

WILLS, ESTATES AND SUCCESSION ACT

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PREVIEW ONLY

THIS ACT IS NOT YET IN FORCE AND MAY BE

FURTHER AMENDED BY 2014 BILLS 14 & 17 PRIOR TO MARCH 31, 2014

Updated To:

[eff. Mar. 31/14 (148/2013), (2011 Bills 10 & 16 (131/2012) & RS2012, c. 1 amends incorporated)]

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WILLS, ESTATES AND SUCCESSION ACT

CHAPTER 13 [SBC 2009]

PDF VERSION

***PREVIEW ONLY – THIS ACT IS NOT YET IN FORCE AND MAY BE
FURTHER AMENDED BY 2014 BILLS 14 & 17 PRIOR TO MARCH 31, 2014***

[effective March 31, 2014 (B.C. Reg. 148/2013) (2011 Bills 10 and 16 (B.C. Reg. 131/2012) and RS2012, c. 1 (B.C. Regs. 191/2012 and 194/2012) amendments incorporated)]

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PART 1 – Definitions and Interpretation

Definitions and interpretation

1. (1) In this Act:

"beneficiary" means

- (a) a person named in a will to receive all or part of an estate, or
- (b) a person having a beneficial interest in a trust created by a will;

"benefit", in relation to a benefit plan, means a benefit payable under a benefit plan on the death of a participant;

"benefit plan" means

- (a) any one or more of the following for the benefit of employees or former employees of an employer, agents or former agents of an employer, the dependants of any of them or a designated beneficiary:
 - (i) a pension plan or retirement plan;
 - (ii) a welfare fund or profit-sharing fund;
 - (iii) a trust, scheme, contract or arrangement,
- (b) a fund, trust, scheme, contract or arrangement for the payment of an annuity for life or for a fixed or variable term,
- (c) a retirement savings plan or retirement income fund registered under the *Income Tax Act* (Canada),
- (d) a fund, trust, scheme, contract or arrangement described in the regulations made under this Act, or
- (e) a tax-free savings account within the meaning of the *Income Tax Act* (Canada),

whether it was created before, on or after this definition comes into force;

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

"court" means the Supreme Court;

"descendant" means all lineal descendants through all generations;

"designated beneficiary" means a person to whom or for whose advantage a benefit is payable by a designation;

"designation" means the designation of a designated beneficiary in accordance with section 85 [*designated beneficiaries*];

"estate" means the property of a deceased person;

"foreign grant" means a grant of probate, including letters of verification issued in Quebec, or a grant of administration or other document purporting to be of the same nature issued by a court outside British Columbia;

"foreign personal representative" means a personal representative to whom a foreign grant has been made;

"gift" includes

- (a) a beneficial devise or bequest, and
- (b)

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an appointment affecting property other than the appointment of a person as executor of the will;

"instrument" includes a testamentary instrument and other legal documents, but does not include an instrument, other than a will, to which the *Insurance Act* applies;

"intestate" means a person who dies without a will;

"intestate estate" means the estate of a person who dies without a will;

"intestate successor" means a person who is entitled to receive all or part of an intestate estate;

"land" includes buildings and fixtures, and every right, title, interest, estate or claim to or in land;

"Nisga'a citizen" has the same meaning as in the Nisga'a Final Agreement;

"Nisga'a Final Agreement" has the same meaning as in the *Nisga'a Final Agreement Act*;

"Nisga'a Lands" has the same meaning as in the Nisga'a Final Agreement;

"Nisga'a law" has the same meaning as in the Nisga'a Final Agreement;

"Nisga'a Lisims Government" has the same meaning as in the Nisga'a Final Agreement;

"Nisga'a Village Government" has the same meaning as in the Nisga'a Final Agreement;

"nominee" includes

- (a) a committee acting under the *Patients Property Act* granted power over financial affairs,
- (b) an attorney acting under an enduring power of attorney as described in section 8 [*enduring power of attorney*] of the *Power of Attorney Act*,
- (c) a representative acting under a representation agreement made under
 - (i) section 7 (1) (b) [*standard provisions*] of the *Representation Agreement Act*, or
 - (ii) section 9 (1) (g) [*other provisions*] of the *Representation Agreement Act*, and
- (d) a person appointed under section 51 (2) [*mentally incompetent Indians*] of the *Indian Act* (Canada) or the Minister of Indian Affairs and Northern Development;

"participant" means a person who makes a designation and, except when the context otherwise requires, includes an attorney or committee who makes a designation under section 85 [*designated beneficiaries*];

"personal property" means every kind of property other than land;

"property" means land and personal property;

"registrable charge" means a charge created by an order of the court under section 33 (2) [*retention of spousal home*] and made effective by registration in a land title office under section 34 [*registrable charges*];

"representation grant" means

- (a) the grant of probate of a will in British Columbia, whether made for general, special or limited purposes,
- (b) the grant of administration of the estate of a deceased person in British Columbia, with or without will annexed, whether made for general, special or limited purposes,

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- (c) the resealing in British Columbia of a grant of probate of a will or a grant of administration of the estate of a deceased person, or
- (d) an ancillary grant of probate;

"security interest" means an interest in property that secures payment or performance of an obligation;

"spousal home" means

- (a) a parcel of land, owned or owned in common by the deceased person and not leased to another person, that
 - (i) is shown as a separate taxable parcel on a taxation roll for the current year prepared under the *Taxation (Rural Area) Act* or on an assessment roll used for the levying of taxes in a municipality, and
 - (ii) has as improvements situated on it a building assessed and taxed in the current year as an improvement, in which the deceased person and his or her spouse were ordinarily resident,
- (b) a share owned or owned in common by the deceased person in a corporation whose charter, as defined in section 1 (1) of the *Business Corporations Act*, provides that a building owned or operated by the corporation must be owned and operated exclusively for the benefit of shareholders in the corporation who are occupants of the building, if the value of the share is equivalent to the capital value of a suite owned by the corporation, in which suite the deceased person and his or her spouse were ordinarily resident and which was not leased to any other person,
- (c) a manufactured home, as defined in the *Manufactured Home Act*, situated on land not owned by the owner of the manufactured home and in which the deceased person and his or her spouse were ordinarily resident, or
- (d) a parcel of land on Nisga'a Lands or treaty lands that has as improvements situated on it a building in which the deceased person and his or her spouse were ordinarily resident,
 - (i) owned or owned in common by the deceased person and not leased to another person,
 - (ii) held or held in common by the deceased person by way of a right to possession under Nisga'a law and not leased to another person, or
 - (iii) held or held in common by the deceased person by way of an interest under the laws of a treaty first nation and not leased to another person;

"spouse" has the same meaning given to it in section 2 [*when a person is a spouse under this Act*];

"taxing treaty first nation" has the same meaning as in the *Treaty First Nation Taxation Act*;

"testamentary instrument" means a will or designation or a document naming a person to receive a payment or series of payments on death under a plan or arrangement of a type similar to a benefit plan;

"will" means

- (a) a will,
- (b) a testament,
- (c) a codicil,
- (d) an appointment by will or by writing in the nature of a will in exercise of a power,

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- (e) anything ordered to be effective as a will under section 58 [*court order curing deficiencies*], or
- (f) any other testamentary disposition except the following:
 - (i) a designation under Part 5 [*Benefit Plans*];
 - (ii) a designation of a beneficiary under Part 3 [*Life Insurance*] or Part 4 [*Accident and Sickness Insurance*] of the *Insurance Act*;
 - (iii) a testamentary disposition governed specifically by another enactment or law of British Columbia or of another jurisdiction in or outside Canada;

"will-maker" means a person who makes a will;

"will-maker's signature" includes a signature made by another person in the manner described in subsection (2).

- (2) A reference to the signature of a will-maker includes a signature made by another person in the will-maker's presence and by the will-maker's direction, and the signature may be either the will-maker's name or the name of the person signing.
- (3) If there is any conflict or inconsistency between this Act and the *Trustee Act* with respect to the powers and duties or office of a personal representative, this Act prevails to the extent of the conflict or inconsistency.

2009-13-1 (part) (B.C. Reg. 148/2013); 2011-6-1 to 3, 5.

PART 2 – Fundamental Rules

Part 2: Division 1 – Meaning of Spouse, Effect of Adoption and Construction of Instruments

When a person is a spouse under this Act

2. (1) Unless subsection (2) applies, 2 persons are spouses of each other for the purposes of this Act if they were both alive immediately before a relevant time and
 - (a) they were married to each other, or
 - (b) they had lived with each other in a marriage-like relationship for at least 2 years.
- (2) Two persons cease being spouses of each other for the purposes of this Act if,
 - (a) in the case of a marriage,
 - (i) they live separate and apart for at least 2 years with one or both of them having the intention, formed before or during that time, to live separate and apart permanently, or
 - (ii) an event occurs that causes an interest in family property, withing the meaning of the *Family Law Act*, to arise, or
 - (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.
- (3) A relevant time for the purposes of subsection (1) is the date of death of one of the persons unless this Act specifies another time as the relevant time.
2009-13-2 (B.C. Reg. 148/2013); 2011-25-465 (B.C. Reg. 131/2012).

Effect of adoption

3. (0.1) In this section, "**pre-adoption parent**" means a person who, before the adoption of a child, was the child's parent.
- (1) Subject to this section, if the relationship of parent and child arising from the adoption of a child must be established at any generation in order to determine succession under this Act, the relationship is to be determined in accordance with the *Adoption Act* respecting the effect of adoption.
- (2) Subject to subsection (3), if a child is adopted,
 - (a) the child is not entitled to the estate of his or her pre-adoption parent except through the will of the pre-adoption parent, and
 - (b) a pre-adoption parent of the child is not entitled to the estate of the child except through the will of the child.
- (3) Adoption of a child by the spouse of a pre-adoption parent does not terminate the relationship of parent and child between the child and the pre-adoption parent for purposes of succession under this Act.
2009-13-3 (B.C. Reg. 148/2013); 2011-25-466 (B.C. Reg. 131/2012).

Construction of instruments

4. (1) If this Act provides that a provision of this Act is subject to a contrary intention appearing in an instrument, that contrary intention must appear in the instrument or arise from a necessary implication of the instrument.
- (2) Extrinsic evidence of testamentary intent, including a statement made by the will-maker, is not admissible to assist in the construction of a testamentary instrument unless
- (a) a provision of the will is meaningless,
 - (b) a provision of the testamentary instrument is ambiguous
 - (i) on its face, or
 - (ii) in light of evidence, other than evidence of the will-maker's intention, demonstrating that the language used in the testamentary instrument is ambiguous having regard to surrounding circumstances, or
 - (c) extrinsic evidence is expressly permitted by this Act.

2009-13-4 (B.C. Reg. 148/2013).

Part 2: Division 2 – Survivorship Rules

Fundamental rule – when persons die simultaneously

5. (1) If 2 or more persons die at the same time or in circumstances that make it uncertain which of them survived the other or others, unless a contrary intention appears in an instrument, rights to property must be determined as if each had survived the other or others.
- (2) If
- (a) two or more persons hold property as joint tenants, or hold a joint account, and
 - (b) both or all of them die at the same time or in circumstances that make it uncertain which of them survived the other or others,
- unless a contrary intention appears in an instrument, for the purpose of determining rights to property, each person is deemed to have held the property or account as tenants in common with the other or with each of the others.

2009-13-5 (B.C. Reg. 148/2013).

General presumption – disposition of property on simultaneous deaths

6. If
- (a) an instrument provides for the disposition of property in the event that a person named in the instrument
 - (i) dies before another person,
 - (ii) dies at the same time as another person, or
 - (iii) dies in circumstances that make it uncertain which of them survived the other, and

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- (b) the named person dies at the same time as the other person or in circumstances that make it uncertain which of them survived the other, for the purpose of that disposition, the event for which the instrument provides is conclusively deemed to have occurred.

2009-13-6 (B.C. Reg. 148/2013).

General presumption – substitute personal representative

7. If

- (a) a will provides for a substitute personal representative in the event that an executor named in the will
 - (i) dies before the will-maker,
 - (ii) dies at the same time as the will-maker, or
 - (iii) dies in circumstances that make it uncertain which of them survived the other, and
- (b) the named executor dies at the same time as the will-maker or in circumstances that make it uncertain which of them survived the other, for the purpose of the grant of probate or a small estate declaration, the event for which the will provides is conclusively deemed to have occurred.

2009-13-7 (B.C. Reg. 148/2013).

Posthumous births

- 8.** Descendants and relatives of an intestate, conceived before the intestate's death but born after the intestate's death and living for at least 5 days, inherit as if they had been born in the lifetime of the intestate and had survived the intestate.

2009-13-8 (B.C. Reg. 148/2013).

Posthumous births if conception after death

- 8.1** (1) A descendant of a deceased person, conceived and born after the person's death, inherits as if the descendant had been born in the lifetime of the deceased person and had survived the deceased person if all of the following conditions apply:
- (a) a person who was married to, or in a marriage-like relationship with, the deceased person when that person died gives written notice, within 180 days from the issue of a representation grant, to the deceased person's personal representative, beneficiaries and intestate successors that the person may use the human reproductive material of the deceased person to conceive a child through assisted reproduction;
 - (b) the descendant is born within 2 years after the deceased person's death and lives for at least 5 days;
 - (c) the deceased person is the descendant's parent under Part 3 of the *Family Law Act*.
- (2) The right of a descendant described in subsection (1) to inherit from the relatives of a deceased person begins on the date the descendant is born.
- (3) Despite subsection (1) (b), a court may extend the time set out in that subsection if the court is satisfied that the order would be appropriate on consideration of all relevant circumstances.

2009-13-8.1 (B.C. Reg. 148/2013); 2011-25-467 (B.C. Reg. 131/2012).

Survival of beneficiaries

9. (1) If
- (a) a right of a beneficiary to receive property is conditional on the beneficiary surviving another person, and
 - (b) the beneficiary dies at the same time as the other person or dies in circumstances that make it uncertain which of them survived the other, the beneficiary is conclusively deemed to have predeceased the other person.
- (2) If
- (a) property is left to 2 or more beneficiaries or to the surviving beneficiary or beneficiaries, and
 - (b) both or all die at the same time or in circumstances that make it uncertain which of them survived the other or others,
- unless a contrary intention appears in an instrument, the property must be divided into as many equal shares as there are beneficiaries, and the shares must be distributed respectively to those persons who would have been entitled to a share in the event that each of the beneficiaries had survived.
- 2009-13-9 (B.C. Reg. 148/2013).

Five-day survival rule

10. (1) A person who does not survive a deceased person by 5 days, or a longer period provided in an instrument, is conclusively deemed to have died before the deceased person for all purposes affecting the estate of the deceased person or property of which the deceased person was competent to give by will to another.
- (2) If 2 or more persons hold property as joint tenants, or hold a joint account, and
- (a) in the case of 2 persons, it cannot be established that one of them survived the other by 5 days,
 - (i) one half of the property passes as if one person survived the other person by 5 days, and
 - (ii) one half of the property passes as if the other person referred to in subparagraph (i) had survived the first person referred to in subparagraph (i) by 5 days, and
 - (b) in the case of more than 2 persons, it cannot be established that at least one of them survived the others by 5 days, the property must be divided into as many equal shares as there are joint tenants or persons holding the joint account, and the shares must be distributed respectively to those persons who would have been entitled to a share in the event that each of the persons had survived.
- (3) This section does not apply to the appointment of a personal representative in a will.
- (4) Nothing in this section affects the law of resulting trusts.

2009-13-10 (B.C. Reg. 148/2013).

Priority of *Insurance Act* provisions

11. This Division does not apply to insurance money to which section 83 [*simultaneous deaths*] or 130 [*simultaneous deaths*] of the *Insurance Act* applies.
- 2009-13-11 (B.C. Reg. 148/2013); RS2012-1-167 (B.C. Regs. 191/2012 & 194/2012).

Part 2: Division 3 – Nisga'a Final Agreement and First Nations' Final Agreements

Not in force. Repealed

12. *Not in force. Repealed.* [2009-13-12 (B.C. Reg. 148/2013); 2011-6-7]

Will or cultural property of Nisga'a citizens

13. (1) In this section, "**cultural property**" has the same meaning as in paragraph 115 of the Nisga'a Government Chapter of the Nisga'a Final Agreement.
- (2) As provided in paragraph 118 of the Nisga'a Government Chapter of the Nisga'a Final Agreement, the Nisga'a Lisims Government may commence a proceeding under this Act in respect of the will of a Nisga'a citizen that provides for the devolution of cultural property.
- (3) In any judicial proceeding under this Act in which the validity of the will of a Nisga'a citizen or the devolution of the cultural property of a Nisga'a citizen is at issue, the Nisga'a Lisims Government has standing in the proceeding as provided in paragraph 117 of the Nisga'a Government Chapter of the Nisga'a Final Agreement.
- (4) In a proceeding described in subsection (2) or to which subsection (3) applies, the court must consider, among other matters, any evidence or representations in respect of Nisga'a laws or customs dealing with the devolution of cultural property as provided in paragraph 119 of the Nisga'a Government Chapter of the Nisga'a Final Agreement.
- (5) As provided in paragraph 120 of the Nisga'a Government Chapter of the Nisga'a Final Agreement, the participation of the Nisga'a Lisims Government in a proceeding described in subsection (2) of this section or to which subsection (3) applies must be in accordance with the applicable Supreme Court Civil Rules and does not affect the court's ability to control the court's process.

2009-13-13 (B.C. Reg. 148/2013); 2011-6-8.

Will or cultural property of treaty first nation members

14. (1) In this section, "**cultural property**", in relation to a treaty first nation, has the same meaning as in the final agreement of the treaty first nation.
- (2) If the final agreement of a treaty first nation so provides, the treaty first nation may commence and may intervene in a proceeding under this Act in respect of the will of a treaty first nation member of the treaty first nation that provides for the devolution of cultural property.
- (3) If the final agreement of a treaty first nation so provides, in any judicial proceeding under this Act in which
- (a) the validity or variation of the will of a treaty first nation member of that treaty first nation, or
 - (b) the devolution of cultural property of a treaty first nation member of the treaty first nation
- is at issue, that treaty first nation has standing in the proceeding.

- (4) In a proceeding described in subsection (2) or to which subsection (3) applies, the court must consider, among other matters, any evidence or representations in respect of the applicable treaty first nation's laws or customs dealing with the devolution of cultural property.
- (5) The participation of a treaty first nation in a proceeding described in subsection (2) or to which subsection (3) applies must be in accordance with the applicable Supreme Court Civil Rules and does not affect the court's ability to control the court's process.

2009-13-14 (B.C. Reg. 148/2013); 2011-6-8.

**Notice of application for representation grant respecting
Nisga'a citizens and treaty first nation members**

- 15.** (1) If a deceased person was a Nisga'a citizen, an applicant for a grant of probate or administration in respect of the estate of the Nisga'a citizen must, in addition to giving notice under section 121 (1) [*notice of proposed application for grant of probate or administration*],
- (a) mail or deliver a notice of the application to the Nisga'a Lisims Government, and
 - (b) if the deceased person left a will and the Nisga'a Lisims Government requests a copy of it within 30 days of receiving the notice under paragraph (a) of this subsection, mail or deliver a copy of the will to the Nisga'a Lisims Government.
- (2) The court must not grant or reseal probate or administration in respect of the estate of a Nisga'a citizen unless the applicant or the applicant's lawyer, in addition to satisfying the requirements under subsection (1), certifies that he or she has
- (a) mailed or delivered a notice of the application to the Nisga'a Lisims Government, and
 - (b) if the deceased Nisga'a citizen left a will and the Nisga'a Lisims Government requested a copy of it within 30 days of receiving the notice under subsection (1) (a), mailed or delivered a copy of the will to the Nisga'a Lisims Government.
- (3) If the deceased person was a treaty first nation member, an applicant for a grant of probate or administration in respect of the estate of the treaty first nation member must, in addition to giving notice under section 121 (1),
- (a) mail or deliver a notice of the application to the treaty first nation, and
 - (b) if the deceased treaty first nation member left a will and the treaty first nation requests a copy of it within 30 days of receiving the notice under paragraph (a) of this subsection, mail or deliver a copy of the will to the treaty first nation of which the deceased person was a member.
- (4) If a treaty first nation has standing under section 14 (3) in a judicial proceeding, the court must not grant or reseal probate or administration in respect of the estate of a treaty first nation member of the treaty first nation unless the applicant or the applicant's lawyer, in addition to satisfying the requirements under subsection (3) of this section, certifies that he or she has
- (a) mailed or delivered a notice of the application to the treaty first nation, and
 - (b) if the deceased treaty first nation member left a will and the treaty first nation requested a copy of it within 30 days of receiving the notice under subsection (3) (a), mailed or delivered a copy to the treaty first nation.

2009-13-15 (B.C. Reg. 148/2013).

Service on Nisga'a Lisims Government or treaty first nation

- 16.** A proceeding in respect of the will of a Nisga'a citizen or a treaty first nation member must not be heard by the court at the instance of a party claiming the benefit of Division 6 [*Variation of Wills*] of Part 4 [*Wills*] unless a copy of the initiating pleading or petition has been served on the Nisga'a Lisims Government or the treaty first nation, as applicable.
2009-13-16 (B.C. Reg. 148/2013); 2011-6-9.

17. to 18.3 Not yet in force

- 17.** to **18.3** [*Not yet in force*]

PART 3 – When a Person Dies Without a Will

Uniform interpretation with laws of other provinces

19. This Part must be interpreted so as to effect its general purpose of making uniform the law of the provinces that enact identical or substantially the same provisions.

2009-13-19 (B.C. Reg. 148/2013).

Part 3: Division 1 – Distribution of Estate When There is No Will

Spouse but no descendants

20. If a person dies without a will leaving a spouse but no surviving descendant, the intestate estate must be distributed to the spouse.

2009-13-20 (B.C. Reg. 148/2013).

Spouse and descendants

21. (1) In this section:

"household furnishings" means personal property usually associated with the enjoyment by the spouses of the spousal home;

"net value of an intestate estate" means the value of an intestate estate after deducting from its fair market value, both inside and outside British Columbia,

- (a) the value of household furnishings distributed to a spouse under subsection (2), and
 - (b) charges, debts, funeral and administration expenses, and fees under the *Probate Fee Act*, payable from the estate.
- (2) If a person dies without a will leaving a spouse and surviving descendants, the following must be distributed from the intestate estate to the spouse:
- (a) the household furnishings;
 - (b) a preferential share of the intestate estate in accordance with subsection (3) or (4).
- (3) If all descendants referred to in subsection (2) are descendants of both the intestate and the spouse, the preferential share of the spouse is \$300 000, or a greater amount if prescribed.
- (4) If all descendants referred to in subsection (2) are not common to the intestate and the spouse, the preferential share of the spouse is \$150 000, or a greater amount if prescribed.
- (5) If the net value of an intestate estate is less than the spouse's preferential share under subsection (3) or (4), the intestate estate must be distributed to the spouse.
- (6) If the net value of an intestate estate is the same as or greater than the spouse's preferential share under subsection (3) or (4),
- (a) the spouse has a charge on the intestate estate for the amount of the spouse's preferential share under subsection (3) or (4), and
 - (b)

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the residue of the intestate estate, after satisfaction of the spouse's preferential share, must be distributed as follows:

- (i) one half to the spouse;
- (ii) one half of the intestate's descendants.

2009-13-21 (B.C. Reg. 148/2013).

Two or more spouses

- 22.** (1) If 2 or more persons are entitled to a spousal share of an intestate estate, they share the spousal share in the portions to which they agree, or if they cannot agree, as determined by the court.
- (2) If 2 or more persons are entitled to apply or have priority as a spouse under this Act in respect of an intestate estate, they may agree on who is to apply or who is to have priority, but if they do not, the court may make the decision.

2009-13-22 (B.C. Reg. 148/2013).

No spouse but intestate leaving descendants or relatives

- 23.** (1) This section applies if a person dies without a will and without leaving a surviving spouse.
- (2) Subject to subsection (3) and section 24, if a person dies without leaving a surviving spouse, the intestate estate must be distributed
- (a) to the intestate's descendants,
 - (b) if there is no surviving descendant, to the intestate's parents in equal shares or the the intestate's surviving parent,
 - (c) if there is no surviving descendant or parent, to the descendants of the intestate's parents or parent,
 - (d) if there is no surviving descendant, parent or descendant of a parent, but the intestate is survived by one or more grandparents or descendants of grandparents,
 - (i) an equal part to the surviving parents of each of the intestate's parents, in equal shares of the part, but if a parent of the intestate has no surviving parent that part to the descendants of that grandparent in equal shares, and
 - (ii) for the purpose of subparagraph (i), a part is determined by dividing the estate by the number of parents of the intestate who have
 - (A) a surviving parent, or
 - (B) a surviving descendent of the parent referred to in clause (A),
 - (e) if there is no surviving descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent, but the intestate is survived by one or more great-grandparents or descendants of great-grandparents,
 - (i) an equal part to the surviving grandparents of each of the intestate's parents, in equal shares of the part, but if a grandparent of the intestate has no surviving parent, that part to the descendants of that great-grandparent in equal shares, and
 - (ii) for the purpose of subparagraph (i), a part is determined by dividing the estate by the number of parents of the intestate who have
 - (A) a surviving grandparent, or

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- (B) a surviving descendent of the grandparent referred to in clause (A), or
- (f) if there is no person who is entitled under paragraphs (a) to (e), the whole intestate estate passes to the government and is subject to the *Escheat Act*.
- (3) For the purposes of this section, persons of the 5th or greater degree of relationship to the intestate are conclusively deemed to have predeceased the intestate, and any part of the intestate estate to which those persons would otherwise be entitled must be distributed to other descendants entitled to the estate.
- (4) Subsection (3) does not affect
- (a) the right of an intestate's descendants to inherit the intestate estate even though they are of greater degree of relationship than the limit imposed by that subsection, or
- (b) the right of a person to apply under the *Escheat Act* on the basis of a legal or moral claim against the former owner of an estate that has escheated to the government as property to which no person is entitled to succeed as the owner.
- (5) For the purpose of subsection (3),
- (a) degrees of relationship are to be computed by counting upward from the intestate to the nearest common ancestor of the intestate and his or her relative, and then downward to the relative, and
- (b) relatives of the half kinship inherit equally with those of the whole kinship in the same degree.

2009-13-23 (B.C. Reg. 148/2013); 2011-6-12; 2011-25-468 (B.C. Reg. 131/2012).

Distribution to descendants

- 24.** (1) When a distribution is to be made under this Part to the descendants of a person, the property that is to be so distributed must be divided into a number of equal shares equivalent to the number of
- (a) surviving descendants, and
- (b) deceased descendants who have left descendants surviving the person, in the generation nearest to the person that contains one or more surviving members.
- (2) Subject to subsection (3), each surviving member of the generation nearest to the person that contains one or more surviving members must receive one share, and the share that would have been distributed to each deceased member if surviving must be divided among that member's descendants in the same manner as under subsection (1) and this subsection.
- (3) Distribution to descendants under subsections (1) and (2) as a result of a parent of the descendants having predeceased the intestate ends with the children of a brother or sister of the intestate.

2009-13-24 (B.C. Reg. 148/2013); 2011-6-13.

Partial intestacy

- 25.** This Division also applies to that part of an estate that is neither the subject of a gift nor otherwise disposed of by a will.

2009-13-25 (B.C. Reg. 148/2013).

Part 3: Division 2 – Spousal Home

Right to spousal home

- 26.** (1) This Division applies to
- (a) an intestate estate that includes a spousal home, and
 - (b) an estate in respect of which the spousal home is not the subject of a gift or otherwise disposed of by a will.
- (2) If this Division applies, the surviving spouse may acquire the spousal home from the personal representative to satisfy, in whole or in part, the surviving spouse's interest in the estate in accordance with this Division.
- 2009-13-26 (B.C. Reg. 148/2013).

Notice by personal representative

- 27.** (1) If this Division applies, the personal representative of a deceased person must, at the time an application for a representation grant is made, give notice to the surviving spouse of the right of the surviving spouse to acquire the spousal home in accordance with this Division.
- (2) A surviving spouse must exercise the right to acquire the spousal home during the period ending no later than 180 days after the date on which the representation grant is issued to the personal representative unless the court, before or after the expiration of that period, extends the time by which the right may be exercised.
- (2.1) If the spousal home is located on Nisga'a Lands or treaty lands, the personal representative must, at the time an application for a representation grant is made, give notice of section 18.3 [*no right to acquire Nisga'a Lands or treaty lands*] to the surviving spouse in addition to the notice under subsection (1).
- (3) If the court grants an extension of the period referred to in subsection (2), a personal representative who disposes of the spousal home is not liable if the disposal is made
- (a) after 180 days from the date the representation grant is issued, and
 - (b) before the notice of the right to acquire the spousal home is delivered to the personal representative under section 29 (1) or before the court, under subsection (2) of this section, extends the time by which that right may be exercised.

2009-13-27 (B.C. Reg. 148/2013); 2011-6-14.

Prohibition on disposing of spousal home

- 28.** A personal representative must not, without the written consent of the surviving spouse, dispose of the spousal home during the 180 days after the date on which the representation grant is issued or for any period of time extended under section 27 (2) unless assets other than the spousal home are not sufficient to pay the debts and liabilities of the estate and a mortgage or charge on the spousal home would not raise sufficient money to pay those debts and liabilities.

2009-13-28 (B.C. Reg. 148/2013).

Notice exercising right to spousal home

- 29.** (1) A surviving spouse may exercise his or her right to acquire the spousal home by delivering, within the required time referred to in section 27 (2), a written notice to
- (a) the personal representative of the deceased person, unless the surviving spouse is the personal representative,
 - (b) the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate, and
 - (c) the Public Guardian and Trustee, if one or more of the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate is a minor or a mentally incapable person without a nominee.
- (2) A notice under subsection (1) must contain
- (a) a statement to the effect that the surviving spouse requires the personal representative to transfer the interest in the spousal home to the surviving spouse, and
 - (b) a statement of the value the surviving spouse places on the deceased person's interest in the spousal home as of the date of the deceased person's death.

2009-13-29 (B.C. Reg. 148/2013); 2011-6-15.

Dispute over value of deceased person's interest

- 30.** (1) If the personal representative disputes the value of the deceased person's interest in the spousal home set out in a notice under section 29, the personal representative must deliver to the surviving spouse, within a reasonable time, a written response to the notice stating the value the personal representative places on the deceased person's interest.
- (2) If the personal representative and the surviving spouse do not agree on the value of the deceased person's interest in the spousal home, the surviving spouse or the personal representative may apply to the court for an order determining the value of the deceased person's interest.
- (3) If a surviving spouse who exercises the right to acquire the spousal home is the sole personal representative of the deceased person, the surviving spouse must apply to the court for an order determining the value of the deceased person's interest in the spousal home unless
- (a) the descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate, and
 - (b) the Public Guardian and Trustee, if one or more of the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate is a minor or a mentally incapable person without a nominee,
- agree in writing to the value that the surviving spouse places on the deceased person's interest.
- (4) If the surviving spouse, being the sole personal representative, does not apply to the court for an order under subsection (3) within 180 days of the date of the notice referred to in section 29,
- (a)

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- a descendant entitled to share in the estate or that part of the estate that is to be treated as an intestate estate, or
- (b) the Public Guardian and Trustee, if one or more of the descendants of the deceased person entitled to share in the intestate estate or the part of the estate is to be treated as intestate estate is a minor or a mentally incapable person without a nominee,
- may apply to the court for an order determining the value of the deceased person's interest in the spousal home.

2009-13-30 (B.C. Reg. 148/2013); 2011-6-16.

Purchase of spousal home by surviving spouse

- 31.** (1) If the fair market value of the deceased person's interest in the spousal home exceeds the value of the surviving spouse's interest in the estate under section 21 [*spouse and descendants*], subject to subsection (3) of this section, the surviving spouse may purchase the remainder of the deceased person's interest from the personal representative, or from those in whom that interest beneficially vests, in accordance with the valuation of the deceased person's interest in the spousal home as determined under this Division.
- (2) The surviving spouse may purchase the deceased person's interest in the spousal home under this Division whether or not the surviving spouse is a personal representative of the deceased person and despite any rule of law concerning the purchase of trust property by a trustee.
- (3) Before a surviving spouse may make an application under section 33, the surviving spouse must provide financial information as set out in the Supreme Court Civil Rules to
- (a) the personal representative of the deceased person, and
- (b) the descendants of the deceased person entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate.

2009-13-31 (B.C. Reg. 148/2013); 2011-6-17.

Occupancy costs of spousal home

- 32.** A surviving spouse who occupies the spousal home pending his or her purchase of the spousal home under this Division must pay, from the date of death of the deceased person to the date of the purchase of the spousal home,
- (a) the cost of insuring the spousal home against damage, destruction and public liability,
- (b) all applicable taxes, other than any prescribed taxes, assessed against the spousal home from the date of death of the deceased person to the date of purchase of the spousal home,
- (c) all reasonable and necessary expenses to maintain and repair the spousal home,
- (d) rates and charges for electricity, gas, fuel, oil and water consumed and similar utilities at the spousal home, and
- (e) a periodic payment that falls due under any mortgage on the spousal home and any bonus or payment of a penalty resulting from any prepayment by the surviving spouse.

2009-13-32 (B.C. Reg. 148/2013); 2011-6-18.

Retention of spousal home

- 33.** (1) On application by a surviving spouse, the court may make an order under subsection (2) if
- (a) the surviving spouse is ordinarily resident in the spousal home at the time of the deceased person's death,
 - (b) assets in the estate are not sufficient to satisfy the interests of all descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate without disposing of the spousal home,
 - (c) the court is satisfied that purchasing the spousal home under section 31 would impose a significant financial hardship on the surviving spouse,
 - (d) the court is satisfied that, in all the circumstances, a greater prejudice would be imposed on the surviving spouse by being unable to continue to reside in the spousal home than would be imposed on the descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate by having to wait an indeterminate period of time to receive all or part of their share of the intestate estate, and
 - (e) either
 - (i) the surviving spouse has resided in the spousal home for a sufficient period of time to have established a connection to the spousal home, or
 - (ii) the surviving spouse has a sufficient connection with the community or members of the community in the vicinity of the spousal home to warrant an order under subsection (2).
- (2) The court may, subject to any terms or conditions the court considers appropriate, make an order doing one or more of the following:
- (a) vesting the same interest in the spousal home in the surviving spouse that the deceased person had;
 - (b) specifying the amount of money the surviving spouse must pay to the descendants towards satisfaction of their interest in the estate;
 - (c) converting the remaining unpaid interest of the descendants in the intestate estate into a registrable charge against the title to the surviving spouse's interest in the spousal home;
 - (d) determining an interest rate, as that term is defined in section 7 [*interest rate*] of the *Court Order Interest Act*, or at any other rate the court considers appropriate, for the amount the descendants are entitled to under paragraph (c) of this subsection;
 - (e) determining the value of the registrable charge referred to in paragraph (c) to include the principal amount owing to the descendants entitled to share in the intestate estate or that part of the estate that is to be treated as an intestate estate and the expected value of the future interest that will be earned under paragraph (d).

2009-13-33 (B.C. Reg. 148/2013).

Registrable charges

- 34.** (1) A registrable charge referred to in section 33 (2) becomes due and payable in the circumstances specified by the court, having regard to prevailing residential lending practices in Canada, but if none are specified, becomes due and payable

on the earliest of the following:

- (a) twelve months after the date of death of the surviving spouse;
 - (b) twelve months after the date the surviving spouse ceases residing in the spousal home;
 - (c) the completion date of the sale of the spousal home.
- (2) If a registrable charge payable under subsection (1) is not paid, the owner of the registrable charge may take any action that a mortgagee of land may take under the prescribed standard mortgage terms under the *Land Title Act*.
 - (3) A registrable charge is not enforceable until a form approved by the Director of Land Titles accompanied by a certified copy of the court order under section 33 (2), in relation to the registrable charge, is registered under the *Land Title Act*.
 - (4) The owner of a registrable charge, on receipt of payment of the total amount secured by the registrable charge, must deliver to the registered owner of the spousal home or to that person's representative a release of the registrable charge in the form approved by the Director of Land Titles.
 - (5) A registrable charge may be released from the title to the spousal home by filing in a land title office
 - (a) a release of the registrable charge executed by the owner of the registrable charge in the form approved by the Director of Land Titles, or
 - (b) a certified copy of a court order releasing the registrable charge.

2009-13-34 (B.C. Reg. 148/2013).

Circumstances when registrable charge becomes payable

35. (1) In this section, "**charge**" has the same meaning as in the *Land Title Act*.
- (2) In addition to the circumstances described in section 34 (1), a registrable charge also becomes due and payable if the court, on application by or on behalf of the owner of the registrable charge, orders that it should become due and payable because of the following:
 - (a) the surviving spouse has not paid an amount required to be paid under or secured by a charge registered against the title of the spousal home in priority to the registrable charge;
 - (b) a tax or other charge is levied against the title of the spousal home and has not been paid, unless payment has been lawfully deferred;
 - (c) an action or failure to take action jeopardizes the value of the spousal home to such an extent that it no longer provides sufficient security for the total amount secured by the registrable charge;
 - (d) the provisions of the registrable charge have not been complied with or an event has occurred pursuant to those provisions by which the amount secured by the registrable charge becomes due and payable.
- (3) If a registrable charge becomes payable by order of the court under subsection (2), the surviving spouse has a period of 180 days to sell his or her interest in the spousal home in order to pay, in full, the amount secured by the registrable charge.
- (4) After the period referred to in subsection (3), the owner of the registrable charge may take any action in respect of the registrable charge that a mortgagee of land may take under the prescribed standard mortgage terms under the *Land Title Act* if the surviving spouse has not sold his or her interest in the spousal home or the owner of the registrable charge has not been paid.

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- (5) The owner of a registrable charge may, before or after it is registered in a land title office, postpone the priority of the registrable charge to other charges.
- (6) The owner of a registrable charge may sell, assign or otherwise dispose of the registrable charge before or after it is registered in a land title office in a form approved by the Director of Land Titles.
- (7) If the sale of a spousal home yields sale proceeds that are not sufficient to pay the full amount secured by a registrable charge the court may order the release of the registrable charge, but may not make any order to recover from the estate, the surviving spouse or the estate of the surviving spouse any shortfall resulting from the insufficiency of sale proceeds to pay the amount secured by the registrable charge.

2009-13-35 (B.C. Reg. 148/2013).

PART 4 – Wills

Part 4: Division 1 – Making a Will

Who can make a will

36. (1) A person who is 16 years of age or older and who is mentally capable of doing so may make a will.
- (2) A will made by a person under 16 years of age is not valid.

2009-13-36 (B.C. Reg. 148/2013).

How to make a valid will

37. (1) To be valid, a will must be
- (a) in writing,
 - (b) signed at its end by the will-maker, or the signature at the end must be acknowledged by the will-maker as his or hers, in the presence of 2 or more witnesses present at the same time, and
 - (c) signed by 2 or more of the witnesses in the presence of the will-maker.
- (2) A will that does not comply with subsection (1) is invalid unless
- (a) the court orders it to be effective as a will under section 58 [*court order curing deficiencies*],
 - (b) it is a will recognized as valid under section 80 [*validity of wills made in accordance with other laws*], or
 - (c) it is valid under another provision of this Act.

2009-13-37 (B.C. Reg. 148/2013).

Will by members of military forces

38. (1) A member of the Canadian Forces while placed on active service under the *National Defence Act* (Canada), or a 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 may, regardless of his or her age, make a gift of property by will in writing, signed by the will-maker at its end or by some other person in the presence of and by the direction of the will-maker.
- (2) If the will is signed by the will-maker, there is no need for a witness to be present to witness or to sign the will as a witness.
- (3) If the will is signed by another person, the signature of that other person must be witnessed by the signature of at least one person, who must sign the will in the presence of the will-maker and of that other person.

2009-13-38 (B.C. Reg. 148/2013).

Clarification of doubt about signature placement

39. (1)

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A will is conclusively deemed to be signed at its end if the will-maker's signature is placed so that it is apparent on the face of the will that the will-maker intended to give effect to the will, including in, but not limited to, the following circumstances:

- (a) the will-maker's signature is placed
 - (i) at or after the end of the will, or
 - (ii) following, under or beside the end of the will;
 - (b) the will-maker's signature does not immediately follow the end of the will;
 - (c) a blank space intervenes between the concluding words of the will and the will-maker's signature;
 - (d) the will-maker's signature:
 - (i) is placed among the words of a testimonium clause or of an attestation clause,
 - (ii) follows or is after or under an attestation clause either with or without a blank space intervening, or
 - (iii) follows or is after, under or beside the name of a witness who signed the will;
 - (e) the will-maker's signature is on a side or page or other portion of the will on which no disposing part of the will is written above the will-maker's signature;
 - (f) there appears to be sufficient space to contain the will-maker's 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 will-maker's signature appears.
- (2) A will-maker's signature that conforms to this section does not give effect to
- (a) a gift or direction in the will that follows the will-maker's signature, or
 - (b) a gift or direction inserted in the will after the will-maker signed the will.

2009-13-39 (B.C. Reg. 148/2013); 2011-6-19.

Witnesses to wills

- 40.** (1) Signing witnesses to a will-maker's signature must be 19 years of age or older.
- (2) A person may witness a will even though he or she may receive a gift under it, but the gift may be void under section 43 [*gifts to witnesses*].
- (3) A will is not invalid only because a witness was, at the time the will was signed by the will-maker, or afterwards became, legally incapable of proving the will, unless the witness was not 19 years of age or older at the time the will was signed by the will-maker.

2009-13-40 (B.C. Reg. 148/2013); 2011-6-20.

Part 4: Division 2 – Legal Effect of a Will

Property that can be gifted by will

- 41.** (1)

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A person may, by will, make a gift of property to which he or she is entitled at law or in equity at the time of his or her death, including property acquired before, on or after the date the will is made.

- (2) Unless a contrary intention appears in a will, when a will refers to property, the will, with respect to the property, is to be interpreted as if it had been made immediately before the death of the will-maker.
- (3) A gift in a will
 - (a) takes effect according to its terms, and
 - (b) subject to the terms of the gift, gives to the recipient of the gift every legal or equitable interest in the property that the will-maker had the legal capacity to give.

2009-13-41 (B.C. Reg. 148/2013).

Meaning of particular words in a will

- 42.** (1) This section is subject to a contrary intention appearing in a will.
- (2) A gift of property in a will to persons described as "heir" or "next of kin" of the will-maker or of another person takes effect as if it had been made to the persons among whom and in the shares in which the estate of the will-maker or other person would have been divisible if the will-maker or other person had died without a will.
 - (3) In a gift of property in a will
 - (a) the words
 - (i) "die without issue",
 - (ii) "die without leaving issue", or
 - (iii) "have no issue", or
 - (b) other words importing either no descendants or no descendants in a person's lifetime or at the time of the will-maker's death or a complete absence of descendants,
are deemed to refer to no descendants or no descendants in the lifetime or at the time of death of that person and not to a complete absence of descendants of that person.
 - (4) A gift of property to a class of persons that
 - (a) is described as a will-maker's "issue" or "descendants" or by a similar word, and
 - (b) encompasses more than one generation of beneficiaries,
must be distributed as if it were part of an intestate estate to be distributed to descendants.

2009-13-42 (B.C. Reg. 148/2013).

Gifts to witnesses

- 43.** (1) Unless a court otherwise declares under subsection (4), a gift in a will is void if it is to
 - (a) a witness to the will-maker's signature or to the spouse of that witness,
 - (b)

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- a person signing the will by the will-maker's direction, or the spouse of the person signing, or
- (c) a person claiming under a person, other than the will-maker, referred to in paragraph (a) or (b).
- (2) For the purposes of subsection (1), the relevant time for determining whether one person is the spouse of another is the time when the will was made.
 - (3) If a gift is void under subsection (1), the remainder of the will is not affected.
 - (4) On application, the court may declare that a gift to a person referred to in subsection (1) is not void and is to take effect, if the court is satisfied that the will-maker intended to make the gift to the person even though the person or his or her spouse was a witness to the will.
 - (5) Extrinsic evidence is admissible for the purposes of establishing the will-maker's intention under subsection (4).
- 2009-13-43 (B.C. Reg. 148/2013); 2011-6-21.

Residue of estate

- 44.** If a will does not give or otherwise dispose of all of the will-maker's property, the property that is not the subject of a gift or otherwise disposed of in the will
- (a) must be distributed to the persons who would be entitled if that property were an intestate estate, and
 - (b) if there is no person who would be entitled under paragraph (a), passes to the government and is subject to the *Escheat Act*.
- 2009-13-44 (B.C. Reg. 148/2013).

Gift of land contemplating division

- 45.** If a gift of land in a will to 2 or more beneficiaries contemplates a physical division of the parcel by subdivision or otherwise, the gift takes effect as a gift to the beneficiaries as tenants in common in proportion to their interests, unless a contrary intention appears in the will.
- 2009-13-45 (B.C. Reg. 148/2013).

When gifts cannot take effect

- 46.** (1) If a gift in a will cannot take effect for any reason, including because a beneficiary dies before the will-maker, the property that is the subject of the gift must, subject to a contrary intention appearing in the will, be distributed according to the following priorities:
- (a) to the alternate beneficiary of the gift, if any, named or described by the will-maker, whether the gift fails for a reason specifically contemplated by the will-maker or for any other reason;
 - (b) if the beneficiary was the brother, sister or a descendant of the will-maker, to their descendants, determined at the date of the will-maker's death, in accordance with section 42 (4) [*meaning of particular words in a will*];
 - (c) to the surviving residuary beneficiaries, if any, named in the will, in proportion to their interests.
- (2) If a gift cannot take effect because a beneficiary dies before the will-maker, subsection (1) applies whether the beneficiary's death occurs before or after the will is made.
- 2009-13-46 (B.C. Reg. 148/2013).

Property encumbered by security interest

47. (1) In this section, "**purchase money security interest**" means a security interest taken in land or in tangible personal property that
- (a) secures credit, including interest charges, provided to the will-maker to acquire, improve or preserve the land or tangible personal property, and
 - (b) is registered under the *Land Title Act* or the *Personal Property Security Act*.
- (2) The interest of a beneficiary in a gift of property encumbered by a purchase money security interest is, as between the different persons claiming through the will-maker, primarily liable to pay the debt secured by the purchase money security interest to the extent that the debt is attributable to the acquisition, improvement or preservation of the property.
- (3) If a purchase money security interest applies to more than one gift of property in a will, each property is liable for payment of the purchase money security interest proportionally, to the extent that the debt is attributable to the acquisition, improvement or preservation of each property.
- (4) Subsections (2) and (3) are subject to contrary intention appearing in the will, but a contrary intention is not signified by
- (a) a general direction in the will for the payment of debts, or
 - (b) a charge of debts on the will-maker's estate,
- unless the will-maker further signifies that intention by words expressly or by necessary implication referring to all or some part of the debt secured by the purchase money security interest.
- (5) Nothing in this section affects the right of a secured party to obtain payment or satisfaction either out of other property of the deceased person or otherwise.
- 2009-13-47 (B.C. Reg. 148/2013).

Relief from disposition of property

48. (1) In this section, "**proceeds**" means the gross proceeds at the time of disposition, and includes
- (a) non-monetary consideration, and
 - (b) in the case of a gift, the fair market value of the gift.
- (2) If property that is the subject of a gift in a will is disposed of by a nominee, the beneficiary of the gift is entitled to receive from the will-maker's estate an amount equivalent to the proceeds of the gift as if the will had contained a specific gift to the beneficiary of that amount.
- (3) Subsection (2) does not apply if
- (a) the disposition is made to carry out instructions given by the will-maker at a time when the will-maker was legally capable of giving instructions, or
 - (b) a contrary intention appears in the will.

2009-13-48 (B.C. Reg. 148/2013); 2011-6-22.

Will exercising a power of appointment

49.

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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.

2009-13-49 (B.C. Reg. 148/2013).

Rules if assets are not sufficient

- 50.** (1) This section is subject to a contrary intention appearing in a will.
- (2) If a will-maker's estate is not sufficient to satisfy all debts and gifts, the debts and gifts must be satisfied or reduced in accordance with this section.
- (3) Land charged by the will-maker with payment of debts or pecuniary gifts, or both, is primarily liable for the debts and gifts, despite a failure of the will-maker to expressly exonerate the personal property.
- (4) Land and personal property must be reduced together.
- (5) Subject to subsection (3), assets are reduced in the following order:
- (a) property specifically charged with a debt or left on trust to pay debt;
 - (b) property distributed as an intestate estate and residue;
 - (c) general, demonstrative and pecuniary legacies;
 - (d) specific legacies;
 - (e) property over which the will-maker had a general power of appointment.

2009-13-50 (B.C. Reg. 148/2013).

Gifts of unowned property

- 51.** (1) Subject to subsection (2),
- (a) a gift of property that the will-maker does not own is void, and
 - (b) the rights of a beneficiary are not affected by the purported gift by the will-maker of property owned by the beneficiary.
- (2) A will-maker may make a gift of property that is conditional on the disposition by the beneficiary of property owned by the beneficiary.

2009-13-51 (B.C. Reg. 148/2013).

Undue influence

- 52.** (1) In a proceeding, if a person claims that a will or any provision of it resulted from another person
- (a) being in a position where the potential for dependence or domination of the will-maker was present, and
 - (b) using that position to unduly influence the will-maker to make the will or the provision of it that is challenged,
- and establishes that the other person was in a position where the potential for dependence or domination of the will-maker was present, the party seeking to defend the will or the provision of it that is challenged or to uphold the gift has the onus of establishing that the person in the position where the potential for dependence or domination of the will-maker was present did not exercise undue influence over the will-maker with respect to the will or the provision of it that is challenged.

Part 4: Division 3 – Abrogation of Common Law Rules

Common law presumptions abrogated

53. (1) The presumption of law that a gift by a will-maker made during his or her lifetime to a child of the will-maker or to a person to whom the will-maker stands in place of a parent is an advancement of a portion that is intended to revoke a gift in the will-maker's will in favour of the child or person is abrogated and the gift in the will takes effect according to its terms.
- (2) The presumption of law that a legacy is revoked by a gift in the same amount as the legacy made by the will-maker during the will-maker's lifetime is abrogated and the legacy takes effect according to its terms.
- (3) The presumption of law that a debt owed by a will-maker is satisfied by a legacy to the creditor equal to or greater than the debt is abrogated and the debt continues to be a claim against the will-maker's estate.
- (4) The presumption of law that a binding promise by a person to make a gift to advance a child in life is satisfied to the extent of the benefit promised by a gift in the person's will to the child is abrogated and the promise remains binding on the person and the person's estate.
- (5) The abrogation of a presumption set out in any of subsections (1) to (4) is subject to a contrary intention appearing in the will or otherwise and extrinsic evidence is admissible to prove the contrary intention.

2009-13-53 (B.C. Reg. 148/2013).

Part 4: Division 4 – Altering, Revoking and Reviving Wills

How to alter will

54. (1) To make a valid alteration to a will the alteration must be made in the same way that a valid will is made under section 37 *[how to make a valid will]*.
- (2) An alteration to a will is valid if the signature of the will-maker to the alteration, and the witnesses to that signature of the will-maker, are made
- (a) in the margin or in some other part of the will opposite to 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.
- (3) An alteration to a will that is not made by the will-maker in accordance with this section is ineffective
- (a) except to invalidate a word or provision that the alteration makes illegible, unless the court reinstates the original word or provision under section 58 (4) *[court order curing deficiencies]*, or
- (b) unless the court orders the alteration to be effective under section 58.

2009-13-54 (B.C. Reg. 148/2013).

How to revoke will

- 55.** (1) A will or part of a will is revoked only in one or more of the following circumstances:
- (a) by another will made by the will-maker in accordance with this Act;
 - (b) by a written declaration of the will-maker that revokes all or part of a will made in accordance with section 37 [*how to make a valid will*];
 - (c) by the will-maker, or a person in the presence of the will-maker and by the will-maker's direction, burning, tearing or destroying all or part of the will in some manner with the intention of revoking all or part of it;
 - (d) by any other act of the will-maker, or another person in the presence of the will-maker and by the will-maker's direction, if the court determines under section 58 that
 - (i) the consequence of the act of the will-maker or the other person is apparent on the face of the will, and
 - (ii) the act was done with the intent of the will-maker to revoke the will in whole or in part.
- (2) A will is not revoked in whole or in part by presuming an intention to revoke it because of a change in circumstances.
- 2009-13-55 (B.C. Reg. 148/2013); 2011-6-24.

Revocation of gifts

- 56.** (1) This section is subject to a contrary intention appearing in a will.
- (2) If a will-maker
- (a) makes a gift to a person who was or becomes the spouse of the will-maker,
 - (b) appoints as executor or trustee a person who was or becomes the spouse of the will-maker, or
 - (c) confers a general or special power of appointment on a person who was or becomes the spouse of the will-maker,
- and after the will is made and before the will-maker's death the will-maker and his or her spouse cease to be spouses under section 2 (2) [*when a person is a spouse under this Act*], the gift, appointment or power of appointment is revoked and the gift must be distributed as if the spouse had died before the will-maker.
- (3) The operation of subsection (2) is not affected by a subsequent reconciliation of the will-maker and the spouse.
- (4) For the purposes of subsection (2), the relevant time for determining whether a person
- (a) was the spouse of a will-maker is at the time the will was made, or
 - (b) became the spouse of the will-maker is at any time after the will was made and before the spouses ceased to be spouses under section 2 (2).
- 2009-13-56 (B.C. Reg. 148/2013).

Revival of will

- 57.** (1) A will or part of a will that has been revoked is revived only by a will that shows an intention to give effect to the revoked will or the part that was revoked.
- (2) Unless a contrary intention appears in the will that revives a will under subsection (1), if a will that has been partly revoked and afterwards wholly revoked is

revived, the revival does not extend to the part that was revoked before the revocation of the whole.

- (3) If a will has been revived by a codicil or has, by a codicil, been re-signed in the presence of 2 witnesses, the will is deemed to have been made at the time it was revived or re-signed.
- (4) A will or part of a will that has been revoked may not be revived except
 - (a) by an order of the court under section 58 if the court is satisfied that the will-maker intended to give effect to the will or part of the will that was revoked, or
 - (b) in accordance with any other provision of this Act that recognizes the revival of a will.

2009-13-57 (B.C. Reg. 148/2013).

Part 4: Division 5 – Curing Deficiencies and Rectification of Wills

Court order curing deficiencies

- 58.** (1) In this section, "**record**" includes data that
- (a) is recorded or stored electronically,
 - (b) can be read by a person, and
 - (c) is capable of reproduction in a visible form.
- (2) On application, the court may make an order under subsection (3) if the court determines that a record, document or writing or marking on a will or document represents
- (a) the testamentary intentions of a deceased person,
 - (b) the intention of a deceased person to revoke, alter or revive a will or testamentary disposition of the deceased person, or
 - (c) the intention of a deceased person to revoke, alter or revive a testamentary disposition contained in a document other than a will.
- (3) Even though the making, revocation, alteration or revival of a will does not comply with this Act, the court may, as the circumstances require, order that a record or document or writing or marking on a will or document be fully effective as though it had been made
- (a) as the will or part of the will of the deceased person,
 - (b) as a revocation, alteration or revival of a will of the deceased person, or
 - (c) as the testamentary intention of the deceased person.
- (4) If an alteration to a will makes a word or provision illegible and the court is satisfied that the alteration was not made in accordance with this Act, the court may reinstate the original word or provision if there is evidence to establish what the original word or provision was.

2009-13-58 (B.C. Reg. 148/2013).

Rectification of will

- 59.** (1)

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On application for rectification of a will, the court, sitting as a court of construction or as a court of probate, may order that the will be rectified if the court determines that the will fails to carry out the will-maker's intentions because of

- (a) an error arising from an accidental slip or omission,
 - (b) a misunderstanding of the will-maker's instructions, or
 - (c) a failure to carry out the will-maker's instructions.
- (2) Extrinsic evidence, including evidence of the will-maker's intent, is admissible to prove the existence of a circumstance described in subsection (1).
- (3) An application for rectification of a will must be made no later than 180 days from the date the representation grant is issued unless the court grants leave to make an application after that date.
- (4) If the court grants leave to make an application for rectification of a will after 180 days from the date the representation grant is issued, a personal representative who distributes any part of the estate to which entitlement is subsequently affected by rectification is not liable if, in reasonable reliance on the will, the distribution is made
- (a) after 180 days from the date the representation grant is issued, and
 - (b) before the notice of the application for rectification is delivered to the personal representative.
- (5) Subsection (4) does not affect the right of any person to recover from a beneficiary any part of the estate distributed in the circumstances described in that subsection.

2009-13-59 (B.C. Reg. 148/2013).

Part 4: Division 6 – Variation of Wills

Maintenance from estate

- 60.** Despite any law or enactment to the contrary, if a will-maker dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in a proceeding by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.

2009-13-60 (B.C. Reg. 148/2013); 2011-6-23.

Time limit and service

- 61.** (1) A proceeding commenced by a person claiming the benefit of this Division must not be heard by the court unless
- (a) the proceeding is commenced within 180 days from the date the representation grant is issued in British Columbia,
 - (b) a copy of the initiating pleading or petition has been served on the executor of the will no later than 30 days after the expiry of the 180 day period referred to in paragraph (a) unless the court, before or after the expiration of the 30 days, extends the time for service, and

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- (c) if there are minor children of the will-maker, or if the spouse or a child of the will-maker is mentally incapable, a copy of the initiating pleading or petition has been served on the Public Guardian and Trustee.
- (2) A proceeding in respect of the will of a Nisga'a citizen or a treaty first nation member must not be heard by the court at the instance of a party claiming the benefit of this Division unless a copy of the initiating pleading or petition has been served on the Nisga'a Lisims Government or the treaty first nation, as applicable.
- (3) If the Public Guardian and Trustee is served with a copy of the initiating pleading or petition under subsection (1), the Public Guardian and Trustee is entitled to appear, to be heard and to any costs that the court orders.
- (4) If a proceeding has been commenced on behalf of a person under this Division, it may be treated by the court as, and so far as regards the question of limitation is conclusively deemed to be, a proceeding on behalf of all persons who might apply.
- (5) Within 10 days from the date of the issue of the initiating pleading or petition, a plaintiff in a proceeding under this Division may register, in the land title office in which the title to land sought to be affected is registered, a certificate of pending litigation against the land in a form approved under the *Land Title Act*.
2009-13-61 (B.C. Reg. 148/2013); 2011-6-23, 25.

Evidence

- 62.** (1) In a proceeding under section 60, the court may accept the evidence it considers proper respecting the will-maker's reasons, so far as may be determined,
 - (a) for making the gifts made in the will, or
 - (b) for not making adequate provision for the will-maker's spouse or children, including any written statement signed by the will-maker.
- (2) In estimating the weight to be given to a statement referred to in subsection (1), the court must have regard to all the circumstances from which an inference may reasonably be drawn about the accuracy or otherwise of the statement.
2009-13-62 (B.C. Reg. 148/2013); 2011-6-23.

Court may make order subject to conditions

- 63.** The court may
 - (a) attach to an order under this Division any conditions that it thinks appropriate, or
 - (b) refuse to make an order in favour of a person whose character or conduct, in the court's opinion, disentitles the person to the benefit of an order under this Division.
2009-13-63 (B.C. Reg. 148/2013).

Lump sum or periodic payments, transfer of property or trust

- 64.** In making an order under this Division the court may, if it things it is appropriate, order that
 - (a) the provision for the will-maker's spouse or children is to consist of a lump sum, a periodic or other payment or a transfer of property, or
 - (b) a trust be created in favour of the will-maker's spouse or children.

2009-13-64 (B.C. Reg. 148/2013).

Payments fall rateably on estate

65. (1) Unless the court otherwise determines, the incidence of the payments ordered by the court under this Division falls rateably on the will-maker's estate.
- (2) If the authority of the court does not extend or cannot, directly or indirectly, be made to extend to the whole estate, subsection (1) applies to as much of the estate as is located in British Columbia.

2009-13-65 (B.C. Reg. 148/2013).

Power to suspend administration and exempt from order

66. The court may, subject to any terms or conditions the court considers appropriate, make one or both of the following orders:
- (a) suspending, in whole or in part, the administration of the will-maker's estate;
- (b) exempting any part of the will-maker's estate from the effect of an order under section 60 [*maintenance from estate*].

2009-13-66 (B.C. Reg. 148/2013).

Power of court to allow commutation

67. (1) The court may make an order that a periodic payment or lump sum is to be paid by a beneficiary to represent, or in commutation of, the proportion of the sum ordered to be paid that falls on the part of the estate in which the beneficiary is interested, and that the part is released from further liability.
- (2) In making an order under subsection (1), the court may give directions concerning the security and disposition of the periodic payment or lump sum under subsection (1).

2009-13-67 (B.C. Reg. 148/2013).

Effect of order

68. On an order being made under this Division, the part of the estate comprised in it or affected by it must be held subject to the provisions of the order, but the order does not bind land unless the order is registered, in the land title office in which the title to the land is registered, as a charge against the land affected.

2009-13-68 (B.C. Reg. 148/2013).

Registration of title

69. (1) Title to property distributed by gift in a will to a beneficiary must not be registered in a land title office except after the time set out in section 155 [*distribution of estate*] unless
- (a) the beneficiaries entitled under the will consent to the registration, or
- (b) a court approves the registration.
- (2) A registration under subsection (1) is subject to the liability of being subject to an order under this Division.

Mortgage in anticipation of order invalid

- 70.** (1) A person for whom provision is made under this Division must not anticipate that provision.
- (2) A mortgage, charge or assignment of any kind of or over a provision referred to in subsection (1) is of no effect if it is made before the order of the court is made.
- (3) A mortgage, charge or assignment made after an order of the court referred to in subsection (2) is made is of no effect unless it is made with the court's permission.

2009-13-70 (B.C. Reg. 148/2013).

Court may cancel or vary order

- 71.** If the court has ordered periodic payments, or that a lump sum be invested for the benefit of a person, the court may
- (a) inquire whether, at any subsequent date, changes in the circumstances of the person in whose favour the order was made have resulted, in whole or in part, in the person's entitlement to adequate provision separate from the order, and
- (b) cancel, vary or suspend its order, or make another order.

2009-13-71 (B.C. Reg. 148/2013); 2011-6-26.

Appeal to Court of Appeal

- 72.** A person who considers himself or herself prejudicially affected by an order under this Division may appeal to the Court of Appeal.

2009-13-72 (B.C. Reg. 148/2013).

Part 4: Division 7 – Registration of Notice of Will

Filing of notice of will

- 73.** If a person makes a will, a notice of will may be filed with the chief executive officer in a form satisfactory to the chief executive officer.

2009-13-73 (B.C. Reg. 148/2013); 2011-6-27.

Filing of notice of revocation

- 74.** If a will is revoked, whether or not a notice was filed under section 73, a notice of revocation in a form satisfactory to the chief executive officer may be filed with the chief executive officer.

2009-13-74 (B.C. Reg. 148/2013).

Filing notice of change of place of will

- 75.** If a notice has been filed under section 73 and the will is no longer located at the place mentioned in the notice, notice of the change in a form satisfactory to the

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chief executive officer may be filed with the chief executive officer.
2009-13-75 (B.C. Reg. 148/2013).

Chief executive officer's records

- 76.** The chief executive officer must maintain, in a system that the chief executive officer believes facilitates access to information by those who require it, a record of every notice filed under this Division.
2009-13-76 (B.C. Reg. 148/2013).

Search of records

- 77.** (1) A lawyer 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 Division.
- (2) A person other than a lawyer 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 chief executive officer if the person named in the application has filed a notice under this Division.
- (3) The chief executive officer must
- (a) issue to an applicant under subsection (1) or (2)
 - (i) the search results for the person named in the application, and
 - (ii) a certificate showing the contents of the last notice that is 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 lawyer 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 Division, or
 - (b) access by computer or otherwise to information contained in a notice filed under this Division.
- (5) Except as provided in this section, the chief executive officer must not provide to any person information regarding notices filed under this Division or information about whether or not a notice has been filed.
2009-13-77 (B.C. Reg. 148/2013); 2011-6-28.

Validity of will or revocation not affected

- 78.** The validity of a will and the validity of a revocation of a will are not affected by filing or not filing a notice under this Division.
2009-13-78 (B.C. Reg. 148/2013).

Part 4: Division 8 – Conflict of Laws

Interpretation

- 79.** (1) In this Division, a reference to the law of a place other than British Columbia is a reference to the internal law only of that place and does not include its conflict of laws rules.
- (2) A requirement of the law of a place other than British Columbia that
- (a) certain formalities must be observed by will-makers of a particular description when making a will, or
 - (b) witnesses to wills must have certain qualifications
- is a formal requirement only that does not affect the essential validity of the will.
2009-13-79 (B.C. Reg. 148/2013).

Validity of wills made in accordance with other laws

- 80.** (1) A will is valid as to the formal requirements for making the will and is admissible to probate if it is made in accordance
- (a) with the law of the place where the will is made,
 - (b) with the law of the will-maker's domicile, either at the date the will is made or at the date of the will-maker's death,
 - (c) with the law of the will-maker's ordinary residence, either at the date the will is made or at the date of the will-maker's death,
 - (d) with the law of a country of which the will-maker was a citizen, either at the date the will is made or at the date of the will-maker's death,
 - (e) with the law of British Columbia, but the will is made outside British Columbia,
 - (f) with the law of the place where the will-maker's property is situated at the date the will is made or at the date of the will-maker's death,
 - (g) in the case of a will made on board a vessel or aircraft of any description, with the law of the place with which, having regard to the registration, if any, of a vessel or aircraft, the vessel or aircraft is most closely connected, or
 - (h) to the extent that the will varies a power of appointment, with the law governing the essential validity of that power.
- (2) If a will is not valid under subsection (1), it is deemed to be valid if a subsequent amendment to the law of the relevant jurisdiction before the deceased person's death would have validated the will.
- (3) The formal validity of a will that revokes
- (a) a will that would be treated as formally valid under this Division, or
 - (b) a provision of a will that would be treated under this Division as a formally valid provision,
- may be determined by reference to any law under which the revoked will or provision of the will would be treated as formally valid and that is relevant for that purpose under this Division.
2009-13-80 (B.C. Reg. 148/2013).

Resort to other aids to construction

- 81.** In the construction of a will to which this Division applies, the court may resort to the law of the place where the will-maker was domiciled or was ordinarily

resident at the time the will was made.

2009-13-81 (B.C. Reg. 148/2013).

Interest in an immovable

- 82.** (1) If the value of personal property consists mainly or wholly in its use in connection with an interest in an immovable by the owner or occupier of the personal property, the right to an interest in the personal property under a will is governed by the law of the place where the immovable is located.
- (2) In subsection (1), "**interest in an immovable**" includes any estate or interest in land whether the estate or interest is real property or personal property, and includes a leasehold estate.

2009-13-82 (B.C. Reg. 148/2013).

Part 4: Division 9 – Adoption of Convention Providing a Uniform Law on the Form of an International Will

Convention adopted

- 83.** (1) In this section, "**convention**" means the Convention Providing a Uniform Law on the Form of an International Will set out in Schedule 2 to this Act.
- (2) The convention
- (a) is in force in British Columbia, and
 - (b) applies to wills as law of British Columbia, and the rules regarding an international will, set out in the Annex to the convention, are law in British Columbia 6 months after the date on which the government of Canada submits to the government of the United States of America a declaration that the convention extends to British Columbia.
- (3) The following are persons authorized to act in connection with an international will:
- (a) lawyers;
 - (b) members of the Society of Notaries Public of British Columbia.
- (4) Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in British Columbia other than this section.
- (5) Section 58 [*court order curing deficiencies*] applies to a will purporting to be signed or witnessed, or both, in accordance with the convention.
- (6) This section applies to wills made before, on or after the date this section comes into force if the will-maker has not died before that date.
- (7) The minister must publish in the Gazette a notice setting out the date that is the effective date for this section as soon as the date that is 6 months after the date on which the government of Canada submits the declaration under subsection (1) is determined.

2009-13-83 (B.C. Reg. 148/2013).

PART 5 – Benefit Plans

Application of Part

- 84.** (1) This Part applies whether or not a benefit plan gives a person entitled to a benefit under the plan the right to make designation.
- (2) If a benefit plan provision is inconsistent with this Part, this Part prevails unless the benefit plan provision that is inconsistent is authorized under another enactment of British Columbia or Canada.
- (3) This Part does not apply to a contract of insurance or to a declaration to which Part 3 [*Life Insurance*] or Part 4 [*Accident and Sickness Insurance*] of the *Insurance Act* applies.
- (4) If this Part conflicts or is inconsistent with another enactment of British Columbia or Canada, the other enactment prevails.
- 2009-13-84 (B.C. Reg. 148/2013).

Part 5: Division 1 – Designation Requirements

Designated beneficiaries

- 85.** (1) A participant may
- (a) designate another person or persons to whom or for whose advantage the benefit is payable as a designated beneficiary, and
- (b) unless the designation is irrevocable under section 87, alter or revoke the designation.
- (2) A designation, alteration or revocation under this section
- (a) is only effective if the designation, alteration or revocation
- (i) is in writing,
- (ii) is not altering or revoking a previous designation that is irrevocable under section 87, and
- (iii) is signed by the person making it, or by another person in the presence of the person making it and by his or her direction, and the signature may be in the name of the person making it or the person signing by his or her direction,
- (b) may be made in a will, but if it is,
- (i) the designation is only effective if it relates expressly to a benefit plan, either generally or specifically, and
- (ii) Division 3 [*Designated Beneficiaries in a Will*] of this Part applies to the designation, and
- (c) is subject to section 89 [*when designations may not be changed*].
- (3) A person granted power over financial affairs under
- (a) section 8 [*enduring power of attorney*] of the *Power of Attorney Act*, or
- (b) the *Patients Property Act*

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may make, alter or revoke a designation under this section only if expressly authorized to do so by the court and the designation is not made in a will.

2009-13-85 (B.C. Reg. 148/2013); 2011-6-29.

Several designated beneficiaries

- 86.** If 2 or more designated beneficiaries are designated other than alternatively, but no division is made of the benefit payable under the benefit plan on the participant's death, the benefit is payable to the designated beneficiaries in equal shares.

2009-13-86 (B.C. Reg. 148/2013).

Irrevocable designations

- 87.** (1) A participant may make an irrevocable designation.
- (2) An irrevocable designation has effect as an irrevocable designation only if, during the lifetime of the participant, it is filed with an office in Canada specified for that purpose by the benefit plan administrator.
- (3) If a person
- (a) makes an irrevocable designation by will, or
 - (b) makes an irrevocable designation that is not filed in accordance with subsection (2),
- the designation takes effect as a revocable designation.

2009-13-87 (B.C. Reg. 148/2013).

Effect of irrevocable designation

- 88.** (1) While a designated beneficiary of an irrevocable designation is living, the participant may not alter or revoke the designation without the consent of the designated beneficiary.
- (2) A benefit that is the subject of an irrevocable designation
- (a) is not subject to the control of the participant or the participant's creditors, and
 - (b) does not form part of the participant's estate.

2009-13-88 (B.C. Reg. 148/2013).

Part 5: Division 2 – Other Benefit Plan Provisions

When designations may not be changed

- 89.** If the amount or duration of a payment under a benefit plan is determined having regard to the person entitled to a benefit under a benefit plan, unless otherwise permitted under the terms of the plan, the person or persons named as designated beneficiary or designated beneficiaries may not be changed after the payments start.

2009-13-89 (B.C. Reg. 148/2013).

Maintaining previous designations

- 90.** (1) Subject to subsection (2), a new designation of the same designated beneficiary may be made, other than by a will, by a representative of the participant, including one of the following:
- (a) a committee acting under the *Patients Property Act*;
 - (b) an attorney acting under an enduring power of attorney as described in section 8 [enduring power of attorney] of the *Power of Attorney Act*;
 - (c) a representative acting under a representation agreement made under section 9 (1) (g) [other provisions] of the *Representation Agreement Act*;
 - (d) a person appointed under section 51 (2) [mentally incompetent Indians] of the *Indian Act* (Canada) or the Minister of Indian Affairs and Northern Development.
- (2) Subsection (1) operates only if the designation renews, replaces or converts a similar instrument made by the participant while capable.
- (3) If a benefit plan administrator acts in accordance with a new designation described in subsection (1), the benefit plan administrator is entitled to rely on that designation and is discharged in respect of that benefit.

2009-13-90 (B.C. Reg. 148/2013); 2011-6-30.

Designated beneficiary dying before participant

- 91.** If a designated beneficiary dies before the participant, and no disposition of the share of the deceased designated beneficiary is provided for in the designation, the share is payable
- (a) to the surviving designated beneficiary,
 - (b) if there is more than one surviving designated beneficiary, to the surviving designated beneficiaries in equal shares, or
 - (c) if there is no surviving designated beneficiary, to the participant's personal representative.

2009-13-91 (B.C. Reg. 148/2013).

Trustee for designated beneficiary

- 92.** (1) A participant may, in the same manner as a designation, appoint or alter or revoke the appointment of a trustee for a designated beneficiary.
- (2) A payment made by a benefit plan to the trustee for a designated beneficiary discharges the benefit plan administrator to the extent of the payment.

2009-13-92 (B.C. Reg. 148/2013).

Enforcing payment of benefit

- 93.** (1) If a designation is in effect when a participant dies, a designated beneficiary or trustee entitled to a benefit under the designation may enforce payment of the benefit.
- (2) A benefit plan administrator may set up any defence that would have been available had the claim to enforce payment been brought by the participant or the participant's personal representative.

2009-13-93 (B.C. Reg. 148/2013).

Benefit plan administrator discharged of liability

- 94.** If a benefit plan administrator transfers a benefit in accordance with the benefit plan to a designated beneficiary or to the trustee appointed under section 92, the benefit plan administrator is discharged in respect of that benefit even if the benefit plan administrator later receives a notice of change of designated beneficiary.

2009-13-94 (B.C. Reg. 148/2013).

Benefit not part of estate

- 95.** A benefit payable to a designated beneficiary or to a trustee appointed under section 92 under a benefit plan on the death of a participant does not form part of the participant's estate and is not subject to the claims of the participant's creditors.

2009-13-95 (B.C. Reg. 148/2013).

Part 5: Division 3 – Designated Beneficiaries in a Will

Alteration or revocation of designation in will

- 96.** A designation in a will may be altered or revoked by a later designation that is not in a will.

2009-13-96 (B.C. Reg. 148/2013).

Designation in will

- 97.** (1) A revocation in a will of a designation revokes a designation that is not in a will only if the revocation in the will relates to the designation, either generally or specifically, and the designation is not irrevocable.
(2) The revocation of a will revokes a designation in the will.
(3) Revocation of a designation does not revive an earlier designation.

2009-13-97 (B.C. Reg. 148/2013).

Effect of designation in purported wills

- 98.** (1) A designation or revocation of a designation contained in a purported will is not invalid merely because the instrument is invalid as a will.
(2) A designation in a purported will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

2009-13-98 (B.C. Reg. 148/2013).

Effect of revival of will on designation

- 99.** Revival of a will by codicil does not revive a revoked designation in a will unless the codicil expressly provides for revival.

2009-13-99 (B.C. Reg. 148/2013).

Effective date of designation and revocation

- 100.** Unless a designation is irrevocable, a designation or revocation of a designation in a will is effective from the time the will is made.
2009-13-100 (B.C. Reg. 148/2013).

PART 6 – Administration of Estates

Part 6: Division 1 – Application of this Part and Vesting of Property

Application

- 101.** This Part applies to the following:
- (a) a personal representative or other person acting or intending to act in British Columbia under a will or a representation grant, wherever the will is made or the representation grant is issued;
 - (b) the administration of the estate of a deceased person who was ordinarily resident or domiciled in British Columbia at the date of the person's death;
 - (c) the estate situated in British Columbia of a deceased person who was not ordinarily resident or domiciled in British Columbia at the date of the person's death.

2009-13-101 (B.C. Reg. 148/2013).

Vesting of property on death

- 102.** (1) On the death of a person, the deceased person's estate vests in the court if
- (a) the estate is an intestate estate, or
 - (b) an executor is not named in the deceased person's will.
- (2) The estate of a deceased person vests in the person's personal representative when the personal representative assumes or is appointed to that office.

2009-13-102 (B.C. Reg. 148/2013).

Administration pending legal proceedings

- 103.** (1) The court may appoint a person as the administrator of the estate of a deceased person pending a proceeding
- (a) in which the validity of the will of the deceased person is in issue, or
 - (b) to obtain or revoke a representation grant.
- (2) The administrator of an estate
- (a) has all the rights, powers and duties of a personal representative, other than the right to distribute the estate,
 - (b) is subject to the control of the court and must act under its direction, and
 - (c) is entitled to reasonable compensation under the *Trustee Act* or as otherwise determined by the court.

2009-13-103 (B.C. Reg. 148/2013).

Renunciation of executorship

- 104.** (1) A person named as executor in a will may renounce his or her appointment as executor.

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- (2) The renunciation of executorship, unless a court otherwise orders, terminates the executorship of the person renouncing it, and the administration of the estate passes as if the person had never been appointed executor.
2009-13-104 (B.C. Reg. 148/2013).

Forfeiture of executorship

- 105.** If an executor
- (a) survives the will-maker and dies without being granted probate, or
 - (b) is required to take probate and does not appear,
- the appointment of the executor terminates and the administration of the estate passes as if the person had not been appointed as executor.
2009-13-105 (B.C. Reg. 148/2013).

Opposition to issue of representation grant

- 106.** A person may, in accordance with the Supreme Court Civil Rules, oppose the issue of a representation grant.
2009-13-106 (B.C. Reg. 148/2013); 2011-6-8.

Executor not joining an application

- 107.** If an executor does not join an application for a grant of probate or administration with will annexed, the executor is not liable in respect of assets of the estate coming into the hands of a co-executor, an alternative executor, an administrator with will annexed or a declarant named in the representation grant, whether or not power is reserved to the executor to apply for a subsequent representation grant.
2009-13-107 (B.C. Reg. 148/2013).

Requirement to accept executorship or to explain

- 108.** If an executor named in a will does not apply for a grant of probate of a will, any person interested in the estate may, in accordance with the Supreme Court Civil Rules, require the executor to
- (a) accept or renounce probate of the will, or
 - (b) explain why administration of the deceased person's estate should not be granted to the executor or to another person who is willing to act as personal representative.
- 2009-13-108 (B.C. Reg. 148/2013); 2011-6-8.

Part 6: Division 2 – Not yet in force

109. to 120. Not yet in force

- 109.** to **120.** *[Not yet in force]*

Part 6: Division 3 – Application for Grant of Probate or Administration

Notice of proposed application for grant of probate or administration

- 121.** (1) An applicant for a grant of probate or administration must give notice of the proposed application to the persons referred to in the Supreme Court Civil Rules.
- (2) An applicant or personal representative who, in accordance with the Supreme Court Civil Rules, makes reasonable efforts to discover the existence, identity or whereabouts of persons to whom the notice under subsection (1) is required to be given, but is unsuccessful, is not liable for any loss or damage arising from not giving the required notice except for claims to recover property or enforce an order under Division 6 [*Variation of Wills*] of Part 4 [*Wills*].
- 2009-13-121 (B.C. Reg. 148/2013); 2011-6-8, 34.

Application for grant of probate or administration – disclosure

- 122.** (1) An applicant for a grant of probate or administration must
- (a) make a diligent search and inquiry to find the property and liabilities of the deceased person, and
- (b) disclose information as required under the Supreme Court Civil Rules concerning the property of the deceased person, irrespective of its nature, location or value, that passes to the applicant in his or her capacity as the deceased person's personal representative, unless
- (i) the deceased person was not domiciled or ordinarily resident in British Columbia at the time of death,
- (ii) the property is situated outside British Columbia, and
- (iii) the property has been, is being, or will be administered by a foreign personal representative or otherwise under the law of a foreign jurisdiction.
- (2) For the purposes of subsection (1), "**foreign personal representative**" may include the applicant.
- (3) The applicant for a grant of probate or administration must file with a registrar of the court a form as set out in the Supreme Court Civil Rules with respect to complying with the requirements of this section.
- 2009-13-122 (B.C. Reg. 148/2013); 2011-6-8, 35.

Production of documents and property

- 123.** (1) The court may order a person having control or possession of the following to produce and bring all or any of them to the court or place directed by the court:
- (a) a testamentary instrument or purported testamentary instrument, including a record as defined in section 58 (1) [*court order curing deficiencies*];
- (b) a document relating to an estate;
- (c) property belonging to an estate;
- (d) a representation grant.
- (2) If there are reasonable grounds to believe that a person has knowledge of anything referred to in paragraphs (a) to (d) of subsection (1), the court may order the person to attend for examination.

Opportunity for Public Guardian and Trustee to comment

- 124.** (1) If the Public Guardian and Trustee has, in accordance with the Supreme Court Civil Rules, been given notice of an application for grant of probate or administration, the court must not issue the grant of probate or administration unless
- (a) the applicant provides to the court the written comments of the Public Guardian and Trustee, or
 - (b) the court is satisfied, in an additional application made with reasonable notice to the Public Guardian and Trustee, that it is necessary or appropriate to issue the grant before the Public Guardian and Trustee gives written comments.
- (2) The applicant must, with respect to an application for grant of probate or administration under subsection (1), provide a copy of the grant of probate or administration to the Public Guardian and Trustee within 45 days after it is issued.

2009-13-124 (B.C. Reg. 148/2013); 2011-6-8.

Direction by Public Guardian and Trustee – sealed applications

- 125.** (1) The Public Guardian and Trustee may, whenever the Public Guardian and Trustee considers it appropriate to do so, direct that an application by the Public Guardian and Trustee for grant of probate or administration be sealed by a registrar of the court.
- (2) On receipt of a direction under subsection (1), the registrar of the court must
- (a) seal the court file respecting the application and related material specified by the Public Guardian and Trustee, and
 - (b) prohibit access to the file except as permitted
 - (i) by the Public Guardian and Trustee, or
 - (ii) by the court.
- (3) The sealing of a court file under subsection (2) does not prohibit the disclosure that there is an application for grant of probate or administration or the date of death of the deceased person.
- (4) An application and file to which this section relates must be sealed and remain confidential for 180 days from the date the application was filed with the registrar of the court, unless the Public Guardian and Trustee or the court authorizes all or part of the court file to be disclosed.
- (5) A person may apply to unseal a file that has been sealed under subsection (2) and must give notice of the application to the Public Guardian and Trustee in order to provide the Public Guardian and Trustee with the opportunity to make submissions on the application.
- (6) The court may, on application by the Public Guardian and Trustee, direct that a file to which this section applies remain sealed for one or more additional periods not exceeding in total 18 months.
- (7) A person who, without the consent of the Public Guardian and Trustee or the court, knowingly discloses any information that the person knows or reasonably ought to know is information in a sealed file, commits an offence and is liable to

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a fine of not more than \$10 000 or to imprisonment for not more than 12 months, or to both.

- (8) This section applies despite any enactment to the contrary.

2009-13-125 (B.C. Reg. 148/2013); 2009-13-125 (B.C. Reg. 148/2013).

Public Guardian and Trustee to pay beneficiaries and intestate successors directly

- 126.** (1) The Public Guardian and Trustee must distribute an estate directly to any beneficiary or intestate successor to whom all or part of the estate is to be distributed, as the case may be, unless the Public Guardian and Trustee otherwise decides.
- (2) Subsection (1) does not apply to a distribution of an estate to a guardian of a minor, or guardian or committee of a person incapable of managing their affairs.
- (3) Subsection (1) applies despite any direction, authorization, power of attorney, agreement, assignment of rights or otherwise to the contrary.

2009-13-126 (B.C. Reg. 148/2013).

Immunity for Public Guardian and Trustee

- 127.** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the Public Guardian and Trustee or an officer or employee of the Public Guardian and Trustee because of anything done or omitted
- (a) in the performance or intended performance of any duty under section 125 or 126, or
- (b) in the exercise or intended exercise of any power under section 125 or 126.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

2009-13-127 (B.C. Reg. 148/2013).

Security for administration of estates

- 128.** (1) No security for the administration of an estate is required to be provided by an applicant for a grant of administration unless
- (a) a minor or a mentally incapable person without a nominee who has authority to represent the mentally incapable person in estate matters is interested in the estate, or
- (b) the court, on application by a person interested in the estate, requires security.
- (1.1) If security is required under subsection (1), the applicant for a grant of administration must apply to the court to determine the security required and the court may, on that application, do one or both of the following:
- (a) accept any form or amount of security;
- (b) impose a restriction on the powers of the proposed administrator that may be exercised without prior approval of the court or the Public Guardian and Trustee.
- (2) If the court is satisfied that a condition of any security of an assignable nature provided under subsection (1) has been breached, the court may order that the registrar of the court or the person to whom the security has been given assign the security to a person named in the order.

- (3) A person to whom security is assigned under subsection (2) or the personal representative of that person
 - (a) may sue in that person's own name or as the personal representative, as the case may be, and
 - (b) is entitled to the amount recoverable for a breach of a condition of the security as trustee for all persons interested.
- 2009-13-128 (B.C. Reg. 148/2013); 2011-6-36.

Part 6: Division 4 – Grant of Probate or Administration

Grant of probate or administration

- 129.** (1) The court may grant probate of a will or administration of an estate for general, special or limited purposes on proof
- (a) of the validity of the deceased person's will or that the deceased person died without a will, and
 - (b) that the deceased person was ordinarily resident or domiciled
 - (i) in British Columbia at the time of his or her death,
 - (ii) outside British Columbia at the time of his or her death and left property in British Columbia, or
 - (iii) outside British Columbia at the time of his or her death and the personal representative will be a party to a proceeding commenced in British Columbia.
- (2) The court may grant probate of a will or administration of an estate even though the deceased person was not ordinarily resident or domiciled in British Columbia at his or her death and left no property in British Columbia.
- (3) The registrar of the court may grant probate of a will or administration of an estate for general, special or limited purposes in the circumstances described in subsections (1) and (2) if the application for the grant of probate or administration is
- (a) unopposed, and
 - (b) made in accordance with the applicable Supreme Court Civil Rules.

2009-13-129 (B.C. Reg. 148/2013); 2011-6-23, 37.

Priority among applicants – intestate estate

- 130.** If a person dies without a will, the court may grant administration of the deceased person's estate to one or more of the following persons in the following order of priority:
- (a) the spouse of the deceased person or a person nominated by the spouse;
 - (b) a child of the deceased person having the consent of a majority of the children of the deceased person;
 - (c) a person nominated by a child of the deceased person if that person has the consent of a majority of the deceased person's children;
 - (d) a child of the deceased person not having the consent of a majority of the deceased person's children;

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- (e) an intestate successor other than the spouse or child of the deceased person, having the consent of the intestate successors representing a majority in interest of the estate, including the intestate successor who applies for a grant of administration;
- (f) an intestate successor other than the spouse or child of the deceased person, not having the consent of the intestate successors representing a majority in interest of the estate, including the intestate successor who applies for a grant of administration;
- (g) any other person the court considers appropriate to appoint, including, without limitation, the Public Guardian and Trustee, subject to the Public Guardian and Trustee's consent.

2009-13-130 (B.C. Reg. 148/2013).

Priority of applicants – administration with will annexed

131. If a person dies leaving a will, and the executor named in the will renounces executorship or is unable or unwilling to apply for a grant of probate, or if no executor is named in the will, the court may grant administration with will annexed to one or more of the following persons in the following order of priority:

- (a) a beneficiary who applies having the consent of the beneficiaries representing a majority in interest of the estate, including the applicant;
- (b) a beneficiary who applies not having the consent of the beneficiaries representing a majority in interest of the estate;
- (c) any other person the court considers appropriate to appoint, including the Public Guardian and Trustee, subject to the Public Guardian and Trustee's consent.

2009-13-131 (B.C. Reg. 148/2013).

Special circumstances

- 132.** (1) Despite sections 130 and 131, the court may appoint as administrator of an estate any person the court considers appropriate if, because of special circumstances, the court considers it appropriate to do so.
- (2) The appointment of an administrator under subsection (1) may be
- (a) conditional or unconditional, and
 - (b) made for general, special or limited purposes.

2009-13-132 (B.C. Reg. 148/2013).

Administration of partial intestacy

133. If a person dies leaving a will and the will does not give away or otherwise dispose of all of the deceased person's estate, the grant of probate of the will or the grant of administration with will annexed also operates as a grant of administration of the part of the estate that is not given away or disposed of by the will.

2009-13-133 (B.C. Reg. 148/2013).

Administration if sole executor a minor

- 134.** (1) If a minor is named the sole executor under a will,
- (a) the court must grant administration with will annexed
 - (i) to the guardian of the minor, on application by the guardian,
 - (ii) if the guardian does not apply, to another person the court considers appropriate until the minor reaches 19 years of age, or
 - (iii) in special circumstances, to another person if the court considers it appropriate, and
 - (b) when the minor reaches 19 years of age, the court may revoke the grant to the guardian or other person and grant probate of the will to the former minor.
- (2) Administration granted under subsection (1) may be
- (a) conditional or unconditional, and
 - (b) made for general, special or limited purposes.

2009-13-134 (B.C. Reg. 148/2013); 2009-13-134 (B.C. Reg. 148/2013).

Effective date of grant for intestate estate

- 135.** (1) The personal representative of a person who dies leaving an intestate estate is conclusively deemed to be the personal representative from the date of death of the deceased person.
- (2) Despite subsection (1), a personal representative is not liable for any loss or damage to the estate that occurred before the effective date of the representation grant unless the personal representative would have been liable for the loss or damage despite the existence of a representation grant.

2009-13-135 (B.C. Reg. 148/2013).

Effect of representation grant

- 136.** A representation grant, whether or not power is reserved to another person to apply for a subsequent representation grant, gives to the personal representative exclusive authority to administer the estate or that part of the estate to which the representation grant applies in accordance with its terms.

2009-13-136 (B.C. Reg. 148/2013).

Reliance on representation grant

- 137.** A person who, relying on a representation grant and before having notice of any revocation of the representation grant, pays or transfers property of the estate or releases or provides any document or information concerning an estate is, despite any defect or irregularity in the grant or revocation of it,
- (a) not liable for loss or damage to any person as a result of the payment or transfer of property or the release or provision of documents or information, and
 - (b) discharged as against the personal representative to the extent of the value of any payment or transfer.

2009-13-137 (B.C. Reg. 148/2013).

Part 6: Division 5 – Foreign Personal Representatives, Resealing Foreign Grant

and Ancillary Grant

Resealing foreign grant and ancillary grants

- 138.** (1) On application by a foreign personal representative, the court may reseal a foreign grant made in another province or in a territory of Canada or in another prescribed jurisdiction.
- (2) A foreign personal representative who applies for the resealing of a foreign grant must
- (a) give notice of the application in accordance with the Supreme Court Civil Rules,
 - (b) disclose information as required under the Supreme Court Civil Rules concerning the property of the deceased person situated in British Columbia that the foreign personal representative seeks to administer, and
 - (c) if the application relates to a foreign grant of administration with or without will annexed and security is required to be provided under section 128 [*security for administration of estates*] provide security in an amount approved by the court.
- (3) On a resealing with the seal of the court, the foreign grant
- (a) has the same effect in British Columbia as if it were issued by the court, and
 - (b) is, with respect to property situated in British Columbia, subject to any order of the court to which a representation grant issued by the court with respect to the same property would be subject.
- (4) If a foreign grant cannot be resealed under this section, the court may make an ancillary grant of probate or administration to the foreign personal representative.
- 2009-13-138 (B.C. Reg. 148/2013); 2011-6-8.

Limited grant to attorney of foreign personal representative

- 139.** (1) In this section, "**attorney**" means a person who is appointed as the representative of a foreign personal representative under a power of attorney.
- (2) On application by an attorney of a foreign personal representative, the court may grant probate or administration to the attorney, limited to the deceased person's estate situated in British Columbia.
- 2009-13-139 (B.C. Reg. 148/2013).

Curing deficiencies in foreign wills

- 140.** The court may make an order under section 58 [*court order curing deficiencies*] in relation to any will for which an application for grant of probate or administration may be made.
- 2009-13-140 (B.C. Reg. 148/2013).

Part 6: Division 6 – Revocation of Grant of Probate or Administration

Revocation of grant of probate or administration

- 141.** (1) The court must not revoke a grant of probate or administration on the sole ground that a notice could not be given to
- (a) a person described in the Supreme Court Civil Rules who could not be discovered, identified or found, or
 - (b) a person to whom notice was not required to be given under the Supreme Court Civil Rules.
- (2) If a grant of probate or administration is revoked, the authority to act passes as if the person had never been appointed executor.
- 2009-13-141 (B.C. Reg. 148/2013); 2011-6-8, 38.

Part 6: Division 7 – Personal Representatives – Powers, Duties and Liabilities

Personal representatives – general authority

- 142.** (1) A personal representative has the same authority over the estate in respect of which the personal representative is appointed as the deceased person would have if living, subject to
- (a) a contrary intention appearing in the will of the deceased person, and
 - (b) this or any other enactment.
- (2) A personal representative must exercise authority to
- (a) administer and distribute the estate in respect of which the personal representative is appointed,
 - (b) account to beneficiaries, creditors and others to whom the personal representative has at law a duty to account, and
 - (c) perform any other duties imposed on the personal representative by the will of the deceased person or by law.
- 2009-13-142 (B.C. Reg. 148/2013).

Application of *Trustee Act* to personal representatives

- 143.** (1) Sections 86 [*application for directions*], 89 [*application for remuneration*] and 96 [*jurisdiction of court to relieve trustee of breach of trust*] of the *Trustee Act* apply to a personal representative.
- (2) Subject to section 153 [*distribution of minor's interest*] of this Act, section 40 [*payment by trustees*] of the *Trustee Act* applies to a personal representative.
- (3) Subsections (1) and (2) apply whether or not a personal representative is also a trustee.
- (4) If a person is both a personal representative and a trustee with respect to all or part of the same estate,
- (a) subject to subsections (1) to (3), this Act applies to that person in respect of a matter relating to the office, duties, powers, appointment, discharge, removal or substitution of that person as a personal representative, and
 - (b) the *Trustee Act* applies to that person in respect of a matter relating to the office, duties, powers, appointment, discharge, removal or substitution of that person as a trustee.

Abolition of rule in *Allhusen v. Whittel*

- 144.** (1) Unless the will of a deceased person contains an express direction to the contrary,
- (a) the personal representative of the deceased person, in paying the debts, funeral and testamentary expenses, estate, legacy, succession and inheritance taxes or duties, legacies or other similar disbursements in relation to the administration of the estate of the deceased person, must not apply and must not be considered to have applied income of the estate in or towards the payment of any part of the capital of those disbursements or of any part of any interest due or accruing due on them at the date of death of the deceased person, and
 - (b) until the payment of the disbursements referred to in paragraph (a), the income from the property required for their payment, except for any part of that income applied in the payment of any interest accruing due on the payments from the date of death of the deceased person, must be treated and applied as income of the residuary estate,
- but if the assets of the estate are not sufficient to pay those disbursements in full, the income must be applied in making up the deficiency.
- (2) Subsection (1) is conclusively deemed to have always been the law of British Columbia.
- (3) Despite subsections (1) and (2), if the personal representative has, before April 1, 1966, applied a rule of law or of administration different from subsection (1), the application is valid and effective.

2009-13-144 (B.C. Reg. 148/2013).

Executor of deceased executor

- 145.** If a deceased will-maker was an executor of a person who died before the will-maker, the executor of the deceased will-maker has all the rights, powers, rights of action and liabilities of the deceased will-maker with respect to the estate of the deceased person.

2009-13-145 (B.C. Reg. 148/2013).

Limitation period for disputed claims against estate

- 146.** (1) The personal representative of a deceased person may give notice of intention to take advantage of the limitation period provided by this section to
- (a) a person who is
 - (i) a creditor of the deceased person, or
 - (ii) a person, other than a creditor, with a claim against the estate, notice of which has been given to the personal representative,whose claim is not the subject of a proceeding against the deceased person at the time of death or against the personal representative in that capacity, or
 - (b) the agent of the creditor or person referred to in paragraph (a) (ii).
- (2) Notice given by a personal representative under subsection (1) must
- (a) be in writing,

- (b) state that the personal representative rejects or disputes the claim, and
- (c) refer to this section and state that the personal representative intends to take advantage of the limitation period provided by subsection (3).
- (3) A person to whom the personal representative gives notice under subsection (1) must commence a proceeding in respect of the claim within
 - (a) 180 days after notice is given, if the claim or a part of it is due at the time notice is given, or
 - (b) 180 days of the time the claim or a part of it falls due, if no part of it is due at the time notice is given.
- (4) If the person to whom the personal representative gives notice under subsection (1) does not commence a proceeding in respect of the claim within the time limited by subsection (3), the claim is forever barred.
- (5) This section does not apply to
 - (a) a claim against the estate by a beneficiary or intestate successor of the deceased person to recover a beneficial interest to which that person claims to be entitled, or
 - (b) a claim or proceeding under Division 6 [*Variation of Wills*] of Part 4 [*Wills*].

2009-13-146 (B.C. Reg. 148/2013); 2011-6-39.

When beneficiary cannot be found or does not claim gift

- 147.** (1) This section applies only if
- (a) a deceased person died with a will leaving a specific gift of property to a beneficiary, and
 - (b) the will does not expressly exclude the operation of this section or a predecessor of this section.
- (2) If the personal representative of a deceased person, after making reasonable efforts, is unable to locate a beneficiary within 12 months of the date of the grant of probate or administration with will annexed, the personal representative may sell the property, deduct any costs related to the storage, transportation and sale of the property and hold the net proceeds in trust.
- (3) Section 27.1 [*unclaimed money*] of the *Public Guardian and Trustee Act* applies to net proceeds under subsection (2) of this section that are held in trust by the Public Guardian and Trustee and are not claimed by a beneficiary within the applicable period prescribed under that Act.
- (4) If net proceeds under subsection (2) are held in trust by a personal representative other than the Public Guardian and Trustee, the personal representative must promptly pay the net proceeds into court after deducting the costs of doing so.
- (5) If a beneficiary described in subsection (1) has been located and notified of a specific gift but neglects or refuses to make arrangements to take delivery of the property within 180 days of the notification, the personal representative may sell the property, deduct any costs related to the storage, transportation and sale of the property and send the net proceeds to the beneficiary.
- (6) If a beneficiary referred to in subsection (5) does not accept the net proceeds, the personal representative must hold the net proceeds in trust, and subsection (3) or (4) applies, as the case may be.
- (7) This section does not prevent an application by a personal representative to the court under section 39 [*distribution of estate under direction of court*] of the *Trustee Act*.

Disposition by executors who do not renounce or join application for grant of probate

- 148.** If one or more of several co-executors named in a will
- (a) renounce probate, or
 - (b) do not join an application for a grant of probate and their right to apply subsequently for a grant of probate is reserved by a representation grant, a disposition relating to the estate by the executors who do not renounce or to whom the grant of probate is issued is as valid and has the same effect as if every executor named in the will had executed an instrument intended to give effect to the will.

2009-13-148 (B.C. Reg. 148/2013).

Part 6: Division 8 – Personal Representatives – Legal Liability and Legal Proceedings

Liability of personal representatives

- 149.** (1) A personal representative is liable, to the extent of the assets belonging to the estate that come into the personal representative's possession or control, for the wrongful acts and omissions or breaches of legal duty of the deceased person, subject to this or any other enactment to the contrary.
- (2) Subsection (1) does not make liable an executor who renounces probate or administration or whose rights are reserved by a representation grant and who has not intermeddled in the estate.

2009-13-149 (B.C. Reg. 148/2013).

Proceedings by and against estate

- 150.** (1) Subject to this section, a cause of action or a proceeding is not annulled by reason only of the death of
- (a) a person who had the cause of action, or
 - (b) a person who is or may be named as a party to the proceeding.
- (2) Subject to this section, the personal representative of a deceased person may commence or continue a proceeding the deceased person could have commenced or continued, with the same rights and remedies to which the deceased person would have been entitled, if living.
- (3) Subsections (1) and (2) do not apply to a proceeding for libel or slander or a proceeding under section 1 [*violation of privacy actionable*] or 3 [*unauthorized use of name or portrait of another*] of the *Privacy Act*.
- (4) Recovery in a proceeding under subsection (2) does not extend to
- (a) damages in respect of non-pecuniary loss, or
 - (b) damages for loss of future income for a period following death.
- (5) A person may commence or continue a proceeding against a deceased person that

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could have been commenced or continued against the deceased person if living, whether or not a personal representative has been appointed for the deceased person.

- (6) A proceeding under subsection (5) may be commenced naming as defendant or respondent
 - (a) the personal representative, if any, or
 - (b) the deceased person.
- (7) A proceeding under subsection (5) in which the deceased person is named as defendant or respondent is valid despite the fact that the deceased person is not living when the action or proceeding is commenced.
- (8) All proceedings under this section bind the estate of the deceased person, despite any previous or subsequent appointment of a personal representative.
- (9) This section is subject to section 10 [*limitation of actions, election and subrogation*] of the *Workers Compensation Act*.
- (10) Nothing in this section affects any rights under
 - (a) the *Family Compensation Act*, or
 - (b) section 103 [*liability of employer*] of the *Workers Compensation Act*.
- (11) In a proceeding under subsection (2), the court may award damages to the personal representative of the deceased person in respect of reasonable expenses of the funeral and disposal of the remains of the deceased person, in addition to the remedies to which the deceased person would have been entitled if living.

2009-13-150 (B.C. Reg. 148/2013); 2011-6-23, 40.

Beneficiary or intestate successor may sue with leave of court

- 151.** (1) Despite section 136 [*effect of representation grant*], a beneficiary or an intestate successor may, with leave of the court, commence proceedings in the name and on behalf of the personal representative of the deceased person
- (a) to recover property or to enforce a right, duty or obligation owed to the deceased person that could be recovered or enforced by the personal representative, or
 - (b) to obtain damages for breach of a right, duty or obligation owed to the deceased person.
- (2) A beneficiary or an intestate successor may, with leave of the court, defend in the name and on behalf of the personal representative of a deceased person, a proceeding brought against the deceased person or the personal representative.
- (3) The court may grant leave under this section if
- (a) the court determines the beneficiary or intestate successor seeking leave
 - (i) has made reasonable efforts to cause the personal representative to commence or defend the proceeding,
 - (ii) has given notice of the application for leave to
 - (A) the personal representative,
 - (B) any other beneficiaries or intestate successors, and
 - (C) any additional person the court directs that notice is to be given, and
 - (iii) is acting in good faith, and

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- (b) it appears to the court that it is necessary or expedient for the protection of the estate or the interests of a beneficiary or an intestate successor for the proceeding to be brought or defended.
- (4) On application by a beneficiary, an intestate successor or a personal representative, the court may authorize a person to control the conduct of a proceeding under this section or may give other directions for the conduct of the proceeding.

2009-13-151 (B.C. Reg. 148/2013).

Personal representative relief from liability under contract

- 152.** The personal representative of a deceased person ceases to be liable in respect of a contract, including a lease, that was not fully performed by the deceased person before the deceased person's death, if the personal representative
- (a) satisfies all liabilities that have accrued and are claimed under the contract until the time of the assignment referred to in paragraph (b),
 - (b) validly assigns the contract to a purchaser, and
 - (c) sets aside a reserve from the estate in an amount fixed by agreement, or by the court on application by the personal representative, to meet future claims that may be made in respect of a fixed or determined amount the deceased person agreed to pay or for which the deceased person was liable under the contract.

2009-13-152 (B.C. Reg. 148/2013).

Distribution of minor's interest

- 153.** (1) Subject to subsections (2) and (3), if
- (a) a minor is a beneficiary or an intestate successor, and
 - (b) there is no trustee or no trust created for the minor's interest in the estate,
- the personal representative, on distribution of the estate, must pay or transfer the minor's interest in the estate to the Public Guardian and Trustee in trust for the minor.
- (2) If a minor's interest in an estate consists, in whole or in part, of property other than money, the Public Guardian and Trustee may
- (a) convert the minor's interest in the estate to money,
 - (b) transfer the minor's interest in the estate to the minor, or
 - (c) decline to accept the transfer of the minor's interest in the estate and recommend to the court that a trustee be appointed to hold and administer the minor's interest in the estate until the minor reaches 19 years of age.
- (3) Subsection (1) does not apply if, before distribution of the assets of the estate, the court, on application and with notice to the Public Guardian and Trustee, appoints a trustee to hold and administer the minor's interest in the estate until the minor reaches 19 years of age.

2009-13-153 (B.C. Reg. 148/2013).

Notice to creditors

- 154.** (1) In this section, "**claimant**" does not include a person who has commenced

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proceedings to determine whether he or she is a beneficiary or an intestate successor.

- (2) The personal representative of a deceased person may publish a notice in the Gazette to creditors and other claimants
 - (a) requiring them to present their claims against the estate of the deceased person to the personal representative within a specified period of time, which must not be less than 30 days from the date of the publication in the Gazette, and
 - (b) stating that after the specified period the personal representative proposes to distribute the estate, having regard only to the claims of which the personal representative then has notice.
- (3) On expiration of the period specified in a notice published under subsection (2), the personal representative may distribute the assets of the estate of the deceased person among the persons entitled to them, having regard to the claims of which the personal representative then has notice.
- (4) The personal representative of a deceased person is not liable for any claim against the estate of the deceased person if the claim was not presented to the personal representative by the end of the period specified in the notice published under subsection (2).
- (5) This section does not prejudice the right of a creditor or other claimant to recover assets of the estate of the deceased person from the person who received them.

2009-13-154 (B.C. Reg. 148/2013).

Distribution of estate

- 155.** (1) The personal representative of a deceased person must not distribute the estate of the deceased person in the 210 days following the date of the issue of a representation grant except
- (a) with the consent of all beneficiaries and intestate successors entitled to the estate, or
 - (b) by order of the court.
- (2) The personal representative of a deceased person must not distribute the estate of the deceased person after the period referred to in subsection (1) without consent of the court if
- (a) a proceeding has been commenced to determine whether a person is or is not a beneficiary or intestate successor in respect of the deceased person's estate,
 - (b) relief is sought under Division 6 [*Variation of Wills*] of Part 4 [*Wills*], or
 - (c) other proceedings have been commenced which may affect the distribution of the estate.
- (3) Nothing in this section
- (a) affects any right or remedy against a person to whom an estate has been distributed in whole or in part, or
 - (b) extends any applicable limitation period.

2009-13-155 (B.C. Reg. 148/2013).

Personal representative deemed to be trustee

156.

Unless the court orders otherwise, a personal representative granted administration with will annexed is conclusively deemed to be the trustee of a trust created by the will if the will-maker has not appointed another trustee in the will.

2009-13-156 (B.C. Reg. 148/2013).

Part 6: Division 9 – Discharge, Removal and Substitution of Personal Representatives

Personal representative may apply to be discharged

157. (1) The personal representative of a deceased person may apply to the court to be discharged from the office of personal representative.
- (2) An application under subsection (1) may be made
- (a) either before or after a grant of probate or administration is issued,
 - (b) whether or not the personal representative is a trustee of the estate or part of it, and
 - (c) whether or not the personal representative has dealt or partially dealt with the estate or a part of it or has to any extent acted in the exercise of a trust or power conferred on or vested in the personal representative.
- (3) A personal representative may make an application under subsection (1) without notice to any other person if
- (a) the accounts of the personal representative have been passed under the *Trustee Act*,
 - (b) every beneficiary or intestate successor with an interest in the deceased person's estate has consented to the accounts of the personal representative without passing under the *Trustee Act*,
 - (c) in the case of a beneficiary or intestate successor who is a minor or mentally incapable person,
 - (i) the guardian of the minor's estate or a nominee has consented to the accounts of the personal representative without passing under the *Trustee Act*, and
 - (ii) the court is satisfied that the accounts do not need to be passed under the *Trustee Act*, or
 - (d) the court otherwise determines that the accounts of the personal representative need not be passed under the *Trustee Act*.
- (4) A personal representative who applies to be discharged under subsection (1) without notice to any other person referred to in subsection (3) must file the personal representative's accounts with the court for the period during which the personal representative was in office, unless subsection (3) (a) applies.
- (5) An order discharging a personal representative from office releases the personal representative from all actions, claims and demands arising from or in connection with acts or omissions of the personal representative while in office, except in respect of undisclosed acts or omissions.
- (6) An order discharging a person as a personal representative does not
- (a) discharge or remove that person as a trustee, or
 - (b)

operate to release the person from liability for anything done or omitted by the person in the capacity of a trustee.

2009-13-150 (B.C. Reg. 148/2013); 2011-6-41; 2009-13-157 (B.C. Reg. 148/2013) am by 2011-6-41.

Application to remove or pass over personal representative

- 158.** (1) In this section, "**pass over**" means to grant probate or administration to a person who has less priority than another person to become a personal representative.
- (2) A person having an interest in an estate may apply to the court to remove or pass over a person otherwise entitled to be or to become a personal representative.
- (3) Subject to the terms of a will, if any, the court, by order, may remove or pass over a person otherwise entitled to be or to become a personal representative if the court considers that the personal representative or person entitled to become the personal representative should not continue in office or be granted probate or administration, including, without limitation, if the personal representative or person entitled to become the personal representative, as the case may be
- (a) refuses to accept the office of or to act as personal representative without renouncing the office,
 - (b) is incapable of managing his or her own affairs,
 - (c) purports to resign from the office of personal representative,
 - (d) being a corporation, is dissolved or is in liquidation other than a voluntary dissolution or liquidation for the purpose of amalgamation or reorganization,
 - (e) on application by a creditor having a claim for more than a prescribed amount,
 - (i) has been convicted of an offence involving dishonesty, or
 - (ii) is an undischarged bankrupt,
 - (f) is
 - (i) unable to make the decisions necessary to discharge the office of personal representative,
 - (ii) not responsive, or
 - (iii) otherwise unwilling or unable to or unreasonably refuses to carry out the duties of a personal representative,to an extent that the conduct of the personal representative hampers the efficient administration of the estate, or
 - (g) is a committee under the *Patient's Property Act*.
- (4) An order of the court removing a personal representative does not remove that person as a trustee.

2009-13-158 (B.C. Reg. 148/2013).

Appointment of substitute personal representative

- 159.** (1) If the court discharges or removes a personal representative, the court
- (a) must appoint another person who consents to act as the substitute personal representative, unless
 - (i) the administration of the estate is complete, or
 - (ii) the court does not consider a new appointment necessary, and

- (b) may, if the personal representative has resigned or is removed as a trustee, concurrently appoint the person referred to in paragraph (a) as trustee under the *Trustee Act* in place of the trustee being discharged or removed.
- (2) The court may require a substitute personal representative under subsection (1) to provide security if security is required by the Supreme Court Civil Rules.
- (3) A substitute personal representative appointed under subsection (1)
 - (a) has the same authority that the former personal representative had in respect of the estate,
 - (b) must perform the same duties and is subject to the same obligations as were imposed by law on the former personal representative, and
 - (c) on application without notice, is entitled to receive a grant of probate or administration, as the case may be, without the return of the previous grant if the court is satisfied that the return of the previous grant would be impossible or impractical.
- (4) A grant of probate or administration to a former personal representative is revoked on the appointment of a substitute personal representative.
2009-13-159 (B.C. Reg. 148/2013); 2011-6-8.

Vesting of estate in personal representative

- 160.** (1) If a person is appointed as the personal representative of a deceased person, the estate of the deceased person vests in the personal representative without any further declaration or order.
- (2) If a person is discharged or removed as the personal representative of a deceased person, the estate of the deceased person ceases, without any further declaration or order, to be vested in that person.
- (3) This section applies whether a person is discharged, removed, added or substituted as a personal representative in accordance with a will or with this Act.
- (4) The vesting of an estate under subsection (1) has the same effect as if the estate had been actually transferred to the person in whom it is vested.
- (5) The provisions of the *Land Title Act* that apply to a transmission of land apply to a vesting of land under this section.
2009-13-160 (B.C. Reg. 148/2013).

Former personal representative to facilitate property and document transfer

- 161.** (1) If a person ceases to be a personal representative and another person is substituted as personal representative, within 30 days of the order making the substitution the former personal representative must provide to the substitute personal representative
- (a) the property comprising the estate, and
 - (b) any records and documents relating to the estate and its administration that are in the possession or under the control of the former personal representative.
- (2) A former personal representative must sign any document and take any steps reasonably necessary to enable a substitute personal representative to administer the estate, but section 160 operates without the need for the former personal representative to sign any document under this subsection.

- (3) A former personal representative may not, unless the court otherwise orders, retain funds to pay any expenses or expenses that
 - (a) the former personal representative incurred in the course of so acting, and
 - (b) may have been lawfully incurred by a personal representative to whom probate or administration of the estate is later granted.

2009-13-161 (B.C. Reg. 148/2013).

Part 6: Division 10 – Devolution of Land

Devolution and administration of land

- 162.** (1) Unless there is a right to land by survivorship, on the death of the land owner, land devolves to and is vested in the deceased owner's personal representative in the same manner as personal property.
- (2) Subject to this Act,
- (a) a personal representative to whom land devolves holds the land as a trustee for the person beneficially entitled to it, and
 - (b) a person beneficially entitled to the land has the same power as a person beneficially entitled to personal property to require a transfer from the personal representative.
- (3) Subject to this Act, land must be administered in the same manner as personal property, and all enactments and rules of law respecting
- (a) the powers, duties and liabilities of a personal representative in respect of personal property,
 - (b) the effect of a grant of probate or administration,
 - (c) dealings with personal property before a grant of probate or administration, and
 - (d) the administration of personal property of a deceased person, including the payment of debts and expenses,
- apply to land.
- (4) A disposition of land by only one or some of several joint personal representatives is not valid without the approval of the court, unless
- (a) section 148 [*disposition by executors who do not renounce or join application for grant of probate*] applies, or
 - (b) a grant of probate is granted to one or more of several persons named as executor with power being reserved to the other or others to apply for a grant of probate, and the disposition is carried out by the other person or persons to whom probate is granted.
- (5) This section applies to land over which a person exercises by will a power of appointment as if the land were vested in the person.

2009-13-162 (B.C. Reg. 148/2013).

Transfer of land to beneficiary may be subject to a charge

- 163.** (1) A transfer of land by a personal representative to a beneficiary may be made subject to a charge for payment of money that the personal representative is liable to pay.

- (2) On registration of a transfer under subsection (1) that is subject to a charge for the whole amount that the personal representative is liable to pay, the liability of the personal representative in respect of the land for a debt or obligation of the deceased person ceases.

2009-13-163 (B.C. Reg. 148/2013).

Part 6: Division 11 – Public Guardian and Trustee

Application for grant of probate or administration by Public Guardian and Trustee

- 164.** (1) This section applies if the Public Guardian and Trustee receives information about the death of a person who
- (a) had at the time of death a fixed place of residence in British Columbia, or
 - (b) had no fixed place of residence in British Columbia, but had property in British Columbia at the time of death.
- (2) The Public Guardian and Trustee may make an application to the court for a grant of administration of the estate of the deceased person if
- (a) the person died without a will for all or part of the person's estate, or
 - (b) the person died leaving a will, but without having appointed an executor willing and able to apply for a grant of probate or whose whereabouts are known.
- (3) A grant of administration must not be issued
- (a) except on affidavits made in accordance with the Supreme Court Civil Rules, and
 - (b) unless the court is satisfied that
 - (i) no grant of administration of the estate of the deceased person has been issued in British Columbia, and
 - (ii) no person in British Columbia is entitled to share in the distribution of the estate of the deceased person and is ready and competent to apply for a grant of administration.

2009-13-164 (B.C. Reg. 148/2013); 2011-6-8, 42.

Court appointment with consent of Public Guardian and Trustee

- 165.** The court must not make an order appointing the Public Guardian and Trustee as administrator of an estate
- (a) except with the prior written consent of the Public Guardian and Trustee, or
 - (b) unless the Public Guardian and Trustee applies to be appointed as administrator of the estate.

2009-13-165 (B.C. Reg. 148/2013).

Powers of Public Guardian and Trustee

- 166.** If administration of the estate of a deceased person is granted to the Public Guardian and Trustee, the Public Guardian and Trustee
- (a)

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is the administrator of the estate of the deceased person in British Columbia, and

- (b) subject to this Act, has the rights, duties and liabilities of an administrator with regard to the estate.

2009-13-166 (B.C. Reg. 148/2013).

Powers before grant issued

- 167.** (1) If, after investigation, the Public Guardian and Trustee
- (a) believes that a person has died, and
 - (b) the Public Guardian and Trustee intends to make an application under section 164 (2) for a grant of administration or to file a small estate declaration under Division 2 [*Small Estate Administration*] of this Part, the Public Guardian and Trustee may, before or after making the application or filing the small estate declaration and before a grant of administration is issued, act under subsection (2).
- (2) The Public Guardian and Trustee may do any or all of the following as if a grant of administration of the deceased person's estate had been issued to the Public Guardian and Trustee:
- (a) arrange the funeral of the deceased person;
 - (b) make an inventory of the deceased person's estate;
 - (c) take possession of, safeguard and dispose of the deceased person's estate.
- (3) In acting under this section, the Public Guardian and Trustee
- (a) has a right to all information and records to which or in respect of which the deceased person had custody or control or would have been entitled to, and
 - (b) may require a person to disclose that information or produce those records to the Public Guardian and Trustee.
- (4) A letter signed by an authorized signatory of the Public Guardian and Trustee indicating that the Public Guardian and Trustee is acting under this section is conclusive proof of the Public Guardian and Trustee's authority to exercise the rights and powers conferred by this section.
- (5) The Public Guardian and Trustee or an agent, attorney, employee or other person acting on behalf of the Public Guardian and Trustee is not personally liable as an executor de son tort by reason of exercising the powers conferred by this section.
- (6) This section does not relieve the Public Guardian and Trustee from
- (a) making an application for a grant of administration, or
 - (b) filing a small estate declaration under Division 2 [*Small Estate Administration*] of this Part.

2009-13-167 (B.C. Reg. 148/2013).

Grant of probate or administration despite previous grant

- 168.** (1) A grant of administration to the Public Guardian and Trustee does not prevent the court from subsequently granting probate of the will or administration of the estate to any person entitled to the grant.
- (2) A person who intends to make an application for a grant of probate or

administration after a grant of administration has been issued to the Public Guardian and Trustee must give the Public Guardian and Trustee at least 4 days' written notice of the person's intention to apply.

- (3) If a subsequent grant of probate or administration is made under subsection (1), the rights, interests, powers and duties of the Public Guardian and Trustee in regard to the estate cease and the portion of the estate of the deceased person left unadministered by the Public Guardian and Trustee vests in the executor or administrator obtaining the subsequent grant of probate or administration, subject to
- (a) the allowance and payment of all money due for
 - (i) the fees and commissions of the Public Guardian and Trustee, and
 - (ii) the necessary outlay, disbursements and expenses in relation to the administration of the estate, including for the subsequent grant of probate or administration, and
 - (b) a limitation or condition in the subsequent grant, if the court considers any to be appropriate.

2009-13-168 (B.C. Reg. 148/2013).

Part 6: Division 12 – Insolvent Estates

Definitions

169. In this Division:

"insolvent estate" means an estate that is not sufficient to pay all the debts and liabilities of the deceased person;

"secured creditor" means a creditor who holds a security interest in an asset of the estate of a deceased person.

2009-13-169 (B.C. Reg. 148/2013).

How proceeds from insolvent estate are to be spent

170. (1) Subject to the rights of secured creditors, the personal representative of a deceased person must apply the proceeds realized from an insolvent estate in the following order of priority:
- (a) reasonable funeral and other expenses incurred by the personal representative in administering the estate of the deceased person;
 - (b) compensation of the personal representative under section 89 [*application for remuneration*] of the *Trustee Act*;
 - (c) legal expenses incurred in the administration of the deceased person's estate;
 - (d) wages, salaries, commissions or compensation of any clerk, employee, travelling salesperson, labourer or worker for services provided during the 180 days immediately preceding the date of death of the deceased person to a maximum of \$2 000 in each case, and in the case of a travelling salesperson, disbursements properly incurred by the salesperson in and about the deceased person's business to a maximum of an additional \$1 000 in each case;

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- (e) a claim in respect of a debt or liability for periodic amounts accrued in the year immediately preceding the date of death of the deceased person, plus any lump sum amount, payable
 - (i) for spousal support, or
 - (ii) under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse or child, made while the spouse, former spouse or child was living apart from the deceased person;
 - (f) municipal taxes and taxes of the Nisga'a Lisims Government or a taxing treaty first nation assessed or levied against the deceased person within the 2 years immediately preceding the date of death of the deceased person that do not constitute a secured claim against the land of the deceased person, not exceeding the value of the interest of the deceased person in the property as declared by the personal representative;
 - (g) the landlord for arrears of rent for a period of 90 days immediately preceding the date of death of the deceased person, and accelerated rent for a period not exceeding 90 days following the date of death of the deceased person if the lease provides for accelerated rent, not exceeding the value of the proceeds from the realization of property on the leased premises, and any payment on account of accelerated rent must be credited against the amount payable by the personal representative for occupation rent;
 - (h) all indebtedness of the deceased person under the *Workers Compensation Act*, under any Act respecting employment insurance or under a provision of any *Income Tax Act* creating an obligation to pay to the government or to the government of Canada amounts that have been deducted or withheld, rateably and without preference;
 - (i) claims resulting from injuries to employees of the deceased person in respect of which the provisions of the *Workers Compensation Act* do not apply, but only to the extent of money received from persons guaranteeing the deceased person against damages resulting from the injuries;
 - (j) claims, not previously mentioned in this subsection, of the government or the government of Canada, the government of any other province, the Nisga'a Lisims Government or a treaty first nation, rateably and without preference despite a statutory preference to the contrary;
 - (k) all other claims accepted by the personal representative, rateably and without preference.
- (2) A personal representative must apply the proceeds of an insolvent estate towards payment in accordance with subsection (1) as soon as funds are available for the purpose.
 - (3) A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for the balance of the creditor's claim.
 - (4) For the purposes of subsection (1) (d), commissions payable when goods are shipped, delivered or paid for within the 180 day period referred to in that provision are deemed to have been earned during that period.

2009-13-170 (B.C. Reg. 148/2013); 2011-6-43.

Provable debts

- 171.** (1) A creditor may, while an insolvent estate is being administered, prove a debt that is

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- (a) owing and payable at the time of the deceased person's death, or
 - (b) owing at the time of deceased person's death but not yet payable, subject to a deduction in respect of a rebate of interest calculated in accordance with subsection (2).
- (2) For the purposes of subsection (1) (b), the interest to be rebated is to be calculated at a prescribed rate from the date the personal representative pays the debt or a prorated portion of the debt to the time when the debt would have been payable.
- (3) A personal representative administering an insolvent estate is not liable for and must not pay interest on the debts of the deceased person in respect of the period following the date of death of the deceased person unless a surplus remains after payment of all debts and claims accepted by the personal representative.

2009-13-171 (B.C. Reg. 148/2013).

Conditional, contingent and unliquidated claims

- 172.** (1) The personal representative must, before the first distribution from an insolvent estate,
- (a) determine a value for a conditional, a contingent or an unliquidated claim, and
 - (b) give to the creditor or claimant who proved the claim written notice of the amount at which the claim is valued.
- (2) The value determined under subsection (1) is the value for which the claim is deemed to have been proved as if for a liquidated amount payable absolutely, unless, within 14 days after the notice referred to in subsection (1) is given, the creditor or claimant applies to the court for a redetermination of the value of the claim.
- (3) On application under subsection (2), the court may
- (a) redetermine the value of the claim determined by the personal representative under subsection (1), or
 - (b) confirm the value determined by the personal representative under subsection (1).

2009-13-172 (B.C. Reg. 148/2013).

Secured creditors

- 173.** (1) A secured creditor claiming against an insolvent estate of a deceased person must state in the claim
- (a) full particulars of the security, including its value as assessed by the creditor, and
 - (b) the value at which the secured creditor assesses the total claim, including the value of the security.
- (2) A secured creditor is entitled to prove as an unsecured creditor for the amount of the difference between the net value realized and the value of the secured creditor's claim.
- (3) If a secured creditor surrenders the security to the personal representative, the secured creditor is entitled to prove as an unsecured creditor for the whole value of the secured creditor's claim.
- (4) A creditor having a claim based on a negotiable instrument
- (a) on which the deceased person was, and the personal representative is, only indirectly or secondarily liable, and

- (b) that is not mature or exigible,
is deemed to be a secured creditor for the purpose of this section and must comply with subsection (1), treating the liability of any person primarily liable on the negotiable instrument as the security.
- (5) If a claim described in subsection (4) (a)
 - (a) is mature or exigible at the date of death of the deceased person, and
 - (b) remains unpaid after that date, whether before or after proof,
the creditor is entitled to treat the claim as unsecured for the purpose of ranking.
- (6) Despite subsection (5), for all purposes except ranking of claims, a creditor having a claim described in subsection (5)
 - (a) is deemed to be a secured creditor, and
 - (b) must comply with subsection (1), treating the liability of all parties liable on the negotiable instrument ahead of the deceased person as the security.
- (7) If the deceased person was liable as a member of a firm or partnership and a creditor holds security from another member of the firm or partnership, the creditor is deemed to be a secured creditor for the purpose of this section.

2009-13-173 (B.C. Reg. 148/2013).

Debts contracted individually and on behalf of partnership

- 174.** If a person dies leaving an insolvent estate with debts owing both individually and as a member of a partnership, a claim against the deceased person based on a debt is to be satisfied
- (a) first from the property of the person by whom or partnership on behalf of and by which the debt was contracted, and
 - (b) after all the creditors of the other person have been paid in full, from the property or estate of another person, including the deceased person.

2009-13-174 (B.C. Reg. 148/2013).

Part 6: Division 13 – Deceased Worker's Wages

Definition

- 175.** In this Division, "**worker**" means a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, in an industry within the scope of Part 1 of the *Workers Compensation Act*, whether by way of manual labour or otherwise.

2009-13-175 (B.C. Reg. 148/2013).

Wages payable to surviving spouse

- 176.** The wages
- (a) earned by a worker during the 3 month period before the worker's death, and
 - (b) owing or accrued to the worker at the time of the worker's death

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are, subject to this Division, payable to the surviving spouse, if any, of the deceased worker, free from debts of the deceased worker.

2009-13-176 (B.C. Reg. 148/2013).

Wages not subject to administration

- 177.** The wages of a deceased worker that are payable to the surviving spouse by this Division are not subject to the provisions of the laws relating to
- (a) the administration of the intestate estates, or
 - (b) if the worker dies with a will, obtaining a grant of probate or the provisions of the deceased worker's will.

2009-13-177 (B.C. Reg. 148/2013).

Evidence of entitlement

- 178.** The surviving spouse of a deceased worker is entitled to those wages referred to in section 176 on production of an affidavit, sworn before a person authorized under the *Evidence Act* to administer an oath, stating that the person claiming to be the surviving spouse of the deceased worker is in fact the only person entitled to claim as a surviving spouse.

2009-13-178 (B.C. Reg. 148/2013).

Discharge of employer

- 179.** An employer who, in good faith and relying on an affidavit made under section 178, pays the wages of a deceased worker to a person purporting to be the surviving spouse of the deceased worker is discharged from liability towards the deceased worker or the estate of the deceased worker to the extent of that payment.

2009-13-179 (B.C. Reg. 148/2013).

Application to court to determine competing claims

- 180.** If 2 or more persons claim to be the surviving spouse entitled to the wages of a deceased worker, the court may order that the wages be paid to one or more of them in the amounts the court considers just.

2009-13-180 (B.C. Reg. 148/2013).

Part 6: Division 14 – Other Matters and Regulations

Representation of mentally incapable person

- 181.** (1) If a person entitled to receive a notice under this Act or the Supreme Court Civil Rules is a mentally incapable person who has a nominee, the nominee represents the mentally incapable person for the purposes of this Part.
- (2) Without limiting subsection (1), a nominee referred to in that subsection may, on behalf of the person referred to in that subsection,
- (a) be given a notice that this Act or the Supreme Court Civil Rules requires or permits,

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- (b) give a consent contemplated by this Part, and
 - (c) make a nomination permitted by this Part, including a nomination of himself or herself.
- (3) In addition to a notice requirement under any provision of this Act, if any other enactment requires notice to the Public Guardian and Trustee or to another person in addition to a notice given under this section to a nominee, notices must be given under every provision of this Act and under the other enactment.
- 2009-13-181 (B.C. Reg. 148/2013); 2011-6-8.

Notices to minor

- 182.** (1) If a person entitled to receive a notice under this Act or the Supreme Court Civil Rules is a minor, the notice is valid only if it is given to every guardian of the minor.
- (2) *Not in force. Repealed.* [2009-13-182 (B.C. Reg. 148/2013); 2011-25-469 (B.C. Reg. 131/2012)]
- (3) In addition to a notice requirement under any provision of this Act, if any other enactment requires notice to the Public Guardian and Trustee or to another person in addition to a notice given under this section to a guardian, notices must be given under every provision of this Act and under the other enactment.
- 2009-13-182 (B.C. Reg. 148/2013); 2011-6-8; 2011-25-469 (B.C. Reg. 131/2012).

Opening safety deposit boxes

- 183.** (1) If a safety deposit box was leased or rented in the name of a deceased person, solely or jointly with another person, a person in control of the premises where the safety deposit box is located must not permit the removal of the safety deposit box or its contents from the premises until a representative of the deceased person or a person in whose name the safety deposit box was jointly leased or held with the deceased person
- (a) prepares an inventory in accordance with subsection (2), and
 - (b) leaves a copy of the inventory in the safety deposit box and with the person in control of the premises.
- (2) An inventory must
- (a) be prepared in the presence of the person in control of the premises where the safety deposit box is located or that person's agent, and
 - (b) be dated and signed by the persons present.
- (3) The original will of the deceased person, and any copies of it, may be removed from the safety deposit box by a representative of the deceased person after the inventory is prepared under this section.
- (4) Subject to subsection (5),
- (a) the copy of the inventory left in the safety deposit box must be kept in it for at least 12 months, and
 - (b) the copy of the inventory left with the person in control of the premises where the safety deposit box is located must be kept by that person for at least 12 months.
- (5) The copy of the inventory left in the safety deposit box may be removed when, during the 12 month period referred to in subsection (4) (a), the lease or rental of the safety deposit box held in the name of

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- (a) the deceased person or the personal representative of the deceased person,
or
- (b) the deceased person, or the personal representative of the deceased person
jointly with another person,
is terminated.

2009-13-183 (B.C. Reg. 148/2013).

Power to make regulations

- 184.** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the keeping, custody, disposal, destruction and indexing of notices filed under Division 7 [*Registration of Notice of Will*] of Part 4 [*Wills*];
 - (b) respecting the use to be made of and the procedure to be followed with respect to the certificates issued under section 77 (3) [*search of records*];
 - (c) prescribing fees to be paid to file a notice or to search for or inspect a notice filed under Division 7 of Part 4;
 - (d) respecting the authority of a personal representative for the purposes of section 142 [*personal representatives – general authority*].
- (3) Without limiting subsection (1) or (2), the Lieutenant Governor in Council may make regulations respecting any matter for which regulations of the Lieutenant Governor in Council are contemplated by this Act.
- (4) The Lieutenant Governor in Council may make regulations for transitional matters with respect to any matter not provided for or inadequately provided for as a result of the repeal of an Act by this Act and the enactment of this Act.

2009-13-184 (B.C. Reg. 148/2013); 2011-6-45.

PART 7 – Transitional Provisions, Repeals and Consequential and Related Amendments

Part 7: Division 1 – Transitional Provisions

Transition – application of Parts 2, 3 and 6

185. Part 2 [*Fundamental Rules*], Part 3 [*When a Person Dies Without a Will*] and Part 6 [*Administration of Estates*] apply in respect of deaths occurring on or after the date on which those Parts come into force.
2009-13-185 (B.C. Reg. 148/2013).

Transition – application of Part 4

186. (1) Subject to subsections (2) and (3) of this section and section 189, Part 4 [*Wills*] applies to a will, whenever executed, if the will-maker dies on or after the date on which Part 4 comes into force.
(2) Subsection (1) does not invalidate a will validly made before the date on which Part 4 comes into force.
(3) Subsection (1) does not revive a will validly revoked before the date on which Part 4 comes into force.
2009-13-186 (B.C. Reg. 148/2013); 2011-6-46.

Transition – application of Part 5

187. Part 5 [*Benefit Plans*] applies to a designation, whenever made, if the participant dies on or after the date on which that Part comes into force.
2009-13-187 (B.C. Reg. 148/2013).

Transition – *Estate Administration Act*

188. Administration and probate granted under the *Estate Administration Act* before its repeal by this Act are deemed to have been granted under this Act.
2009-13-188 (B.C. Reg. 148/2013).

Transition – property encumbered by security interest

189. Section 47 [*property encumbered by security interest*] applies only to a will made on or after the date on which that section comes into force.
2009-13-189 (B.C. Reg. 148/2013).

Transition – direction by court

190. In a proceeding with respect to an Act repealed by this Act, the court may give any transitional directions or make any order that it considers necessary in the circumstances.
2009-13-190 (B.C. Reg. 148/2013).

Schedule 1

Note: The table in Schedule 1, which lists consequential amendments to other acts, is not included here.

Schedule 2

[2009-13-Sch. 2 (B.C. Reg. 148/2013)]

(Section 83)

**Convention Providing A Uniform Law On The
Form Of An International Will**

THE STATES SIGNATORY TO THE PRESENT CONVENTION,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

- (1) Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.
- (2) Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.
- (3) Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.
- (4) Each Contracting Party shall submit to the Depository Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

- (1) Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad in so far as the local law does not prohibit it.
- (2) The Party shall notify such designation, as well as any modifications thereof, to the Depository Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

- (1) The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.
- (2) Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

- (1) The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.
- (2) Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

- (1) The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.
- (2) The Convention shall be subject to ratification.
- (3) Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

- (1) The Convention shall be open indefinitely for accession.
- (2) Instruments of accession shall be deposited with the Depositary Government.

Article XI

- (1) The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.
- (2) In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the

deposit of its own instrument of ratification or accession.

Article XII

- (1) Any Contracting Party may denounce this Convention by written notification to the Depositary Government.
- (2) Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

- (1) Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.
- (2) Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.
- (3) Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV

- (1) If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
- (2) These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

- (1) The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.
- (2) The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:
 - (a) any signature;
 - (b) the deposit of any instrument of ratification or accession;

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- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
- (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

Annex

Uniform Law On The Form Of An International Will

Article 1

- (1) A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.
- (2) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

- (1) The will shall be made in writing.
- (2) It need not be written by the testator himself.
- (3) It may be written in any language, by hand or by any other means.

Article 4

- (1) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.
- (2) The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

- (1) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
- (2) When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
- (3) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

- (1) The signatures shall be placed at the end of the will.
- (2) If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

- (1) The date of the will shall be the date of its signature by the authorized person.
- (2) This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I,, (name, address and capacity), a person authorized to act in connection with international wills
2. Certify that on (date) at (place)
3. (testator) (name, address, date and place of birth) in my presence

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and that of the witnesses

4. (a) (name, address, date and place of birth)

(b) (name, address, date and place of birth) has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

(2) following a declaration of the testator stating that he was unable to sign his will for the following reason- I have mentioned this declaration on the will.....- the signature has been affixed by (name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

12. PLACE

13. DATE

14. SIGNATURE and, if necessary, SEAL

*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

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The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.