**What is a will?**  
A will is a document which states what you want done with the assets that you own when you die. These assets typically consist of real estate, money, investments, and personal or household belongings that you own. You can change your will at any time and it has no legal effect until you die.*To read more click here*

**A will doesn’t deal with certain assets**  
A will generally doesn’t cover assets that you don’t own at your death. For example, a joint bank account or a house owned in joint tenancy has a “right of survivorship” and will be owned by the joint survivor when you die. Also, a will does not apply to assets like life insurance, RRSPs, RRIFs and TFSAs, where you have already designated a beneficiary.

**A will is only one part of an overall estate plan**  
There are opportunities to transfer assets to beneficiaries outside of a will, without tax and other cost consequences. This is called “estate planning” – discussed at the end of this script.

**In a will, you name a person or company to be the “executor”**  
The executor is responsible for:

* safeguarding the estate
* gathering up your assets
* paying your debts (including income taxes)
* dividing what remains of your estate among the “beneficiaries” (the people named in your will to receive a share of your estate)

**How should you choose an executor?**  
Choose an executor you trust and who will likely still be alive when you die. He or she may be a trusted family member or friend; it helps if he or she is also a good book keeper and communicator. Most important, the person must be willing to take on the duties of executor.

If you like, you can appoint more than one executor who can act together as co-executors. You should also appoint an alternate executor if the first executor isn’t able to act. If you have a complex estate or investments or need someone to take over the operation of a company, you should name a professional executor who may be a lawyer, accountant or other professional. Trust companies also accept executor appointments if the estate is big enough.

**If you have minor children, appoint a guardian in your will**  
If you’re a guardian of a minor child, the new Family Law Act (which came into effect in March, 2013) allows you to appoint someone else to be the child’s guardian in your will. Also, if you are terminally ill or facing a permanent mental incapacity, you can appoint a “standby guardian” who will continue to be the child’s guardian after your death (unless you state differently).

It’s especially important that you name a guardian if you’re a single parent. For separated parents, it’s best to reach an agreement on the choice of a guardian if one or both of you die. Where that’s not possible, it’s important to consider the parenting responsibilities you have (through either a court order or separation agreement) and ensure that you include those responsibilities as part of the guardian appointment in your will.

Although your choice of guardian is important, the court doesn’t have to follow your wishes and may appoint a different guardian if this would be in the child’s best interests. And the court will consider the wishes of any child 12 or older. You should therefore check with an older child about their wishes before deciding on the appointment of the guardian in your will.

The guardian’s job is to look after your minor children, and he or she may in turn appoint a replacement guardian. But the guardian generally doesn’t have any rights to look after a minor child’s property – the guardian can only receive and hold a minor child’s property or money if it’s worth less than $10,000. You should therefore appoint a trustee to manage a minor child’s inheritance.

**What happens if you don’t make a will?**  
When there’s no will, your net estate is distributed to your next of kin according to rules in BC’s statutes.

For a death before March 31, 2014, the rules in Part 10 of the Estate Administration Act apply. If you die after March 31, 2014, the rules in Part 3 of the Wills, Estates and Succession Act apply.

For more information, refer to script [177](http://cbabc.org/For-the-Public/Dial-A-Law/Scripts/Wills-and-Estates/177) on “What Happens When You Die without a Will?”

**It’s important to make a will properly**  
You should have your will professionally prepared, as a will is a complex legal document. To make an effective will requires a good understanding of property ownership rules and the law about wills. There are rules and formalities that must be followed, no matter how simple the will, otherwise the will may not be valid. And the words used must be chosen carefully so the will is clear and unambiguous. If the formalities are ignored or the terms of the will are unclear, there will be extra legal costs taken from your estate to get court orders to fix the problems, and the court may not be able to remedy all problems.

**Your will can be changed after you die**  
If your will doesn’t properly provide for your spouse or children, they can make a claim to have your will varied or changed by the BC Supreme Court. Until March 31, 2014, this claim is made under the Wills Variation Act. After March 31, 2014, the claim is made under the Wills, Estates and Succession Act. A “spouse” under both statutes includes both a married spouse and a person with whom you have lived in a marriage-like relationship for two years before your death.

The case law is clear that you have both a legal and moral obligation to provide for a spouse or child in your will. So if you’re thinking of disinheriting a spouse or child (even a self-sufficient adult child), or leaving them less in your will than they might reasonably expect, be sure to consult with a lawyer about the situation before finalizing your will.

**Your estate may have to pay “probate” filing fees**  
Probate is the process by which the executor must apply to the BC Supreme Court to confirm that a will is legally valid. Probate filing fees are the fees that must be paid to the province to do this. These fees are as follows:

* If the estate is worth less than $25,000 – no fee.
* If the estate is worth over $25,000 – basic fee of $208.
* If the estate is worth between $25,000 and $50,000 – basic fee of $208 plus $6 per $1,000 (for a total of $358 for the first $50,000).
* If the estate is worth over $50,000 – $358 plus $14 per $1,000 of estate value over $50,000.

The Probate Registry of the Supreme Court determines the estate value based on documents filed by the executor. Probate fees can often be avoided or reduced by estate planning outside of a will, and you may wish to see a lawyer to explore such planning.

**Taxes may also have to be paid**  
When a person dies, the law assumes that they sold their assets on the **date immediately before their death.**If the assets have increased in value over time, a capital gains tax will have to be paid in the person’s year of death. There are some exceptions, such as gifts to spouses and principal residences. But if you own assets that will attract capital gains tax on your death, you should speak to a lawyer or an accountant to see how to deal with this tax.

**What are some aspects of estate planning?**  
With estate planning, you may be able to reduce the amount of probate fees and taxes that your estate would otherwise pay. Consider, for example the following:

* **Joint Assets:** The owners of joint assets, such as a joint bank account that two or more people own, or a house owned by two or more people as joint tenants, have a “right of survivorship.” This means that when one person dies, the other joint owners are entitled to own the asset. So if you and another person own a house as joint tenants, the surviving joint owner will get the house when you die. The house is an asset that passes outside your will. No probate fees will have to be paid by your estate regarding the house, and if the house is your principal residence, no tax will be paid by your estate.  
    
  However, note that several recent court rulings have returned a jointly-owned asset to the estate.  If your joint asset is not with your spouse or a minor child, but instead is with an adult child or other adult, then that joint holder may in fact own the asset in trust for you. This can be avoided by clear documentation showing your intent to give the property to the surviving joint owner when he or she becomes the joint owner. So, if you add an adult son to your bank account as a joint holder, and you want the account to belong to him when you die, you should sign a deed of gift. Otherwise, it may be presumed that your son holds the bank account in trust for your estate, and the money will be paid out according to the terms of your will.
* **RRSPs, RRIFs and TFSAs:** A Registered Retirement Savings Plan(RRSP), Registered Retirement Income Fund (RRIF) and Tax Free Savings Account (TFSA) all allow you to designate a beneficiary to get the proceeds when you die. If you name a beneficiary and he or she survives you by at least five days, the proceeds pass outside your will to that beneficiary. So, for example, an RRSP beneficiary will get the money in the RRSP directly from the company holding the RRSP, and not from the estate.
* **Life Insurance Policies:** Life insurance policies allow you to designate a beneficiary to receive money at your death. Again, this money passes outside your will.
* **Trusts:** Depending on the size of your estate, you might want to establish a trust, which protects against a wills variation claim.
* **Charitable Gifts:** You can reduce the income tax liability arising on the deemed disposition of your assets on your death by making charitable gifts in your will.

**You should hire a lawyer to help you**  
An experienced lawyer will know about the rules that apply to wills and can help with estate planning so as to save money for your beneficiaries. And you’ll have the peace of mind of knowing that your will is properly drafted and valid, and that your estate will be paid out according to your wishes.

**How much does a will cost?**  
The cost depends on how complex your situation is. Most lawyers charge a fee that reflects the time, skill and responsibility involved. Discuss the fees with your lawyer when you call to arrange a meeting.

**You can minimize the legal fees by being well prepared**  
It helps if you have the following information ready before you meet with your lawyer:

* A list of everyone in your immediate family with their full names and contact information, their relationship to you and the ages of all your children, including stepchildren.
* The names and addresses of any other people or organizations to whom you want to give gifts.
* A list of all your assets and values, such as your home, car, investments and any personal items of significant value. It's important to describe how you own any property (for example, whether you own it alone or together with someone else).
* A document that shows whose name is on the title of any real estate or house you own.
* Details of any insurance policies you own, and, specifically, who the beneficiary is.
* Details of any pensions, RRSPs, RRIFs and TFSAs, and the beneficiary of these.
* Information about the structure of any business you operate (for example, a company or partnership).
* Any separation agreements or court orders requiring you to make support payments or dealing with guardianship of any minor children.
* Your choice for your executor(s) and guardian.

**It’s important to update your estate plan**  
A well-drafted will anticipates different scenarios and plans for these (for example, what happens if an adult child or grandchild dies before you). But you should still think about changing your will whenever your financial or personal circumstances change or if there’s a change in the beneficiaries. For example, if you made a will when your children were young and named your parents as guardian and executor, when your children become adults, you’ll no longer need the guardian clause and you might want your children or a sibling to be executor instead. It’s a good practice to review your will every three to five years to ensure that it still reflects your current wishes.

**Also make sure to review your will after any change in your marital status**  
If you marry before March 31, 2014, your will is automatically revoked unless the will says that it was made in contemplation of your new marriage. On or after March 31, 2014, a marriage will not revoke a will.

If you divorce before March 31, 2014, the portions of your will that appoint your ex-spouse as an executor and make a gift to him or her will not be valid. On or after March 31, 2014, the appointment or gift won’t be valid:

* If you’ve lived separate and apart for at least two years before your death (and one or both of you intended to live separately and apart permanently).
* If, before you die, an event occurs that causes an interest in family property to arise (within the meaning of the Family Law Act).
* If, in the case of a marriage-like relationship, one or both of you end the relationship before you die.

**Consider registering a “wills notice”**  
You can file a wills notice with the Vital Statistics Agency at [www.vs.gov.bc.ca/wills](http://www.vs.gov.bc.ca/wills). A wills notice sets out who made the will and where it can be found. This is a voluntary registration and has a small filing fee. The Vital Statistics Agency doesn’t take a copy of your will; rather, you fill out a standard form of information, including information as to where your will is being kept.

**Where should you keep your will?**  
You should store your original will with your lawyer or in a safety deposit box at your bank so that you have a permanent, safe and fireproof location. Your original will is what your executor will need to present to the Probate Registry in future, not a copy. It’s recommended that you let your executor know where you keep your will and other important documents, so your executor has what he or she requires when the time comes.

**What is LEAVE A LEGACY™?**  
LEAVE A LEGACY™ is a public awareness program of the Canadian Association of Gift Planners. (See [www.cagp-acpdp.org](http://www.cagp-acpdp.org/)). Its objective is to promote, through the media and educational sessions for the public, the importance of preparing a will. It also raises awareness about leaving a gift for charity in the will.

[updated December 2013]\*

<http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Wills-and-Estates/176>

\**As per British Columbia Provincial Laws. Each province has its own probate filing fee or probate fees. Please consult a lawyer or Canadian Bar Association of your province for details. Alternatively, your estate planning lawyer would be able to help you. To contact a member in your area click here*

*To prepare your own Will click here…..*

http://www.legalwills.ca/write\_a\_will?refcode=a550145482