

## 1) Marriage no longer invalidates a prior Will

- After a marriage, a previously-made Will is still valid
- Remember to make new Wills after you marry, to provide for your new spouse (and do a Power of Attorney)

## 2) Separation invalidates an executor appointment or gift in Will

- If spouses make Wills that appoint each other as Executor and make a gift to each other (usually of the "residue" of the estate), and then subsequently separate, this separation invalidates the executor appointment & the gift in the Will. This is the case, even if the spouses later reconciled.
- If you have separated in the past and then reconciled, consult a lawyer to add a codicil to your Will to address this.

## 3) Intestacy scheme is changed

### **If a person dies without a Will**

For those assets that are in deceased's sole name at death:

- Spouse receives a "preferential s":
  - \$300,000 (if there are children common to Deceased and spouse); or
  - \$150,000 (if deceased's children are not children of the spouse)
- After spouse's preferential share:
  - Residue divided ½ to spouse, ½ to children
- For the spousal home: the spouse may elect to take the spousal home as part of the spouse's share of estate

## 4) Multiple Wills Strategy / Corporate Will

- Allows you to have 2 Wills (using 2 different people as executors) to avoid cost of probate fees on certain assets (i.e. your private company shares)
- Common in Ontario, now accepted practice in B.C.
- Typically used for clients who have significant holdings in private companies (i.e., small business owners)

## 5) Appoint a trustee for Life Insurance, TFSA, RSP, RIF

- May now designate that funds will be received by a Trustee on behalf of the minor beneficiary
- Trustee may hold until age 19, but then must pay to the minor
- Avoids the funds being paid to and administered by the Public Guardian and Trustee
- Other option: consult a lawyer to draft a Trust to hold to a later age (i.e. 25 years old)

## 6) Gifts to children during lifetime

- Are not automatically deducted from inheritance
- Child will take inheritance without having to deduct \$\$ received during lifetime, unless Will specifically provides otherwise
- Your lawyer can draft a “hotchpot” clause for your Will to take previous gifts into account, and equalize funds received by each child

## 7) Court’s curative powers to declare a document a “Will”

- There are formal requirements to make a valid Will
- Court now empowered to order that a record, document, or writing be effective as a Will despite deficiencies in execution, attestation or other compliance aspects
- Includes data stored electronically, but must be capable of being read in visible form (not audio/video)
- TEST: if it is a final expression of wishes, and if the document can be connected to the will-maker
- Courts use this power conservatively (see experience in 6 other Canadian jurisdictions)
- Will increase litigation over issue of what was the last Will

For assistance with estate planning or administering an estate, contact a member of our experienced estate team at Fulton & Company LLP.



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