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The New *Wills, Estates and Succession Act* (“WESA”) and You

Beginning on March 31, 2014, the BC government has implemented the biggest changes in wills and estate legislation within the past 85 years: consolidated the various acts that governed the laws of wills and estate in the Province into one modern and comprehensive statute. The following are seven major elements of this new legislation:

1. Intestacy

- Where a deceased dies without a will and leaves a spouse and children, the division of estate upon intestacy has been modified under WESA.

	Old Law	New Law (WESA)
If all the children are descendants of the deceased and the surviving spouse:	\$65,000 + one-third (half, if one child) of the remainder of the estate	\$300,000 + half of the remainder of the estate
If there is at least one child from the deceased's former spouse:	\$65,000 + one-third (half, if one child) of the remainder of the estate	\$150,000 + half of the remainder of the estate

2. Factors Affecting the Validity of a Will

- Revocation: A will is no longer revoked by a subsequent marriage of the will-maker.
- Age requirements: WESA reduces the age requirement to make a will from nineteen (19) years old to sixteen (16) years old.
- Inter vivos gifts: Gifts made during the deceased's lifetime will no longer be considered as estate distribution.

3. Survivorship

- Under the old law, if two persons die together in an accident, the younger person is “deemed” to have survived the older person. Under WESA, a person who does not survive a deceased by five days will be deemed to have died before the deceased.
- Under WESA, if joint tenants die within five days of each other, then a tenancy-in-common arises and each interest is distributed as if the other joint tenant had predeceased.

4. Court will have an Increased Discretion to Correct Wills

- Under WESA, the court has a greater discretion to ensure that a deceased's last wishes are carried through, even where the document containing those wishes may not meet the formal validity requirements.
- For example, the court may consider evidence from lawyer's notes or a copy of a will.

5. Simple And Complex Estate Administration

- WESA differentiates the procedures for administering simple or complex estate.
- The following are examples of simple estate:
 - there is no challenge that the will is the last will of the deceased;
 - the formal execution requirements for the will have been met;
 - the will does not contain handwritten corrections; and
 - the will does not refer to other unknown documents.

6. Transition to New Rules

- This Act applies to the estate of any deceased whose date of death is after WESA came into force on March 31, 2014.
- New probate forms should be used for all submissions made after March 31, 2014.

7. Necessity to Redraft Will?

- If your testamentary wishes remain the same, then it is not necessary to redraft your will, as your will remains valid after WESA came into force.
- If the following scenarios apply to you, you may consider making a new will:
 - (a) If you wish to bequest specific properties or assets to certain individuals, and the properties or assets involve associated liabilities such as mortgage or lease payments, then the beneficiary of the properties or assets will also inherit the associated liabilities.
 - (b) If you wish to give a sum of money from your estate to an individual, and you have already given him/her part or all of the gift while you are alive, then you may consider revising your will to take that into account.
 - (c) If you wish to give a portion of your estate to a creditor as a repayment of debt, then you should specify the same in your will, otherwise under WESA, your testamentary gift will not be considered as a debt payment.
- The above scenarios serve as examples only. You may discuss with your lawyer regarding your specific testamentary wishes and arrangements.