Specific Bequests*</u>	<u>Beneficiaries (Full Names)</u>
1. _____	_____
2. _____	_____

*Any PMSI on asset? (s.47 WESA)

Explain legal effect of separate memorandum. Prepare? Yes No

- (b) Residue - Most Will-makers leave the residue, or remainder, of their estate to their spouse, with a "gift over" of that residue to their children if the spouse has predeceased. Under B.C. law, however, if a surviving spouse and/or children do not receive a gift in the Will, then he/she can make an application to Court to obtain a portion of the estate (Section 60 of *Wills, Estates and Succession Act*). If you do not wish to leave a bequest to your spouse and/or children, that intention should be discussed with us or your estate plan may fail.

(i) Residue to spouse: Yes No

(ii) Residue to children if spouse predeceases you: Yes No
(see item 6 below)

– Use multi-generational Testamentary Trust? Yes No

(iii) Deceased child's share goes to his or her children: Yes No

(iv) Residue/gift to some other person or persons? (if gift to group, consider anti-lapse provisions of Section 46 WESA)

Full Name(s): _____

(v) Spouse or child disinherited? Yes No
If yes, state reasons in WESA Statutory Declaration.

(vi) Section 60 WESA discussed? Yes No

(vii) Catastrophe (both spouses and all children die): _____

(viii) Loans to Children/others? Yes No Forgive?
Bring into hotchpot? _____

(ix) Is any person providing goods or services to you based upon your promise in this estate plan? Yes No

- (c) Charities/Planned Giving - Yes No - If specific bequests or gifts of residue are left to charities, you must provide us with the full, legal name of the charity and office address (and charitable tax number if possible), and any specific restrictions on or allocation of the gift. We can advise on inter vivos planned giving (gifts during your lifetime) if requested. Most gifts to charities result in tax credits to your estate.

Disclose to Charity: Yes No

- (d) Real Property - For a specific bequest or other dealing with real property in the will, you must provide us with evidence of ownership as at the date you give will instructions to us (or we will do title search); e.g. if property you wish to give to a child in your will is presently owned by you in JOINT TENANCY with your spouse or another person, then your will cannot validly make this gift and the property will be transmitted by operation of law to the surviving joint owner. RESIDENCE OWNED JOINTLY? Yes No Other real estate owned jointly? Yes No NOTE: Generally, there are more risks than advantages in owning land in joint tenancy with someone other than your spouse. LAND LOCATED ON A RESERVE? Yes No
- (e) Joint Assets/Bank Accounts/Investments - For bank accounts, term deposits, investment accounts or other assets owned jointly with one or more others, be aware that litigation can result in your estate unless you have clearly indicated whether or not such asset is to pass, by right of survivorship, to the other joint owner(s). The forms provided to you by the bank may not deal conclusively with this issue. There are techniques for ensuring that either your estate, or surviving joint owner (as may be intended), will receive the benefit of the jointly owned asset (e.g. Deed of Gift, Secret Trust, Nominee Agreement, etc.). If you inform us of such joint account/asset(s), we can assist.
- (f) Foreign Assets - If you own real property or significant personal property OUTSIDE BRITISH COLUMBIA OR CANADA YOU MUST INFORM US. A British Columbia will does not necessarily control disposition of your assets outside B.C. and steps must be taken to insure that your testamentary wishes will be honoured for assets you own in a foreign country (e.g. foreign jurisdiction lawyer to review Will, or do a foreign Will).
- (g) Shares - If you wish to make a specific bequest of shares you own in a (privately-held) company, you must provide appropriate evidence of ownership and company details. You must advise us of any existing Shareholder's Agreement dealing with the transfer of ownership of such shares, and of any large unrealized capital gain.
- (h) R.R.S.P.'s/R.I.F.'s - You would not normally revoke a designation of primary beneficiary in an R.R.S.P. Your spouse should normally be the primary beneficiary of your R.R.S.P. Consider naming your children as secondary beneficiaries, but your estate will usually be liable for tax payable on R.R.S.P./R.I.F. transfers (unless given to a spouse or disabled child), so keep this in mind if gifting R.R.S.P. outside your estate.

- (i) Life Insurance - You would normally designate a spouse and/or children as primary and secondary beneficiaries. In some cases it may be desirable to bring life proceeds into your will/estate (even if this incurs probate tax) if you want to control the distribution to children. Consider a “Life Insurance Trust” of the proceeds which protects beneficiaries against estate claims.

NOTE: BEFORE SIGNING YOUR WILL YOU MUST CONFIRM TO US THE DESIGNATED BENEFICIARY OF EACH R.R.S.P./R.I.F./T.F.S.A. AND LIFE POLICY.

- (j) T.F.S.A.’s - Discuss difference between “successor holder” and “beneficiary” of T.F.S.A. on your death.
- (k) Multiple Wills- If you have an asset in a foreign jurisdiction, or of significant value in B.C. (such as a vacation home or shares in a private corporation), it may be possible to avoid obtaining probate for that asset, and therefore payment of the probate tax, by using a second Will.
- (l) (i) Joint Spouse Wills - JOINT RETAINER: Each spouse will sign their own, separate Will. Note that a Will can be changed by a surviving spouse. Because my retainer is with both spouses there can be no solicitor/client privilege from one spouse as to the testamentary intentions and instructions of the other spouse (discuss ILA).
- (ii) Second Marriages/Blended Families - JOINT RETAINER: Again, note that a spouse can change the Will later (to disinherit you, children, step-children). Consider: use inter vivos trust, spouse trust, outright bequest to children, jointure of assets, life insurance? Spouses must have informed consent to this joint retainer (discuss ILA).

NOTE: A JOINT RETAINER AGREEMENT must be signed when we prepare wills for couples.

6. INFANT/DEPENDENT BENEFICIARIES

- (a) If your children or other beneficiaries are under the age of majority at the date of your death, their portion of the estate should be held in trust for them until they reach at least the age of majority. You can also require that an infant’s share be held until the beneficiary is older than the age of majority (age 19 in B.C.). Unless the Will is drafted appropriately, a beneficiary who reaches the age of majority can apply to the Court to have his or her share paid immediately.
- (b) YOU MUST INFORM US if any of your children or beneficiaries are minors or mentally/physically handicapped or otherwise dependent on you or another adult. Special care must be taken in providing gifts in trust to such beneficiaries. A Registered Disability Savings Plan, or Qualified Disability Trust, may be advisable.
- (c) Names/ages of all natural children/step-children/step-grandchildren (if needed):

7.

POWERS OF TRUSTEES

Because the person named as Executor and Trustee under your Will is charged with the responsibility of properly handling your assets after your death, you must choose someone in whom you have trust and confidence, residing in a jurisdiction which does not tax your estate unreasonably (preferably Canada). Most Wills allow the Trustee to exercise discretion in the handling of your estate, and provides that it cannot be held liable if there is a loss of your investments so long as it has acted in good faith. You may wish the powers or discretion of the Trustee to be more limited.

Investments as authorized by *Trustee Act*: Yes: No:

Unlimited investment powers: Yes: No:

8.

FUNERAL WISHES

You may wish to express your funeral wishes, but it is not a legal requirement. Except where compliance by your Executor would be unreasonable or impracticable, the preference stated in the Will is binding on him/her. This is subject to the *Human Tissue Gift Act* which deals with matters such as organ donations. Advise your Executor now of any organ donation wishes, and/or register now (we have the forms available).

BURIAL? _____

PLACE: _____

CREMATION? _____

ASHES? _____

OTHER DIRECTIONS/PRE-NEED PLAN? _____

ORGAN DONATION? Yes No

9.

OTHER DIRECTIONS

The foregoing matters are usually dealt with in most Wills and estate plans. However, if you have special considerations regarding estate and/or tax planning, life estates or trusts, those wishes must be made known to us and we will be pleased to advise on same. If we feel it necessary, we may refer you to an accountant, tax advisor or financial planner whom you could retain separately for assistance prior to completing your Will and estate plan.

THIS INSTRUCTION SHEET WILL BE USED AT OUR INITIAL MEETING. PLEASE REVIEW IT CAREFULLY AND ASK US ABOUT ANY MATTERS YOU ARE UNCLEAR ON BEFORE SIGNING YOUR WILL.

10.

MENTAL CAPACITY/UNDUE INFLUENCE

Question: Was any part of this estate plan requested by someone else? Yes No

If a Will-maker does not have the mental (testamentary) capacity to make a Will, either when giving Will instructions or when signing the Will, it may not be legally effective. If you have a concern, please request our advice. If we have a concern, we may request medical or other evidence of capacity before preparing your Will. [Lawyer only: Capacity OK? _____ If any concern, inquire re: committee/guardian; use capacity/undue influence checklists and/or prepare memo to file] [Discuss Banks test: Nature of Will _____; extent of estate _____; claims on estate/beneficiaries _____; no delusions _____] Obtain medical letter/certificate? _____]

11. POWER OF ATTORNEY/REPRESENTATION AGREEMENT/LIVING WILL

Existing Power of Attorney*/Rep. Agreement? Yes: No: If yes, where: _____

With Will, prepare:

- (a) Power of Attorney: _____ Name/address/occupation of attorney(s)
- (b) Representation Agreement: _____
- (c) Living Will: _____
- (d) Store at Mission Law Group: _____ (sign Authorization form)
- (e) Note: We do not register location of POA/RA
- (f) Joint Retainer Letter for couples.

(a) Enduring Power of Attorney (“POA”):*

The POA has long been used to protect against the loss of mental capacity and an inability to deal with one’s financial affairs. The POA appoints one or more individuals to handle your financial affairs and deal with your legal obligations. If you lose your ability to manage your financial affairs, and do not have a POA, the legal alternative is an expensive court application to appoint a legal guardian for you. Section 12(2) test: To make a POA you must understand:

- (a) the property you have and its approximate value;
- (b) the obligations you owe to your dependants;
- (c) that your attorney will be able to do anything in respect of your financial affairs that you could do if capable, except make a will, subject to the conditions and restrictions set out in the POA;
- (d) that, unless your attorney manages your business and property prudently, their value may decline;
- (e) that your attorney might misuse the attorney's authority;
- (f) that you may, if capable, revoke the POA.

*NOTE: Amendments to the *Power of Attorney Act* likely require changes to a POA signed before September 1, 2011 (eg. Attorney remuneration, accounting and gift/loan provisions).

(b) Representation Agreement (“RA”):

If you wish to appoint an individual to have legal authority to assist with your health, medical and personal care decisions, either with your guidance or after you have lost mental capacity, then a RA is the best legal tool. There are a wide range of rights and obligations to grant your Representative, so legal advice is necessary to properly draft the RA. Discuss “Advance Directives”?

(c) Living Will: Is not a Will at all. It is simply a written statement of your wish that those responsible for your health care (especially your Representative) not aggressively prolong your life if you become terminally ill or in a hopeless physical situation, such that health care be limited to alleviating your pain and to allow you to die with dignity. This is NOT to be confused with medical assistance in dying (MAID), a “Do Not Resuscitate” (DNR) statement or a Medical Order for Scope of Treatment (MOST), none of which should be signed without prior legal advice.

12.

SIGNING YOUR WILL

Because of the strict requirements of WESA, it is our recommendation that your Will be signed at our office in order to ensure its validity. A Will which is witnessed by a beneficiary or a spouse of a beneficiary may be void with respect to a gift to that beneficiary. Wills must be signed by both witnesses while in the presence of the Will-maker and each other. We will call you within 10 business days of receiving your final estate planning instructions to schedule an appointment to sign the Will.

ANY UNUSUAL URGENCY TO SIGN WILL? (state reason/date:)
LANGUAGE PROBLEM? (speak/read)
SIGNING ABILITY: (infirm or blind)

RETAINER AGREEMENT: This Instruction Sheet summarizes the terms of our wills and estate planning services retainer agreement with you, which you have agreed to by signing here:

Also Section 58 “document” or “record”? (final, testamentary intent, with prior Will revocation?)
Yes No

Will-maker: Will-maker: Witness(es):

SCHEDULE OF ASSETS

Please complete this Schedule and leave it with your copy of the Will at home. We can also store a copy with your original Will.

1. Liquid/Intangible Assets:

(a) Bank Accounts

(i) Joint Accounts _____

(ii) Sole Accounts _____

(b) Investment Accounts

(c) Stocks in Private Companies (discuss Shareholder Agreements)

2. Life Insurance Policies and Annuities:

Company Cash Value Beneficiary(s)

3. Real Property (Land):

Location of Property Name of Owner(s) Value Mortgages

4. Registered Retirement Savings Plan/RIF/TFSA:

Name of Trustee Name of Beneficiary Approximate Amount

_____ \$
_____ \$
_____ \$

5. Personal Effects:

6. Other Substantial Assets (include Interest in other Estates or Trusts):

7. Liabilities:

(a) Mortgages on Real Property

(b) Other Secured Debts/Car Loans

(c) Unsecured Debts/Line of Credit

(d) Other Financial Obligations including Personal Guarantees, Separation Agreements, Maintenance Orders, Agreements to Purchase, Leases

8. Digital Assets/Passwords:

(a) Home Computer Password/Username:

(b) Office Computer Password/Username:

(c) Cell Phone or Laptop Password/Username:

(d) Office Phone Password:

(e) Other Passwords:

(f) Credit Card(s) Security Code(s):

(g) Debit Card(s) Security Code(s):

(h) Online Banking Password/Username:

(i) Online Utility Account(s):

(j) Crypto Securities/Account Access:

(k) Non-Fungible Tokens:

(l) Domain names owned:

(m) Home Security Alarm Code:

(n) Home Wireless Access Code:

(o) Other:
