

Highlights of Changes to BC's New Adult Guardianship Laws

Long awaited changes to BC's Adult Guardianship laws were enacted on September 1, 2011. Below are some highlights:

Powers of Attorney

Unless the Power of Attorney document specifically authorizes it, an attorney **cannot**:

- Make or continue to make family gifts (such as gifts to children and grandchildren for birthdays and Christmas)
- Make charitable donations
- Receive a fee for acting as the attorney
- Appoint a substitute attorney in case of illness or disability of the chosen attorney
- Distribute any part of the Adult's estate prior to his/her death (even if the Adult is living in a care facility and everyone agrees)
- Sell or transfer land (or bank accounts) into his/her name either solely or as a joint tenant (even if it is for estate planning purposes)

Where there is more than one attorney appointed, the document must specify how conflicts will be resolved unless one attorney is the primary and the other attorneys are alternates. This may not be an issue if your current document provides that the attorneys "may act separately".

Representation Agreements

As of Sep. 1, 2011, a Section 9 (Enhanced) Representation Agreement is valid only for the purposes of making health and personal care decisions. This will include the ability for the representative to make end of life decisions and arrange for admission to a care facility. (Previously financial matters were included in these agreements.) This means persons now need a Power of Attorney for financial and legal decisions, and a separate Representation Agreement for health and personal care decisions.

The more limited Section 7 (Routine) Representation Agreement is useful for those people who may not have sufficient capacity to grant a power of attorney but still need someone to help with **routine** financial AND routine health care decisions. There are new regulations to safeguard adults using Section 7 agreements from abuse. For example, a monitor is required if there are financial powers in the agreement (unless the representative is a spouse, child or parent of the adult or there are two representatives who **must** act together).

Advance Directives

The new legislation provides a legal basis for an **Advance Directive**, which allows a person to give future health care instructions directly to the health care provider, eliminating the need for a decision maker. Most likely, people will prefer to give instructions about what they would want under certain circumstances, leaving the decision to a family member or a representative, who can consider the facts and diagnosis at the time. Those instructions, formerly known as Living Wills, should be in written form to avoid stress, confusion and conflict within the family. They may be called, **Health Care Directives, Instructions to Family and/or Representatives, Expressed Wishes, or Statement of Values and Beliefs**. The Notary will be able to help you determine which is best for you.

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- http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96006_01
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Sometime in 2012, another new piece of legislation is expected to be enacted. Known as W.E.S.A., (*Wills, Estates and Succession Act (S.B.C.2009, c. 13)*), the act repeals and replaces the existing Estate Administration Act, Probate Recognition Act, Wills Act and Wills Variation Act.

http://www.leg.bc.ca/39th1st/3rd_read/gov04-3.htm

Some of the highlights of the new legislation will be:

- Change in definition of a spouse
- Effect of Adoption
- Distribution of property when there are simultaneous deaths
- A 5 day survival rule
- Distribution when a person dies without a Will or a Will that is has an error in it that causes an intestacy or partial intestacy (significant changes)

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