

## ❧ GLOSSARY ❧

The explanations are provided to assist the user in understanding the terms used throughout this *Guide* and may have another meaning when used in an area of law other than wills and estates. The explanations relate to the Province of British Columbia.

<b>ADEEMPTION (ADEEM)</b>	Term used to determine what happens when an asset given under a Will no longer exists at the time of the Will-Maker's death because it has already been given to a beneficiary during the life of the Will-Maker or has been disposed of prior to the Will-Maker's death, or simply cannot be located. For a more detailed explanation of the term, see <b>Lapsed or adeemed Gifts – Overview</b> .
<b>ADMINISTRATOR</b>	Person appointed by <b>the court</b> to administer the estate of someone who died intestate (without a Will). An administrator is also appointed where there is a Will but it either fails to appoint an executor or the executor named in the Will is unable or unwilling to act. "Administrator" is gender-neutral. The feminine-only terms "administratrix" (singular) and "administratrices" (plural) are considered archaic and seldom used today.
<b>AFFIDAVIT</b>	Written statement or declaration of facts made voluntarily. The person making such statement (the "affiant" or the "deponent") must swear the statement to be the truth before a lawyer, a notary or an authorized commissioner for taking oaths.
<b>BENEFICIARY</b>	Person who receives a benefit under a Will or from an insurance policy or a trust.
<b>BEQUEATH</b>	To give personal property in a Will to another. It may be distinguished from "devise" (below), which is used for a gift of realty. However, the two are now synonymous and mean "to give" in a Will.
<b>BEQUEST (OR LEGACY)</b>	Gift of personal property made in a Will (e.g. money, jewellery, car, etc.). Historically, there was a distinction between a bequest, a legacy and a demise, but the terms are now often used synonymously.
<b>BOND</b>	Security for the performance of an administrator's duties in the administration of the estate of an intestate Deceased, which is posted by the administrator at the direction of the Public Guardian and Trustee and as ordered by the court. It is usually arranged with an insurance company. The requirement for a security or a bond may be waived in appropriate cases.

**CANADA DEPOSIT  
INSURANCE  
CORPORATION  
("CIDC")**

It is a federal Crown corporation that provides deposit insurance against the loss of **eligible** deposits at **member** institutions in the event of failure of a member institution.

- **Eligible deposits** are deposits payable in Canada and in Canadian currency up to a maximum of \$100,000 (principal and interest combined) per depositor per insured category and include when relating to law firms:
  - savings accounts;
  - chequing accounts;
  - term deposits with original terms to maturity of **less than five years**.
- **Member** institutions are listed on the CDIC Website (List of Members). In Canada, most banks and credit unions are members of CDIC.

What CDIC does **not** insure are:

- term deposits, such as GICs, with original terms to maturity greater than five years; and
- foreign currency deposits (e.g., U.S. dollars);

Law firms are only permitted to deposit trust funds with designated savings institutions that have an office in British Columbia accepting demand deposits and are insured by:

- the Canada Deposit Insurance Corporation; or
- the Credit Union Deposit Insurance Corporation of British Columbia.

Under the CDIC Deposit Insurance Information By-law, member institutions must notify depositors when a deposit is **not** eligible for insurance. For example, if a term deposit is in a foreign currency, the deposit certificate or receipt must state that it is not insured by CDIC.

**CITOR**

The person who serves a citation under Rule 25-11(1). If there is a Will (or a testamentary document), citations allow a person interested in an estate to demand that an executor named in a Will apply for a grant of probate.

**CODICIL**

Formal supplement or addition to the Will made by the Will-Maker. It modifies, adds, subtracts from, qualifies, alters, restrains or revokes provisions in a Will. It must be prepared and executed in the same manner as a Will.

**COMMITTEE**

(Pronounced **com-i-tay**) Person (or a group of persons, such as a trust company) who has been appointed by the court to manage the affairs of a mentally incompetent person.

**CONTINGENT  
BENEFICIARY**

Person (or a body corporate) who may acquire an interest in the Deceased's estate depending on a future event.

<b>DESCENDANTS</b>	All persons who have descended from a common ancestor. This includes children, grandchildren and any other descendants of whatever degree. Under legislation previous to WESA, the term used was “issue”.
<b>DEVISE or BEQUEATH</b>	To confer a gift on someone in a Will. This expression is considered archaic and has been replaced with “I give”.
<b>DEVISE</b>	Gift under a Will (usually land or real property). It is archaic and now seldom used.
<b>DISCLOSURE STATEMENT</b>	Statement of Assets, Liabilities and Distribution.
<b>ESCHEAT</b>	Reversion or forfeiture of property of an intestate to the Crown in right of the Province (Provincial Government) if there are no heirs.
<b>ESTATE</b>	The total of all property owned by a deceased person (or that a deceased person had a right to a share of), as well as all debts incurred, constitute the Deceased's <b>estate</b> .
<b>EXECUTOR</b>	Person appointed <b>by the Will-Maker</b> in his or her Will to carry out the provisions of the Will, to administer the estate and distribute the property. “Executor” is gender-neutral. The feminine-only terms “executrix” (singular) and “executrices” (plural) are considered archaic and seldom used today.
<b>FIDUCIARY DUTY</b>	Legal obligation which the executor has to the beneficiaries under a Will to act in good faith and for the benefit of the beneficiaries in the performance of his/her duties as executor.
<b>GUARDIAN</b>	Someone appointed by the Will-Maker in the Will-Maker’s Will to look after the care, education and upbringing of the minor (infant) children (children under 19) in the event that the Will-Maker (and his/her spouse) should die before the children reach the age of majority.
<b>HEIR-AT-LAW</b>	Person who, in an intestacy, is entitled to inherit (or receive) or has a right to a share in the estate of a Deceased. Now referred to as “intestate successors”.
<b>HOLOGRAPH WILL</b>	<p>Will entirely hand-written and signed by the Will-Maker without being witnessed. In British Columbia, this type of Will is generally invalid (although it may be valid in another Province of Canada).</p> <p>In British Columbia, a holograph Will <u>is</u> valid when the Will-Maker is:</p> <ul style="list-style-type: none"><li>• on active duty in the armed forces; or</li><li>• if the Will is upheld by a court order.</li></ul> <p>For a more detailed explanation, see the <b>Overview</b> chapter.</p>
<b>INFANT CHILD</b>	See “minor”.

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<b>INSTRUMENT</b>	Includes a testamentary instrument and other legal documents, but does not include an instrument, other than a Will, to which the <i>Insurance Act</i> applies.
<b>INTER VIVOS</b>	During a lifetime.
<b>INTESTATE/INTESTACY</b>	Means dying without a valid Will. N.B. <b>Partial intestacy</b> : a situation where some of the assets of the estate are not disposed of in the Will.
<b>INTESTATE SUCCESSORS</b>	Formerly: “Heirs-at-Law”. A person who is entitled to receive all or part of an intestate estate.
<b>ISSUE</b>	See: “Descendants”.
<b>JOINT TENANCY</b>	Shared ownership of land or other property where two or more people have an undivided partial interest in the property with a right of survivorship.
<b>LAND TITLE OFFICE (LTO)</b>	Refers to the actual office location designated by the Board of Directors of the LTSA, where the records of the land title district served by that office are maintained.
<b>LEGACY</b>	Gift under a Will (usually a gift of cash).
<b>LEGATEE</b>	One who receives a bequest or legacy – often replaced by “beneficiary”.
<b>LIABILITIES</b>	Debts and obligations.
<b>THE LAND TITLE AND SURVEY AUTHORITY OF BRITISH COLUMBIA (LTSA)</b>	A corporation which operates and administers the land title and survey systems and the registration of land title interests and survey records in British Columbia. The registration system is an electronic centralized system for all records filed.
<b>MAJORITY (AGE OF)</b>	Person who is 19 years or over; a person who is of full legal age.
<b>MINOR</b>	Person under the age of 19 years; an infant; a person who does not have full legal capacity.
<b>MUTATIS MUTANDIS</b>	The necessary changes being made.

**PER CAPITA** <sup>(1)</sup>

By “head”. Manner in which a person receives his/her share of an estate. For example: the residue of the estate is to be divided among each of the surviving children of the Deceased share and share alike or divided into as many shares as there are surviving children (as opposed to “per stirpes”). If a person in a given class has predeceased the Deceased, that person’s share will be divided among the survivors of that class. By way of illustration: If the Will-Maker left the estate to his three children in equal shares per capita, and one child predeceased the Will-Maker leaving two children, those children (the Will-Maker’s grandchildren) will **not** receive a share of the Will-Maker’s estate. The surviving two children of the Will-Maker will each receive one-half of the residue. In addition, the distribution will also depend on how the group of beneficiaries is described; for example: “descendants” or “issue” (rather than “children”) per capita.

**PER STIRPES** <sup>(1)</sup>

By “root”. Manner in which a person receives his/her share of an estate. Each person shares in the estate according to the family stock, or receives a share in the estate by right of representation and stands in the place of a deceased ancestor (as opposed to “per capita”). If one person in a given class has predeceased the Will-Maker, that person (i.e. the deceased beneficiary) is considered alive for the purpose of distribution and the issue of that deceased beneficiary takes his or her share. For example, the Will-Maker leaves his estate to his three sons, in equal shares per stirpes. If one son predeceased the Will-Maker leaving two children, those children (the Will-Maker’s grandchildren) will inherit the share to which their father (the Will-Maker’s son) would have been entitled if living – so these grandchildren receive one-sixth of the estate. The Will-Maker’s two surviving sons will each receive one-third of the estate.

**PERSONAL  
REPRESENTATIVE**

Executor or administrator.

**PRESCRIBED  
JURISDICTIONS FOR  
RESEALING**

A jurisdiction prescribed for the purposes of section 138 and Regulation 3 of WESA, being:

- all provinces and territories of Canada;
- any member of the British Commonwealth of Nations;
- any of the states of the United States of America; and
- Hong Kong (Special Administration Region of China).

<sup>(1)</sup> These terms should never be used in drafting Wills because they may have an unintended effect if used incorrectly. For a more complete explanation, see **Per Stirpes v. Per Capital** in the **Overview** chapter.

<b>PROOF IN COMMON FORM (WILL)</b>	<p>In an action where a Will is submitted to the court for probate and it is not contested, it is usually proved in common form. In most cases, proof in common form is all that is required for a grant of probate to be issued.</p> <p>A grant of probate in common form may subsequently be revoked.</p> <p>This is the common procedure for probating Wills and is covered in the <i>Guide</i>.</p> <p>See: Will in Solemn Form (below).</p>
<b>PROBATE</b>	<p>Court procedure by which the Will is legally proved to be the valid last Will of the Deceased. This procedure confirms the appointment of the executor(s) named in the Will.</p>
<b>RESIDUE</b>	<p>Balance (or remainder) of an estate once all debts, expenses and specific legacies and bequests have been paid or made.</p>
<b>RENUNCIATION</b>	<p>Document signed by someone who abandons, repudiates or disclaims a right or a privilege.</p>
<b>REVOCATION</b>	<p>Action of, or document, cancelling or nullifying an existing Will or other legal document or a portion thereof.</p>
<b>RIGHT OF SURVIVORSHIP</b>	<p>Right by which the surviving owner of a property held in joint-tenancy (see above) dies and automatically receives the Deceased's portion of a property.</p>
<b>SIBLINGS</b>	<p>Brothers and sisters – persons having at least one common parent.</p>
<b>SPOUSE</b>	<p>Two persons <b>are</b> spouses of each other if they were both alive immediately before the date of death of one of the persons; and</p> <ul style="list-style-type: none"> <li>• they were married to each other; or</li> <li>• they had lived with each other in a marriage-like relationship, including a marriage-like relationship between persons of the same gender, for at least two years (s. 2 of WESA).</li> </ul> <p>Note: two persons <b>cease</b> being spouses, which occurs if:</p> <ul style="list-style-type: none"> <li>• in the case of a marriage: <ul style="list-style-type: none"> <li>◦ they live separate and apart for at least two years with one or both of them having the intention, formed before or during that time, to live separate and apart permanently; or</li> <li>◦ an event occurs that leads to a division of assets under the <i>Family Law Act</i>. This event is the date of separation of the spouses.</li> </ul> </li> <li>• in the case of a marriage-like relationship, one or both persons terminate the relationship.</li> </ul>

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<b>TENANTS-IN-COMMON</b>	Co-ownership of property by two or more people who each own an undivided share in the property. If one of the owners dies, the Deceased's share does not pass to the co-owner(s), as with joint tenants, but will be inherited either pursuant to the Will of the Deceased or, if the Deceased dies intestate, by the Deceased's intestate successors.
<b>TESTATE</b>	Person dying leaving a Will.
<b>TESTATOR/TESTATRIX</b>	Has been replaced by Will-Maker. "Testator" is gender-neutral. The feminine-only term "testatrix" is considered archaic and seldom used today.
<b>TRUST</b>	Interest in a property held by one person for the benefit of another. An arrangement or agreement by which the property is transferred to a trustee to be administered by the trustee for the benefit of a beneficiary.
<b>VEST (TO)</b>	To give an immediate fixed right of present and future enjoyment, to deliver full possession.
<b>VESTING TRUST</b>	Clause in a Will by which the Will-Maker gives all his or her estate to the executor and sets out the general instructions as to the disposition of the Will-Maker's estate.
<b>WILL</b>	<p>Under WESA, the definition of "Will" has been expanded to include:</p> <ul style="list-style-type: none"><li>• a <b>Will</b>;</li><li>• a <b>Testament</b>;</li><li>• a <b>Codicil</b>;</li><li>• an appointment by Will or by writing in the nature of a Will in exercise of a power.</li><li>• anything ordered by the court to cure a deficiency and declare the document to be effective as a Will under s. 58 of WESA [Court Order curing deficiencies]; or</li><li>• any other testamentary disposition <u>except</u> the following:<ul style="list-style-type: none"><li>○ benefit plan designation under Part 5 of WESA;</li><li>○ an insurance beneficiary designation under Part 3 or 4 of the <i>Insurance Act</i>;</li><li>○ a testamentary disposition specifically provided for under any other legislation.</li></ul></li></ul>
<b>WILL-MAKER</b>	Person making the Will.
<b>WILL IN SOLEMN FORM</b>	An application to prove a Will in solemn form is made when there is doubt as to the validity of a Will or a possibility of opposition. It is the form of probate of a Will where, after notice to all interested persons and after hearing the testimony of the attesting witnesses, the court decrees a Will to be the last will and testament. This procedure is not covered in the <i>Guide</i> .

