



This Act is Current to March 9, 2011

WILLS ACT
[RSBC 1996] CHAPTER 489

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Definitions

- 1 In this Act:

"chief executive officer" means the chief executive officer under the *Vital Statistics Act*;

"will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

Part 1**Property disposable by will**

- 2 A person may by will devise, bequeath or dispose of all property, whether acquired before or after making the will, to which at the time of the person's death he or she is entitled either at law or in equity, including one or more of the following:

(a) estates pur autre vie, whether there is or is not a special occupant, and whether they are corporeal or incorporeal hereditaments;

(b) contingent, executory or other future interest in property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may become vested and whether the person is entitled to them under the instrument by which they were created or under a disposition of them by deed or will;

(c) rights of entry.

Writing required

- 3 A will is valid only if it is in writing.

Signatures required on formal will

- 4 Subject to section 5, a will is not valid unless

(a) at its end it is signed by the testator or signed in the testator's name by some other person in the testator's presence and by the testator's direction,

(b) the testator makes or acknowledges the signature in the presence of 2 or more attesting witnesses present at the same time, and

(c) 2 or more of the attesting witnesses subscribe the will in the presence of the testator.

Military forces and mariners

- 5 (1) A member of the Canadian Forces while placed on active service under the *National Defence Act*, or member of the naval, land or air force of any member of the British Commonwealth of Nations or any ally of Canada while on active service, or a mariner or seaman at sea or in the course of a voyage may, regardless of his or her age, dispose of his or her real and personal estate by will in writing, signed by the testator at its end or by some other person in the presence of and by the direction of the testator.
- (2) If the will is signed by the testator, there is no necessity for the presence, attestation or subscription of any witness.
- (3) If the will is signed by another person, the signature of that other person must be attested by the signature of at least one person, who must attest in the presence of the testator and of that other person.

Place of signature

- 6 (1) A will is deemed to be signed at its end if the signature of the testator, made either by the testator or the person signing for the testator, is placed at or after or following or under or beside or opposite to the end of the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his or her will.
- (2) A will is not rendered invalid in any of the following circumstances:
- (a) the signature does not follow immediately the end of the will;
 - (b) a blank space intervenes between the concluding words of the will and the signature;
 - (c) the signature is placed among the words of a testimonium clause or of an attestation clause or follows or is after or under an attestation clause either with or without a blank space intervening, or follows or is after or under or beside the name of a subscribing witness;
 - (d) the signature is on a side or page or other portion of the paper or papers containing the will on which no disposing part of the will is written above the signature;
 - (e) there appears to be sufficient space to contain the signature on or at the bottom of the side or page or other portion of the same paper on which the will is written and preceding that on which the signature appears.
- (3) The generality of subsection (1) is not restricted by the enumeration of circumstances set out in subsection (2), but a signature in conformity with section 4 or 5 or this section does not give effect to a disposition or direction that is underneath the signature or that follows the signature or to a disposition or direction inserted after the signature was made.

Wills of persons under 19 years of age

- 7 (1) A will made by a person who is under 19 years of age is not valid unless at the time of making the will the person
- (a) is or has been married, or
 - (b) is a person described in section 5.
- (2) For the purposes of section 5 and of this section, a certificate that purports to be signed by or on behalf of an officer who has custody of the records of the force in which a person was serving at the time the will was made and that sets out that the person was at that time a member of a naval, military or air force of a named country is sufficient proof of that fact.
- (3) A person who has made a will to which subsection (1) applies may, while under 19 years of age, revoke the will.

Will exercising power of appointment

- 8 A will made in accordance with this Act is as to form a valid execution of a power of appointment by

will, even if it has been expressly required that a will in exercise of the power be made in some form other than that in which it is made.

Publication

9 A will made in accordance with this Act is valid without other publication.

Incompetence of witness

10 If a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid.

Gift to attesting witness

11 (1) If a will is attested by a person to whom or to whose then wife or husband a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debt, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns the person so attesting, or the wife or the husband or a person claiming under any of them, but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity.

(2) A devise, bequest or other disposition or appointment is not void under this section if the will is attested in accordance with section 4 or 5 by at least the number of persons required by those sections and who are not persons within subsection (1).

Creditor as witness

12 If property is charged by a will with a debt and a creditor or the wife or husband of a creditor whose debt is so charged attests a will, the person so attesting, despite that charge, is a competent witness to prove the execution of the will or its validity or invalidity.

Executor as witness

13 A person is not incompetent as a witness to prove the execution of a will, or its validity or invalidity, solely because the person is an executor.

Revocation in general

14 (1) A will or part of a will is revoked only by one of the following:

- (a) marriage of the testator, subject to section 15;
- (b) another will made in accordance with this Act;
- (c) a writing declaring an intention to revoke and made in accordance with the provisions of this Act governing the making of a will;
- (d) the burning, tearing or destruction of it in some other manner by the testator, or by some person in the testator's presence and by the testator's direction, with the intention of revoking it.

(2) A will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances.

Revocation by marriage

15 A will is revoked by the marriage of the testator, unless

- (a) there is a declaration in the will that it is made in contemplation of the marriage, or
- (b) the will is made in exercise of a power of appointment of property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if the person died intestate.

Revocation of gift on dissolution of marriage

16 (1) In this section, "**spouse**" includes a person considered by a testator to be the testator's spouse.

(2) If in a will a testator

- (a) gives an interest in property to his or her spouse,
- (b) appoints his or her spouse executor or trustee, or
- (c) confers a general or special power of appointment on his or her spouse,

and after the making of the will and before the testator's death

- (d) a judicial separation has been ordered in respect of the marriage,
- (e) the marriage is terminated by a decree absolute of divorce, or a judgment granting a divorce under the *Divorce Act* (Canada) for which a certificate was or could have been issued under that Act, or
- (f) the marriage is found to be void or declared a nullity by a court

then, unless a contrary intention appears in the will, the gift, appointment or power is revoked and the will takes effect as if the spouse had predeceased the testator.

Altering a will

17 (1) Subject to subsection (2), unless an alteration that is made in a will is made in accordance with the provisions of this Act governing the making of a will, the alteration has no effect, except to invalidate words or meanings that it renders no longer apparent.

(2) An alteration that is made in a will is validly made when the signature of the testator and the subscription of the witness or witnesses to the signature of the testator to the alteration are made

- (a) in the margin or in some other part of the will opposite or near to the alteration, or
- (b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will.

Revival of will

18 (1) A will or part of a will that has been in any manner revoked is revived only

- (a) by a will made in accordance with this Act, or
- (b) by a codicil made in accordance with this Act

that shows an intention to give effect to the will or part that was revoked.

(2) Unless a contrary intention is shown, if a will that has been partly revoked and afterward wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole.

Subsequent conveyance

19 A conveyance of or other act relating to property comprised in a devise or bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of the testator's death.

Effective time of will

20 (1) If a will has been revived or re-executed by a codicil, the will is deemed to have been made at the time it was revived or re-executed.

(2) Unless a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to the property.

Lapsed and void devises and bequests

21 Unless a contrary intention appears by the will, property or an interest in it that is comprised or intended to be comprised in a devise or bequest that fails or becomes void because of the death of the devisee or donee in the lifetime of the testator, or because the devise or bequest is contrary to law or otherwise incapable of taking effect, is included in the residuary devise or bequest, if any, contained in the will.

Inclusion of leaseholds in general devise

22 Unless a contrary intention appears by the will, if a testator devises

- (a) the testator's land,
- (b) the testator's land in a place mentioned in the will, or in the occupation of a person mentioned in the will,
- (c) land described in a general manner, or
- (d) land described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates.

Exercise of general power of appointment by general gift

23 (1) Unless a contrary intention appears by the will, a general devise of

- (a) the real property of the testator,
- (b) the real property of the testator in a place mentioned in the will or in the occupation of a person mentioned in the will, or
- (c) real property described in a general manner

includes any real property or any real property to which the description extends, that the testator has power to appoint in any manner the testator thinks proper and operates as an execution of the power.

(2) Unless a contrary intention appears by the will, a bequest of

- (a) the personal property of the testator, or
- (b) personal property described in a general manner

includes any personal property or any personal property to which the description extends, that the testator has power to appoint in any manner the testator thinks proper and operates as an execution of the power.

Devise without words of limitation

24 Unless a contrary intention appears by the will, if real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate that the testator had power to dispose of by will in the real property.

Gifts to heirs

25 Unless a contrary intention appears by the will, if property is devised or bequeathed to the heir or next of kin of the testator or of another person, the devise or bequest takes effect as if it had been made to the persons among whom and in the shares in which the estate of the testator or other person would have been divisible if the testator or other person had died intestate.

Meaning of "die without issue"

26 (1) Subject to subsection (2), in a devise or bequest of property

- (a) the words
 - (i) "die without issue",
 - (ii) "die without leaving issue", or
 - (iii) "have no issue", or
- (b) other words importing either a want or failure of issue of a person in the person's lifetime or at the time of the person's death or an indefinite failure of the person's issue

are deemed to refer to a want or failure of issue in the lifetime or at the time of death of that person and not to an indefinite failure of that person's issue unless a contrary intention appears by the will.

(2) This section does not extend to cases where the words defined in subsection (1) import

- (a) if no issue described in a preceding gift be born, or
- (b) if there be no issue who live to reach the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.

Devise to trustees otherwise than for term

27 Unless there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property.

Unlimited devise to trustees

28 If real property is devised to a trustee without express limitation of the estate to be taken by the trustee and the beneficial interest in the real property or in the surplus rents and profits

- (a) is not given to a person for life, or
- (b) is given to a person for life but the purpose of the trust may continue beyond the person's life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied.

Gifts to issue predeceasing testator

29 (1) Unless a contrary intention appears by the will, if a person dies in the lifetime of a testator either before or after the testator makes the will and that person

- (a) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in property not determinable at or before his or her death, and
- (b) leaves issue any of whom is living at the time of the death of the testator,

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if the person had died intestate without leaving a spouse and without debts immediately after the death of the testator.

(2) Unless a contrary intention appears by the will, if a person dies in the lifetime of a testator either before or after the testator makes the will and that person

- (a) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in property not determinable at or before his or her death, and
- (b) leaves a spouse but does not leave issue any of whom is living at the time of the death of the testator,

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if the person had died intestate and without debts immediately after the death of the testator.

Primary liability of mortgaged land

30 (1) In this section, "**mortgage**" includes an equitable mortgage, and any charge, whether equitable, statutory or of other nature, including a lien or claim on freehold or leasehold property for unpaid purchase money, and "**mortgage debt**" has a meaning similarly extended.

(2) If a person dies possessed of, or entitled to, or under a general power of appointment by the person's will disposes of, an interest in freehold or leasehold property that, at the time of the person's death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention, the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt.

(3) For the purposes of subsection (2), every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(4) A testator does not signify a contrary or other intention within subsection (2) by

(a) a general direction for the payment of debts or of all the debts of the testator out of the testator's personal estate or the testator's residuary real or personal estate, or the testator's residuary real estate, or

(b) a charge of debts on that estate,

unless the testator further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(5) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

Executor as trustee of residue

31 (1) Unless a contrary intention appears by the will, if a person dies after this Act takes effect, having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of for the persons among whom and in the shares in which the estate of the testator would have been divisible if he or she had died intestate.

(2) Nothing in this section affects or prejudices a right to which the executor, if this Part had not been passed, would have been entitled in cases where there is not a person who would be so entitled.

Part 2

Filing of notice of will with chief executive officer

32 If a person has executed a will, a notice may be filed with the chief executive officer in a form satisfactory to the chief executive officer.

Filing of notice of revocation

33 If a will has been revoked, whether or not a notice was filed under section 32, a notice of revocation in a form satisfactory to the chief executive officer may be filed with the chief executive officer.

Filing notice of change of place of will

34 If notice has been filed under section 32 and the will is no longer located at the place mentioned in the notice, notice of the change in a form satisfactory to the chief executive officer may be filed with the chief executive officer.

Chief executive officer's records

- 35 The chief executive officer must maintain, in a system that he or she believes facilitates access to information by those who require it, a record of every notice filed under this Act.

Search of records

- 36 (1) A solicitor of the Supreme Court of British Columbia or a member of the Society of Notaries Public of British Columbia may, on application in a form satisfactory to the chief executive officer, ascertain from the chief executive officer whether or not a notice has been filed under this Act.
- (2) Any person other than a solicitor of the Supreme Court of British Columbia or a member of the Society of Notaries Public of British Columbia may, on written application accompanied either by a certificate of the death of the person named in the application or by a statutory declaration proving to the satisfaction of the chief executive officer that the person named in the application has died, ascertain from the director if the person has filed a notice under this Act.
- (3) The chief executive officer must
- (a) issue to an applicant under subsection (1) or (2) a certificate in duplicate showing the contents of all notices filed and relevant to the application, and
 - (b) permit the applicant, or the agent of the applicant, to inspect the notices.
- (4) The chief executive officer may provide a solicitor or member of the Society of Notaries Public of British Columbia who is an applicant under subsection (1) with
- (a) a copy of a notice filed under this Act, or
 - (b) access by computer or otherwise to information contained in a notice filed under this Act.
- (5) Except as provided in this section, the chief executive officer must not provide to any person information regarding notices filed under this Act or information showing whether or not a notice has been filed.

Validity of will or revocation not affected

- 37 The failure to file or the filing of a notice under this Act does not affect the validity of a will or of the revocation of a will.

Power to make regulations

- 38 The Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the keeping, custody, disposal, destruction and indexing of notices filed under this Part that have been superseded or that refer to wills that have been probated;
 - (b) respecting the use to be made of and the procedure to be followed with respect to the original and duplicate certificate issued under section 36;
 - (c) to carry into effect this Part according to its true intent;
 - (d) correcting deficiencies in this Part;
 - (e) [Repealed 2002-12-41.]
 - (f) prescribing fees to be paid to file a notice under this Part or to search for or inspect a notice filed under this Part.

Part 3

Definitions and interpretation

- 39 (1) In this Part:
- "an interest in land"** includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;

"an interest in movables" includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land.

(2) Subject to other provisions of this Part, the manner and formalities of making a will, and its intrinsic validity and effect, so far as it relates to an interest in land, are governed by the law of the place where the land is located.

(3) Subject to other provisions of this Part, the manner and formalities of making a will, and its intrinsic validity and effect, so far as it relates to an interest in movables, are governed by the law of the place where the testator was domiciled at the time of his or her death.

Wills of interest in movables

40 In so far as the manner and formalities of making a will are concerned, a will, so far as it relates to an interest in movables, made outside British Columbia is valid and admissible to probate if it is made in accordance with the law in force at the time of its making in the place where

- (a) the will was made,
- (b) the testator was domiciled when the will was made, or
- (c) the testator had his or her domicile of origin.

Change of domicile

41 A change of domicile of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction.

Construction of will

42 Nothing in this Part precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables.

Movables used in relation to land

43 If the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing, under a will or on an intestacy, is governed by the law of the place where the land is located.

Part 4

Application of Act

44 (1) Except as provided in subsections (2) and (3), this Act applies only to wills made after March 31, 1960.

(2) In the case of a person dying after March 17, 1960, sections 25 and 30 apply to the will and estate of the testator whether the will was made before, on or after March 31, 1960.

(3) Section 16 applies to a will made before, on or after March 31, 1960.