



# WILLS

## Matter

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### WE ARE EXPERIENCING TECHNICAL DIFFICULTIES

You may not be aware that there are many legal technicalities that must be followed when making a Will.

One such technicality is the rule that states: if a will is witnessed by a beneficiary or the spouse of a beneficiary, then any gift to that beneficiary will fail. This completely unintended deficiency can be devastating to a disappointed beneficiary.

This commonly occurs when an adult child assists an elderly parent to prepare a Will. Often that child signs the Will as a witness. Under the legislation any gift to that child will fail, as would any gift to that child's spouse (the son/daughter in-law).

This rule applies to both specific gifts (of articles or money) and to the residue (what is left) of the estate. If a specific gift, whether it be an article or money, to a beneficiary fails, that item would be included in the residue of the estate and would pass to whomever is entitled to the residual beneficiary. On the other hand, if a gift of the residue or part of it fails, the amount in question passes by intestacy, such that the entitlement to the gift will be determined by the Estate Administration Act, and not by the Will.

You can see how this simple technicality might greatly reduce a beneficiary's inheritance. In our example, if the adult child had two siblings and the residue of the parent's estate was to be divided between all three children, the gift of 1/3 of the residue to the first child would fail. The intended gift would pass by on intestacy and, under the distribution scheme of the legislation, the first child would then only receive 1/3 of 1/3, which was clearly not the testator's intention.

The 'ins' and 'outs' of this rule can be rather complicated, but the bottom line is that, if a beneficiary or the beneficiary's spouse acts as a witness to the Will, then the gift to that beneficiary will fail.

Even though Wills can be technically complicated, experienced Wills and Estates lawyers can help prevent these and similar problems from occurring.

### Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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BY DONALD KNAPP



BY DANIEL CARROLL



BY LEAH CARD



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## FULTON & COMPANY<sub>LLP</sub>

LAWYERS & TRADE-MARK AGENTS

### WILLS & ESTATES LAWYERS

DONALD KNAPP	LEAH CARD
DENNIS HORI	EDWIN MARK
RICK HENEY	DAN CARROLL



300 - 350 Lansdowne Street, Kamloops, BC Phone: 250-372-5542 Fax: 250-851-2300

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