

Dying Without a Will

What law in BC governs if No Will?

The [Wills, Estates, and Succession Act](#) (WESA) is the law in BC that outlines what happens if someone dies with No Will.

- WESA came into effect March 31, 2014.
- If someone died with No Will before WESA came into effect, the previous legislation applies.
- BC laws for Wills and Estates may not apply in the same way for indigenous peoples, see p. 10.

Is someone capable of making a Will?

Nidus strongly recommends going to a lawyer or notary public to make a Will if you meet the requirements. No one can make a Will on your behalf. You need to cognitively understand what a Will is about and who might expect to inherit (like your spouse and/or your children). To read more details on the legal requirements in BC, click [Tips on Making a Will](#).

*Some people will not be able to make a Will.
Some people will not be able to change their Will.*

What is the purpose of THIS fact sheet?

This fact sheet gives general information about **when someone dies with No Will**. In legal terminology, this is called 'Intestate Succession.'

- Intestate means dying without a Will.
- Succession refers to the rules about how the estate of the deceased (the person who died) is divided and who can inherit if there is No Will.

Could there be a Will?

If there is any possibility that there is a Will, do a search of the BC government Vital Statistics [Wills Registry](#). You might also want to check if a copy is stored in the [Nidus Registry](#).

What if there is a Will, but no executor?

Sometimes there is a Will but there is no one to be the executor (maybe the executor died or does not want to do it).

In this situation, someone becomes the administrator to fill the executor's role. This is called 'Administrator with Will annexed.'

If all the beneficiaries listed in the Will are deceased, then the administrator will follow the rules for distribution of the deceased's estate as if there is no Will.

What are the key tasks when someone dies with no Will?

The main issues to deal with when someone dies with no Will in BC are:

- ❑ **Arrange** for what happens to the deceased's body (usually **burial or cremation**). Who has the legal right to decide this if there is no Will is spelled out in legislation—see page 2.
- ❑ **Decide who will be the administrator**. This is the title or role of the person who acts like the executor. This step is often done at the same time as the next two steps—see page 4.
- ❑ **Determine** the estimated **gross value of the deceased's estate**. More on page 4.
- ❑ **Determine** if a **Grant of Administration** is required (usually determined by the gross value). The Grant is obtained by submitting specific forms to the Supreme Court of BC Registry. When approved, the Court Registry will issue official paperwork authorizing the administrator to act.
- ❑ **Administrator completes tasks** that an executor would do. See page 6.
- ❑ **Distribute** the balance (after expenses) of the deceased's estate according to the **legal scheme for who inherits if no Will**. There are specific rules. See examples:
 - > Spouse and/or descendants - pages 7-9
 - > No spouse and no descendants - pp 9&10

First things first

When death is at hand

- If relevant, the BC Transplant Team will check about possibility of organ donation.
 - People can decide this in advance. To be valid, it must be registered at [Transplant BC](#). Next-of-kin may be asked to confirm it.
 - If no registration, next-of-kin may be asked to give or refuse consent for organ donation.
- Sometimes instead of organ donation a person makes their own arrangements in advance for body donation to a research facility.

Immediate tasks **after death**:

- 1) Someone needs to make sure the deceased's personal and financial effects are kept safe. (This would be a task of the administrator but may not be able to wait until determine who.)
 - > Safekeep the wallet/purse and contents, mobile phone, vehicle.

- > Check on insurance coverage and storage units.
 - > Identify and secure locks and keys.
- 2) Check if deceased arranged for body donation.
- 3) Check if deceased was a member of Memorial Society and gets discount on funeral costs or if deceased pre-paid funeral costs.
- > If yes, find out where to go for discount.
 - > If pre-paid funeral, did they specify burial or cremation in the 'pre-need contract?'
- 4) Arrange for cremation or burial. There is legislation about this. See heading below.
- > The circumstances of death may require an autopsy to be done first. Or, a spouse or immediate next-of-kin might request an autopsy to be done (for a fee).
 - > Obtain death certificates.
- 5) Public announcement. No legislation for this.
- > It is common to publish a notice of death or obituary of the deceased - including suggestions for donation.
 - > Often the family notifies relatives, friends, employer, work colleagues, community groups and faith community of the deceased.
- 6) Remembrance service. No legislation for this.
- > Sometimes people say they do not want any service after they die. The intent may be to save fuss or money, but it may not be helpful to survivors.
 - > It can be very important for survivors (even work colleagues) to have a way to express their grief. The decision about a service is often made by survivors. The service could be a gathering on the beach or in the forest. It does not have to be a formal event.
 - > While the deceased's wishes about having a service are not legally binding, survivors try to be respectful and honouring in choices of music, setting, readings, etc.

ARRANGE BURIAL OR CREMATION

Who decides about burial or cremation if there is No Will?

In BC, section 5 of the [Cremation, Internment and Funeral Services Act](#) lists who can make decisions about burial and cremation (unless the body is donated for research).

Executor is top of the list, but if there is No Will (or a Will but no executor) the right to decide, in order of priority, goes to:

1. The spouse of the deceased (see definition p.3);
2. An adult child of the deceased (see definition);

3. An adult grandchild of the deceased;
4. A parent of the deceased;
5. An adult sibling of the deceased;
6. An adult nephew or niece of the deceased; or
7. An adult next-of-kin of the deceased, such as grandparent, aunt, uncle, cousins.

If more than one person in a category is eligible (for example, three adult children) they can come to an agreement; if they cannot agree, the priority goes to the eldest of them.

If no one above is able or willing, the right goes to:

8. The BC government Minister responsible for the Employment and Assistance Act (today called the Ministry for Social Development), or
9. The Public Guardian and Trustee (PGT) who acts for the government/state or
10. An adult with a personal connection to the deceased, such as a friend.

If there is no spouse, family, or friends practical tasks are often done by staff of the care system.

Sometimes the police, hospital, care facility or coroner may refer the deceased and estate to the [Estate and Personal Trust Services of the PGT](#) because there is no known family or involved friends. The PGT tries to locate next-of-kin. If there is no one available, the PGT may decide to act as administrator or may decide not to.

Who pays for the burial or cremation?

The costs for burial or cremation come out of the deceased's estate. The funeral home staff know options for payment or reimbursement.

- Sometimes, the deceased may not have a Will but pre-paid some funeral costs or joined the Memorial Society to get a discount.
 - A common problem is that survivors often do not know and may end up paying again or not getting a discount.
 - Nidus recommends using the [Nidus Registry](#) (Other Document section) to store copies of any pre-arrangements.
- A spouse or family member may pay the bill(s) out of their own pocket and get reimbursed later, from the estate.
 - Keep the bill or receipt as proof of payment and give it to the administrator as paying expenses is one of their tasks.
- If no one can cover the costs out of their own pocket, and if the deceased has enough funds in their bank account, the deceased's financial institution will usually pay the funeral home bill from the deceased's bank account.
 - Do NOT pay the bill and then ask for reimbursement. Take the unpaid invoice or bill to the financial institution.

- If the financial institution will not pay the bill, this may be a sign that there are not enough funds in the deceased's account. The funeral home staff may have suggestions.
 - You might be able to arrange payment or reimbursement from the federal government Death Benefit entitlement.
 - Check the [PGT website FAQs](#) about options.

NOTE: Funeral homes often give out information on next steps. This may include instructions to notify the deceased's financial institution and stop any income such as Old Age Security, Canada Pension, or other government benefits.

How many Death Certificates to order?

The funeral home usually provides Death Certificates. You can also order them from [Vital Statistics](#). How many are needed?

Times have changed.

- In the past, everything was done with paper (hard copies) and by regular mail. This required getting a number of Death Certificates. There is a fee for each one as they are originals.
- Today, you may only need a couple of originals as you may be able to use fax or scans for some purposes. In other cases, like a financial institution, you can present the original and they will make a true copy (photocopy of the original) for their own files.

Never give away your last original.

- You might need to get certified copies—a true copy of an original.
 - Service Canada staff, like the financial institution, can do this for their programs for free. Others may also do this. You can also pay a legal professional to do this.

Dealing with the financial institution

When you tell the deceased's financial institution about the death:

- The name of the deceased's bank account is changed to 'the estate of XYZ.'
 - The funds will be 'frozen' until there is an administrator — someone to take on the legal role and settle the estate.
- The financial institution can be helpful in arranging for the stopping and, if necessary, the return of income received by direct deposit (like government benefits).
- Depending on the balance in the deceased's account, the financial institution will generally pay regular expenses until the administrator is able to stop the service and the charges. For example, monthly Hydro or phone bills.

What is WESA's definition of spouse?

The term spouse is important for the list of who can decide about burial or cremation, who has legal authority to settle the deceased's estate and who is entitled to inherit and how much, when there is no Will.

WESA defines spouse as two individuals who at the time one of them died:

- Were legally married, or
- Lived in a marriage-like relationship (common-law) for at least two years.

WESA sets out conditions for when a couple are no longer considered spouses in section 2(2).

If the change of spousal status is recent, you may find that institutions want some proof that a marriage or marriage-like relationship has ended. It has to do with who is entitled to inherit.

NOTE: Be careful, different laws have different definitions of spouse. WESA does provide that there could be two surviving spouses.

What does the term adult mean?

The term adult is used for the list of who has legal authority to decide about burial or cremation. In BC, the age of adulthood is 19 years. Minor refers to a child under 19.

What is WESA's definition of child/parent?

The definition of child and/or parent is important for who is entitled to inherit and how much, when there is no Will.

WESA defines a child and/or parent as related by birth or adoption. In-laws and step-children or step-parent by marriage are not counted. Fostering or home sharing relationships are also not included.

DECIDE WHO WILL BE ADMINISTRATOR

Determining who will be the administrator is often done when determining the gross value of the deceased's estate and determining if a Grant of Administration is required.

If a Grant is not required (the estate is small), the administrator is usually the spouse or relative of the deceased who volunteers or someone selected by other relatives. This process is more informal, with everyone cooperating.

If a Grant is required, specific forms must be submitted to the Supreme Court Registry. It will be necessary to list who will be the administrator. This is a more formal procedure.

Who can be the administrator?

Essentially anyone can be the administrator; usually it is the spouse or a relative of the deceased.

Sometimes it is the same person who decided about the burial or cremation, although this does not have to be the case.

Not everyone is suited to the role of administrator — it requires time, patience, comfort with paperwork, and attention to detail.

Sometimes others believe that being the administrator gives more control and power — not true. The administrator has many tasks to do; it is time consuming work.

Can there be two administrators?

Yes there can be more than one administrator. More than one administrator can be listed on an application for a Grant of Administration but only one address is used for correspondence.

Having multiple administrators can create more work and delay. People can help the administrator without being formally named.

Can the administrator receive a fee?

Yes the administrator can receive a fee. The [BC Trustee Act](#), section 88, provides that if there is a Grant of Administration, an administrator is allowed a fee related to the value of the estate, as well as an annual fee and a maintenance fee. Fees are paid out of the deceased's estate and are taxable.

For small estates not requiring a Grant, those entitled to inherit can agree on the administrator's fee. If there is disagreement the administrator must apply to the Supreme Court of BC. This cost of court action might not be worth it for a small estate.

DETERMINE GROSS VALUE OF ESTATE

The gross value of the estate generally consists of property the deceased owned at death and its fair market value.

The gross value (unlike net value — discussed later) does not include debts, taxes or expenses owing, although it is helpful, if known, to also estimate what is owed and to whom.

What is part of the estate?

In legal terms, property is defined very broadly. It includes real estate (called real property), cash, investments, personal effects, and vehicles. Don't forget about valuing contents of bank accounts, safe deposit box, and storage units.

Did the deceased own a business? Are there mobile devices and equipment—for business and/or personal use?

If valuable, items such as books, tools, artwork and stamp or coin collections would be listed and valued separately. If not significant in value, they can be included under personal effects.

If the deceased had a Registered Disability Savings Plan, any funds left in the RDSP is counted as part of the estate. Check on requirements for any re-payments or reporting. The RDSP is not intended for estate inheritance, it is intended for the benefit of the individual while they are alive.

Check for property owned in and out of BC.

Spousal home? Part of estate?

Determine if there a spousal home and most important, if it is part of the deceased's estate.

A spousal home is where the deceased and their spouse ordinarily lived.

Perhaps the deceased and spouse were renters. Perhaps the surviving spouse rented from the deceased. To check on tenant's rights, contact the [Tenant Resource & Advisory Centre](#) (TRAC).

WESA states the spousal home is part of the deceased's estate if the deceased:

- Was the only owner (the only name on title) of the spousal home and did not lease (rent) it to another person; or
- Owned the spousal home joint as a 'tenant-in-common' and did not lease it to another person; or
- The spousal home is a manufactured home and the land it is sitting on is not owned by the owner of the manufactured home.

WESA has specific provisions for a spousal home on Nisga'a lands and treaty lands.

If the spousal home is part of the deceased's estate, only a surviving spouse has the right to acquire or purchase the deceased's interest. The surviving spouse has up to 180 days to decide—from the time the Grant of Administration is issued. They can ask the Court for an extension based on hardship.

- If the value of the surviving spouse's share of the estate is greater than the value of the spousal home, the spouse may acquire ownership of the home as part of their share; or
- If the value of the spouse's inheritance share is less than the value of the spousal home, the spouse has the right to purchase the remainder of the deceased's interest in the home.

The surviving spouse is responsible for occupancy costs while living in the spousal home until it is acquired.

There are many definitions and rules regarding a spousal home. For example, written notice must be given to others entitled to inherit. If there is a dispute about the fair market value of the spousal home, the Supreme Court of BC can decide. You likely need knowledgeable and experienced help in such cases.

What is NOT part of the estate?

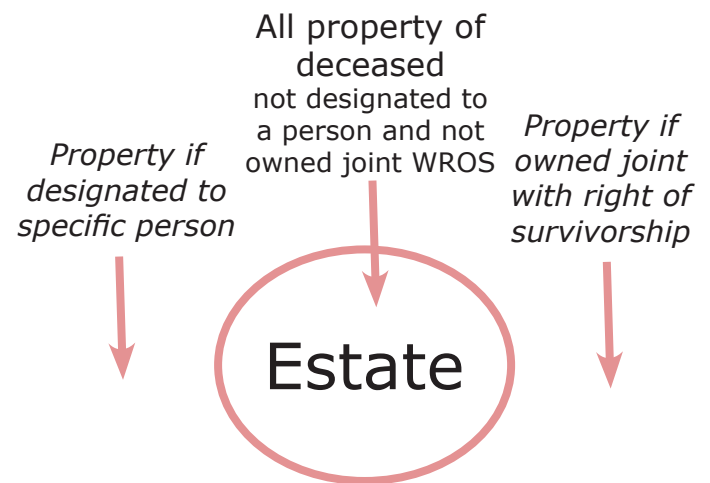
A person may make some arrangements before they are deceased and these can affect their estate. These arrangements have to be done in advance of death; and usually by the person themselves when cognitively capable/competent.

If the deceased owned an investment (like a Tax Free Saving Account) or policy that they designated to a specific person (beneficiary) this is NOT counted as part of the deceased's estate. The benefit goes directly to the designated person.

If the deceased owned property (like a vehicle or real estate) jointly with right of survivorship (WROS), this is NOT part of the deceased's estate. The deceased's ownership goes directly to the survivor(s)/other owner(s). The deceased's name is not automatically removed from the title as a joint owner WROS — action must be taken by the surviving owner(s).

Joint bank accounts WROS owned with someone other than a spouse may or may not be counted as part of the estate. There were two court cases in the Supreme Court of Canada in 2007 that called this into question. Some financial institutions made changes to address this.

If the deceased owned real estate, anyone can do a Land Title search to see if it is owned solely by the deceased (part of estate), or owned joint as Tenant's in Common (part of estate) or owned joint WROS. There is a fee to search.



DETERMINE IF GRANT OF ADMINISTRATION IS AUTOMATICALLY REQUIRED

When is a Grant mandatory?

A Grant of Administration is required if any of the following apply to the deceased's estate:

- Estimated gross value is \$25,000.00 or more.
- There is real estate (not owned joint WROS).
- The deceased has a fishing license registered with the federal Department of Fisheries.

A Grant of Administration is generally NOT required for settling small estates (where none of the above applies).

What is considered a small estate?

It is common practice that if the gross value of the deceased's estate is **less than \$25,000.00** (the amount used to be 'less than \$10,000') it is considered a small estate and a Grant of Administration is NOT required.

- This is a policy—it is not in law. Different institutions may have different policies.
- A Death Certificate and next-of-kin details may be enough to settle a small estate.
- It may help if the deceased and you already had a positive relationship with the relevant institutions and they are aware the deceased had limited income.
 - Maybe you were helping the deceased with financial matters while alive - as an attorney appointed in an Enduring Power of Attorney or a representative named in a Representation Agreement with authority for routine finances from section 7.

A financial institution or an employer or other institution like the Canada Revenue Agency may refuse to provide information needed to estimate the gross value of the deceased's estate unless there is formal authorization.

This requires applying for a Grant of Administration, regardless if the estate is small or mostly made up of debts.

- Refusal may happen if there is doubt about who may inherit (for example, questions about the status of a spouse if divorce papers were not finalized) or years with no tax returns.
- Refusal could also happen if there are different requests from different next-of-kin. This could indicate conflict and discord and suggests inability to agree on an administrator.

Who can apply for a Grant?

WESA says the following people may apply, in order of priority, for a Grant of Administration:

1. Spouse of the deceased;
2. Someone nominated by the spouse;
3. Child of the deceased with consent of majority of deceased's children;
4. Someone nominated by child of deceased with consent of majority of deceased's children;
5. Child of the deceased without consent of majority of deceased's children;
6. Other relative of the deceased (related by birth or adoption); or
7. Anyone, including a friend of the deceased, a lawyer, or the PGT.

NOTE: A spouse or next-of-kin or friend may apply to be the administrator and hire help for specific tasks or they may hire someone (like a lawyer, accountant or other expert) to be the administrator. Having a knowledgeable advisor or experienced administrator is especially helpful if the estate has a high value or has complexities such as real estate, businesses, creditors, tenants, or family conflict. Fees would be paid from the deceased's estate.

What is the procedure to apply for a Grant of Administration?

There are many different forms to be completed when applying for a Grant of Administration. These forms are related to [Part 25](#) of the Supreme Court of BC rules.

The procedures and forms for applying for a Grant of Administration are not user-friendly for the public.

The BC government website has a [list of forms](#). Most typical are P5, P10, P9, P1 and P2.

Some of the forms have to be affidavits (sworn oaths). You can take the filled out forms to the Supreme Court Registry (where you have to submit them) and ask a commissioner for the court to take your sworn oath. Do NOT sign or date the forms that need to be affidavits.

Click for a list of [BC Supreme Court Registries](#).

One of the steps in applying for a Grant is to show proof of a **search** of the BC government-run [Wills Registry](#). Even if you know there is no Will, the law requires proof of a search. You submit the proof of search when you submit the forms to apply for a Grant of Administration.

Another step that is required is to give **notice** to the [Public Guardian and Trustee](#) if a person who might inherit is:

- a minor (under 19 years old); or
- an adult (19 years or older) who would be considered mentally incompetent (has cognitive difficulties to understand) under the Patients Property Act - which is based on a traditional approach to capability as used for Committeeship/Adult Guardianship.
 - Be sure to mention (provide a copy) if the adult has a Representation Agreement with authorities from section 7. The RA7 is based on a different (non-traditional) approach to capability.

Fees for the Grant are based on the gross value of the deceased's estate (roughly 1.4%) and are related to form P10. The fees for Grant of Administration are the same as fees for Grant of Probate (probate is the term used if there is a Will and executor). See [BC Probate Fee Act](#).

If the application is complete and not opposed, the BC Court Registrar will issue a Grant of Administration and the administrator can begin their tasks (see next heading).

TASKS OF ADMINISTRATOR

What are the key tasks of an administrator?

Do NOT start paying debts or distributing the estate immediately — review the tasks and priorities. Paying debts, taxes, fees (including the administrator's fee) and expenses are done first then whatever is left in the estate can be distributed.

If a Grant is required, some tasks must be done in a specific way and reported on specific forms submitted to the Court Registry.

Here are common tasks of an administrator:

- Ensure the deceased's property is safe and secure (get special insurance coverage?);
- Locate and notify those entitled to inherit. Did the deceased have a 'secret' family?;
- Notify the surviving spouse of their right to acquire and purchase the deceased's interest in the spousal home (if applicable);

- Identify and notify creditors who may be owed compensation from the deceased;
- Identify and value items the deceased owned, and protect these until they are needed to pay debts and for distribution;
- Pay the deceased's debts and, if necessary, sell items the deceased owned to do this;
- Apply to Service Canada for the CPP Death Benefit (if applicable);
- File a final tax return for the deceased;
- Pay expenses including legal fees, administrator's fee and accounting fees;
 - Expenses may also include obituary notices, flowers, service, Death Certificates.
- Calculate Net Value of deceased's estate (see below) and distribute to those entitled to inherit;
- Keep a record of all activities related to administration of the estate. These may need to be reported and an accounting provided to those entitled to inherit and/or to the Court.

Administration of an estate may take time. It is a good idea for the administrator to keep in communication with those entitled to inherit. Sometimes people think that if an estate is small, it can be settled quickly. This is not necessarily possible.

NOTE: One reason settling an estate takes time is because administrators (like executors) may want to wait until the Canada Revenue Agency (CRA) issues a 'clearance certificate' before distributing the remainder of the deceased's estate. This certificate from CRA indicates no more tax is owing and the file is closed.

DISTRIBUTE BALANCE OF DECEASED'S ESTATE ACCORDING TO RULES FOR INHERITANCE

The amount to distribute if there is no Will is based on the **Net Value** of the deceased's estate.

How is Net Value Calculated?

The Net Value of the deceased's estate is calculated by taking the Fair Market Value of what the deceased owned (in and out of BC), less (minus) the value of the household furnishings and less (minus) expenses.

Who is entitled to inherit if no Will?

WESA outlines the requirements for inheritance (succession) when someone dies with No Will (intestate).

The rules of intestate succession cannot be changed or waived.

NOTE: WESA does NOT impose qualifications on those entitled to inherit where there is no Will - for example, there is no requirement that those entitled to inherit be in contact with the deceased within the past 12 months before death. WESA rules for inheritance where there is no Will, are based on next-of-kinship. Be careful not to apply requirements from other laws to WESA and vice versa.

SURVIVING SPOUSE & DESCENDANTS

Following are the rules of intestate succession where there is a spouse and/or descendants, see examples for Mary starting on page 8.

What if a spouse & NO descendants?

If there is only a surviving spouse and no living descendants of the deceased, then the entire deceased's estate (less expenses) goes to the surviving spouse.

Deceased → Spouse

Spouse inherits everything if no descendants.

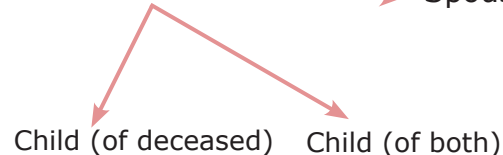
What if spouse & descendants?

Descendants refers to children, grandchildren, great-grandchildren, great-great grandchildren and so on of the deceased. Think of **descending** (going down) the deceased's family tree.

Sometimes descendants are referred to as 'the issue' of the deceased.

It makes a difference if descendants are only descendants of the deceased or if they are descendants of both the deceased and surviving spouse.

Deceased → Spouse



Deceased's estate is divided between spouse and the deceased's descendants.

The spouse is treated with priority.

What does priority for spouse mean?

If there is no Will, but there is a surviving spouse and living descendants, **the spouse gets priority** consideration.

For small estates (gross value is less than \$25,000.00), the surviving spouse will inherit the entire deceased's estate (less expenses).

For larger estates, the surviving spouse is entitled to:

- The household furnishings (of the spousal home); and
- A **preferential or priority share** of \$150,000 or \$300,000, if the net value of the estate is the same amount or more (see next heading for details); and
- Half of the remainder of the net value of the estate (after the preferential share and household furnishings are distributed).

How is preferential or priority share calculated for surviving spouse?

If ALL living descendants (for example, the children) are related, by birth or adoption, to BOTH the surviving spouse and the deceased, the preferential share to the surviving spouse is \$300,000.

If one or more living descendants are related, by birth or adoption, to ONLY the deceased, the preferential share to the surviving spouse is \$150,000.

If the net value of the estate is less than the preferential share, the surviving spouse inherits the entire estate. For example, if the net value of the deceased's estate is calculated to be \$75,000, the surviving spouse gets it all.

Examples for Mary

Mary put off making a Will. Her dementia advanced to a stage where she has cognitive difficulties and is not able to meet the requirements for being mentally capable to make a Will.

Although Mary is not capable to make a Will, she is able to make a Representation Agreement with authorities from section 7 (RA7ALL) so she has help with decisions affecting her quality-of-life.

VALUE AND CONTEXT OF MARY'S ESTATE

Mary and her spouse, John, sold their home when Mary was first diagnosed with dementia. They invested the proceeds from the sale and lived together in an assisted living residence. Later, Mary needed more personal care and moved to a facility that provided 24/7 services.

Mary dies with No Will. Her estate is distributed according to the rules of intestate succession.

The net value of Mary's estate is \$500,000.

If only a surviving spouse: John inherits everything. (John can give some or all of the inheritance to charity, other relatives, or it will be distributed according to his Will, if he made one.)

Eg. Mary is survived by her spouse and descendants:

John (as the spouse) inherits:

- The household furnishings,
- A preferential share of \$300,000 (as the descendants, Anne and Tom, are the children of both Mary and John) and
- Half of the rest of the estate = \$100,000.

Anne and Tom (as living first level descendants) inherit:

- Half of the rest of Mary's estate, divided equally – $\$100,000 \div 2 = \$50,000$ each.

(John and/or Anne and/or Tom can give some or all of their inheritance to any grandchildren and/or other relatives, friends, staff, charity.)

Eg. Mary is survived by her descendants:

Anne and Tom (as living first level descendants) inherit:

- Half of net value of Mary's estate, divided equally – $\$500,000 \div 2 = \$250,000$ each.

(It is up to Anne & Tom if they share their inheritance with others).

Eg. Mary is survived by her descendants:

Tom (as living first level descendant) inherits:

- Half of Mary's estate \$250,000.

Anne is deceased so her half of Mary's estate goes to her two living children who inherit:

- Half of Mary's estate (Anne's share), divided equally – $\$250,000 \div 2 = \$125,000$ each.

Deceased (Mary) – ~~Spouse~~ (John)

Mary's children
~~Anne~~ & Tom

Anne's children get Anne's share
(Anne's spouse does not inherit from Mary)

Eg. Mary is survived by her descendants:

Tom and Anne are both deceased so descend to next level of living descendants. Tom and Anne have children so their half share goes to their children.

- Anne's two children inherit Anne's share divided equally – $\$250,000 \div 2 = \$125,000$ each.
- Tom's one child inherits Tom's share of \$250,000.

If Mary does not have a living spouse or living descendants, see the information and examples on pages 9 & 10.

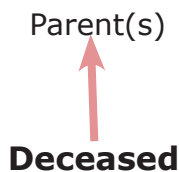
NO SPOUSE AND NO DESCENDANTS

Following are the rules of intestate succession where there are no spouse and no descendants.

The WESA scheme for intestate succession ends at the 4th degree of relationship to the deceased (this limit does not apply to descendants of the deceased). If there is no one to inherit under the WESA scheme, the deceased's estate goes to the BC government under the [Escheat Act](#). This Act allows a time period for any relative of the deceased (beyond the WESA scheme) to apply for the estate.

Who inherits if no spouse or descendants?

If there is no surviving spouse and no descendants, then you will **ascend** (go up) the family tree of the deceased to determine who inherits. Check for a living parent(s) related to the deceased by birth or adoption.



If both parents are living, deceased's estate is divided equally between them. Does not matter if parents are divorced or estranged. If only one parent is alive, that parent gets everything.

If no living parents, then check for descendants of parent(s) (siblings of deceased, related by birth or adoption).



If both parents are dead, estate is divided equally among deceased's siblings. If sibling is dead then the sibling's share is divided equally among sibling's children.

Examples for Bruce

Bruce is an adult with a disability from birth. His disability affected his cognitive abilities. He was considered not mentally capable to make a Will.

Although he did not communicate in a traditional way, Bruce had an active and full life. He made a Representation Agreement with authorities

from section 7, which allowed the people who knew and cared about him to help him access government benefits and participate in activities for his quality-of-life. For example, they helped Bruce pursue his interest in photography (buy and use a digital camera). The idea is for Bruce to spend HIS money while he is alive.

With the help of his representative, Bruce made donations to his favourite causes and set up a Registered Disability Savings Plan (RDSP). When he was older, the RDSP gave him extra funds for things like vitamins, dental work and regular physiotherapy treatments. It also covered the cost of a special mattress when he was bedridden.

VALUE AND CONTEXT OF BRUCE'S ESTATE

The net value of Bruce's estate is \$6,000 - from money in his bank account and in the RDSP. Bruce does not have a spouse or descendants.

Eg. Bruce is survived by his parents, June and Sven, Bruce's estate is divided equally - $\$6,000 \div 2 = \$3,000$ each (One or both parents can give some or all of their inheritance to charity, other relatives, or let it become part of their estate and distributed according to their Will, if they made one.)

Eg. Bruce is survived by only one parent, that parent inherits all of Bruce's estate. (It is up to that surviving parent if they share the inheritance with others.)

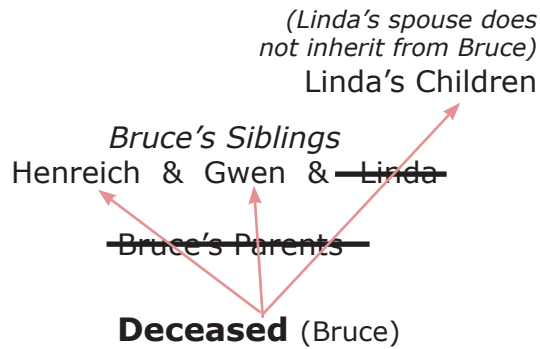
NOTE: *Let's say Sven died and June has another spouse. If June's spouse does not adopt Bruce then June is the only surviving parent and inherits all of Bruce's estate. Let's say June and Sven divorce. They are still both Bruce's parents by birth. BUT if June or Sven are in another spousal relationship and the other spouse adopts Bruce, then Bruce has two parents - one from birth, the other from adoption. When Bruce is adopted the biological parent signs papers to consent to adoption and gives up their parental rights.*

Eg. Bruce is survived by his three siblings Henreich, Gwen and Linda, Bruce's estate is divided equally. $\$6,000 \div 3 = \$2,000$ each.

Eg. Bruce is survived by two of his three siblings and the deceased sibling has a child or children (see diagram top page 10):

- Bruce's two living siblings (Henreich & Gwen) inherit 2/3 of Bruce's estate - \$2,000 each.
- The deceased sibling's (Linda) share (1/3) is divided equally among that sibling's living children. (If the deceased sibling did not have children, the two surviving siblings would divide Bruce's estate equally - \$3,000 each).

Diagram for example bottom page 9.



Eg. As you can tell by examples for Bruce, you ascend (go up) one level at a time. But only to the 4th degree of relationship. To continue from examples on previous page, the WESA scheme would stop after Bruce's great nieces/nephews; then go to next level and check for any living grandparent(s) of Bruce and if none, then their descendants - Bruce's aunts/uncles and if none, then descendants of aunts/uncles (stop after Bruce's first cousins). Next would be Bruce's living great-grandparents, if none, then descendants of great-grandparents (stop after great-aunt/uncle).

FREQUENTLY ASKED QUESTIONS

Am I personally liable as administrator?

As an administrator, you are not personally liable (responsible) to pay the debts of the deceased. As long as you act honestly and reasonably, you are less likely to be held responsible for any small mistake in the course of following your duties, even if it causes a loss to the estate. It is when you ignore or deliberately act against your duties that you may be held personally liable.

When would the Public Guardian and Trustee (PGT) administer the estate?

The Public Guardian and Trustee (PGT) may consider administering the estate if there is no one else willing or able to do so. The PGT will only be administrator if the estimated net value of the estate will cover the costs of burial or cremation and the PGT fees-for-services.

Contact the PGT before referring an estate, 604.660.4444 or estates@trustee.bc.ca

I thought a surviving spouse could live in the spousal home until their death?

WESA changed some rules for what happens to the spousal home. The changes, proposed by lawyers, are designed to make things better.

RESOURCES & ACKNOWLEDGEMENTS

Where to get more information?

- See **PGT website** about [Estates](#)
- Some **indigenous people** may be governed by the federal Indian Act and can get personal help with making a Will and settling an estate. Call 604-775-5100 or 1-888-917-9977 or BCestates@aandc-aadnc.gc.ca
- **Nidus Resource Centre** has free information, stories and videos at nidus.ca
 - This fact sheet is about what happens after death. There are legal documents adults can make that authorize someone to help with health decisions and finances while alive. Nidus calls this personal planning.
 - In the examples of Mary and Bruce, you read about BC's special legislation that provides a more level playing field for personal planning than for making a Will. Adults who have cognitive difficulties and nothing in place, may make a RA7 even if they cannot make a Will.
- **Nidus Registry** is an online service that offers a secure place to store important information and documents and make them available to others - [Sign Up](#) to set up your Nidus Registry Account.

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- Deidre Herbert, Barrister & Solicitor, [McLellan Herbert](#) (Also served on the Succession Law Reform Project that made recommendations for WESA.)

Reference material:

[The Law Society of BC, Practice Material: Wills](#), for the Professional Legal Training Course (2018).

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