

After serving a Notice of application to the Court on all pertinent parties and when the court is satisfied that all conditions are met, the court will approve the Will or Administration and issue a formal Grant of Probate to you. The grant will allow you to move the deceased's assets as indicated in the Will or, for Administration, according to the

#### **Estate Administration**

**Act.** As this can be a complicated and lengthy process, we would be pleased to assist you.

## Siebenga & King Law Offices

We are a firm of lawyers who believe that you ought to know and fully understand what we do for you. As a result, we have written this brochure as a general overview of the process required to take control of your legal affairs and establish a Will. Your affairs deserve individual attention and you should not view this document as complete legal advice on how to control your affairs. If after reading through this you have questions, please contact us directly. We are happy to provide you with a quote for services that is both easy to understand and cost competitive. We also offer other services within our firm and are able to arrange flexible appointments to meet your schedule. Also, if you bring this brochure and draw this clause to our attention in our first meeting with you over estate planning issues, we will provide you with a reduction in our fees of \$50.00 for what we do for you.

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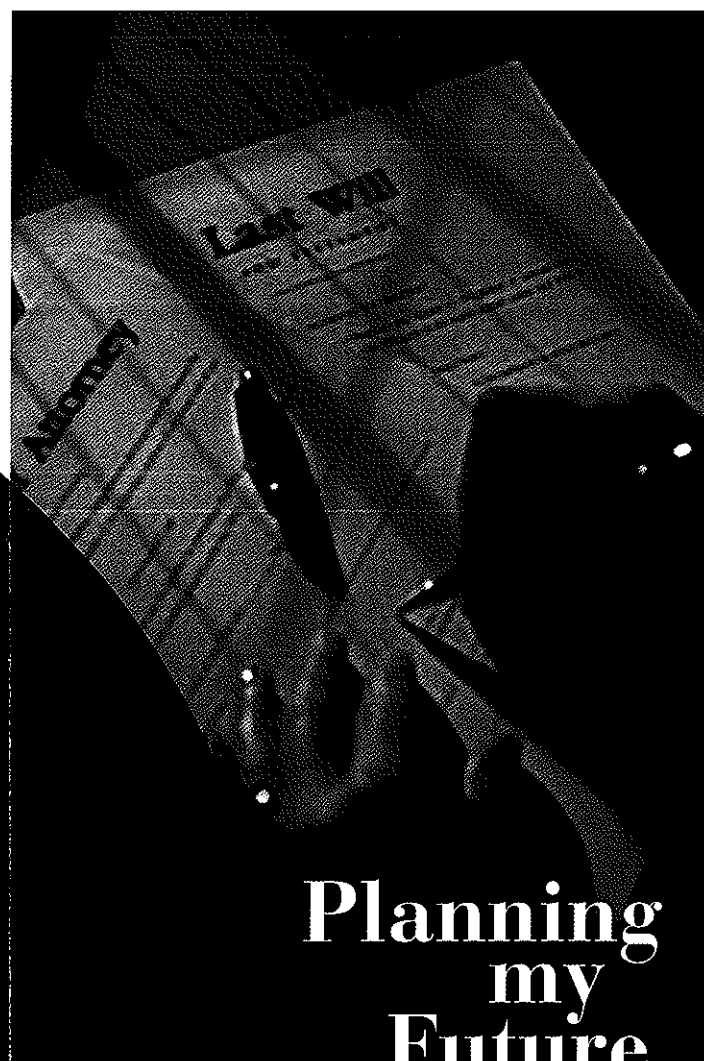
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## Planning my Future

## What happens now?

## A Simple guide



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## Life has its changes

We live in a quick-paced society: busy home paying bills, fast cars, social activities, long hours work, school and more. We go through each week and year like a blur. Suddenly, interrupted. Unfortunate events, sickness, accident or other situations arise which bring your attention to putting things in order. How long does it take to put your house in order? Are you concerned about who takes care of you if you are incapable of doing so? **What about Powers of Attorney, Living Wills, Estate Probates and executors.** Who is to take care of your children? This guide is written to help you understand how to plan your future in a way that reduces the stress in your life and brings you peace of mind.

## A bewildering world of definitions and how to take control

**Executors, Donors, Beneficiaries, Legacy Attorneys and Guardians.** Understanding all the definitions in estate planning is something you may leave to your legal professional. The important thing to understand is to employ professional advice in a way so that your needs are met. This Guide sets out various things you can do to protect your affairs while you are alive and healthy, things you can do to ensure that if you become sick and infirm your needs will be recognized and understood, and you need to do to ensure that when you die your assets will be given to the people you want and handled in the way you want. The important thing to act to ensure that your needs are met. A Will is a written document that divides up what you own (called your Estate). In your Will you appoint a trusted person to be your Executor, who distributes your estate according to the instructions in your Will

## Taking control when you are alive and healthy

You want to go on a trip but have important legal affairs that need to be done in your absence. What can you do? You can attempt to organize your affairs before you go or be inconvenienced while you are away. However, you can use a “Power of Attorney” to appoint another person to legally sign on your behalf for the function needed. Powers of Attorney are used for financial matters. The major drawback is that once you appoint a person to act on your behalf, if you are not careful in how you appoint them, that appointed person (called an “attorney”) could act in a fashion that could take more assets from you than you can contemplated. Therefore, you always need to ensure that in drafting such a document you are specific and clear with your intentions.

You can with some assets, have title to them in joint names. If the asset is held as joint tenants or with the right of survivorship, then any transfer of assets to that other party will be virtually automatic at the time of your death. Life insurance as well can be structured to assist in estate transmission independently of a Will.

## Taking control when you are alive but not healthy

Too often, people do not take control of their affairs prior to some calamity occurring. Accidents occur and people are left without a Power of Attorney or any other legal instrument. In cases like this, what happens:

### The costly approach – Committeeship

If someone has to take control of your affairs if you are incapable of doing so, then the only option is for a friend or relative to petition the court to be appointed your legal representative. If no one is appointed for you, the courts or the Public Trustee has to take control. Not only is the process expensive causing many court

applications and time delay, but the court will often impose serious restrictions and limitations on what can be done. Because there has to be continual reporting back to the courts on legal activities, the ongoing cost of committeeship is very high.

### Approaches that do not work – Living Wills

We live in British Columbia. This is not USA, or Quebec or other jurisdictions. In BC, signing a living will will not have any legal significance. Also having previously signed a living will in another jurisdiction will not make it binding here should you become sick or suffer an accident in BC. In BC we have other approaches, they are:

### Approaches that work

**Power of Attorney:** as noted above, a Power of Attorney only handles your financial affairs and cannot deal with matters of illness or dementia. To deal with this you need...

**Representation Agreements:** BC’s response to a Living Will is the preparation and signing of a representation agreement. This agreement is an involved document but allows for its use only when a doctor certifies that you are no longer capable or able to manage your own affairs and allows you to appoint someone you trust to make medical and financial decisions, including ending life support. The Representation Agreement protects you so that while you are alive and capable, no one can use the agreement to liquidate your assets without your permission. It also allows you, should you recover from an ailment, to terminate the use of the Representation Agreement automatically.

## Taking control of your estate

Once you pass on, the only way you can protect your children, your assets and how you want to distribute things, is to have a Will. Most people delay preparing a Will; however the preparation of a Will is quite simple and painless. So:

## What Happens if I Die Without a Will?

### You will have given your children to the government to raise.

The government has established an agency to oversee any party who is a minor or incapable of handling his own financial affairs. That office is known as the Public Guardian and Trustee and governs all assets that fall to children under legal age or adults who are incapacitated and without representation. The Ministry of Children and Families acts as guardian of the person when children do not have a capable parent or guardian. As such, if you do not have a Will or have not nominated someone to be a guardian for your infant children in your will, the state and not your next of kin will control your children’s lives. Further, if you own assets that then become controlled by your infant children, the government will hold those assets until the children become of legal age.

### You will have given the government the right to say who gets your assets.

The government has passed laws to govern how your estate is distributed if you do not have a Will. The law says that the first \$65,000 is transferred to your spouse and the balance of the estate is split among your children and spouse. The law does not provide for your spouse to get everything so if your spouse and children have differing opinions on what needs to be done, you will have effectively tied your spouse’s hands to handle your affairs.

### It costs more.

If you do not have a Will, a next of kin can apply to “administer” your estate. This process is again subject to court oversight and costs significantly more than if a Will is in place. Consents would also be required if you had more than one relative who wanted to apply.

## What is a Will and what does it do?

A Will allows you to direct your affairs and assets according to your wishes after you die. A Will can contain the following basic terms:

- ✓ It revokes any former Wills you may have drafted;
- ✓ It appoints one or more people in tandem or succession to handle your affairs (called *Executors*);
- ✓ It allows for the payment of taxes and debts;
- ✓ It can direct for any funeral arrangements;
- ✓ It directs any specific gifts you may wish to give (called *specific bequeaths*);
- ✓ It directs who gets, and at what time they get, your assets;
- ✓ It can confer operating powers to executors to consolidate and payout your estate;
- ✓ It appoints guardians for any infant children.

There is a specific format for making a Will. The law requires that two people, who are independent of you and are not involved or benefiting from the Will to witness the Will and watch you signing it. Once signed you can, but are not required to file a “Wills Notice to the government” which allows parties in the future to confirm the date and place where your last Will is.

## Probate

You may have been appointed as an executor in your Will or wish to administer an estate if there is no Will and may wonder what needs to be done. You will need to apply to the court to have the estate “probated”. To make this application you will need to locate the original Will (if applicable) along with a Wills Notice to the government, a search and also assemble a complete inventory of the assets and liabilities of the deceased.