

## WHAT HAPPENS IF YOU DIE WITHOUT A WILL

A Will is a document written by a person called a *testator*. In his or her Will, a testator appoints another person or persons as executor(s) and trustee(s). The executors and trustees are responsible to carry out the testator's wishes as set out in the Will, especially how assets are to be distributed to beneficiaries. If you die without a Will, no one may know what your wishes are; or if they do, your wishes are not enforceable. Also, there is no one appointed to carry out your wishes.

When a person dies without a Will, they are said to have died *intestate*. The *Estate Administration Act* of British Columbia sets out how an intestate's property will be distributed to beneficiaries – a sort of "default list" of beneficiaries. The Act also sets out the procedure to appoint a person or persons to manage the affairs of the deceased and effect the statutory distribution scheme.

The statutory scheme for distribution of an intestate estate is:

1. If the person dies with a spouse but no issue, 100% to the spouse;
2. If the person dies leaving a spouse and issue but the estate is worth not more than \$65,000.00, 100% goes to the spouse;
3. If the person's estate is worth more than \$65,000.00, the spouse gets the first \$65,000.00 and then the residue is divided between the spouse and the children in varying proportions depending upon the number of children;
4. In addition to the above rights, a surviving spouse may be entitled to a *life estate* in matrimonial property and all household furnishings;
5. If the person dies with no spouse or issue, the estate goes to his or her parents;

and so on down the line of next-of-kin of the deceased person.

However, it is not necessarily this simple. Some assets are not considered part of the "estate", and therefore they will not be distributed as set out in the *Estate Administration Act*. For example, an RRSP or RRIF will go to the named beneficiary or beneficiaries. This is true also for proceeds under life insurance policies or annuities. Assets registered in joint tenancy with another person will go to that other person (unless that other person is a child or in certain other circumstances, in which case more complicated considerations may apply).

When a person dies without a Will the court must appoint one or more persons to make sure assets are distributed properly as set out in the *Estate Administration Act*, debts are paid, income tax returns are filed for the deceased person, and other estate matters are looked after. Such persons appointed by the court are called *administrators*. Before appointing an administrator, the court will ask about his or her entitlement to act, if other family members consent to the appointment, if creditors consent, and certain other matters. The procedure is somewhat more complicated than applying for probate of a Will, and there may be delays and extra expenses.

Although there are rare occasions when, as a matter of tactical planning, a person might deliberately choose not to make a Will, it is usually easier for family and friends to deal with the estate of a deceased person where there is a proper Will and estate plan.

Ruth P. Magnusson  
February 2008