LEGEND — **NA** = Not applicable **L** = Lawyer **LA** = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
INTRODUCTION **Purpose and currency of checklist.** This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1), WILL-MAKER INTERVIEW (G-2), and WILL DRAFTING (G-3) checklists. The checklist is current to September 1, 2019. **New developments:** • **Trust reporting requirements.** On July 27, 2018, the Department of Finance Canada released draft legislation proposing amendments to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and the Regulations made thereunder, which will require certain trusts to report personal information (name, address, date of birth, jurisdiction of residence, and tax identification number) of all trustees, beneficiaries, settlors (as that term is broadly defined in subsection 17(15) of the *Income Tax Act*), and certain other persons having an ability to exert influence over trustee decisions regarding appointment of income or capital. If enacted as proposed, the new reporting requirements will take effect in 2021. An estate which qualifies as a graduated rate estate ("GRE") will be exempt from the reporting requirements, but testamentary trusts and estates which extend longer than three years or otherwise do not qualify as a GRE will be required to comply. Penalties for failing to comply knowingly or in circumstances amounting to gross negligence will result in a penalty of 5% of the highest value of all of the trust's property. If the omission spans more than one taxation year, the 5% penalty may apply in respect of each year. • **Private corporation tax amendments.** Amendments to the provisions of the *Income Tax Act* dealing with taxation of private corporations and their shareholders were introduced to take effect in 2018 and subsequent taxation years. The amendments may have significant tax consequences where private corporation shares are held by a taxpayer on death. Clients holding private corporation shares may wish to obtain tax advice specific to their situation regarding the impact of the amendments. **Law Society Rules:** • **Trust accounts and cash transactions.** Lawyers may not move funds into or out of their trust accounts unless the funds are directly related to legal services (see Law Society Rule 1, definition of "trust funds", and Law Society Rules 3-53, 3-58.1, 3-59, 3-70(1), and 3-98(1)). Lawyers are prohibited from accepting more than $7,500 in cash, which increases the previous amount by one cent for consistency with the updated Federation of Law Societies Model Code (Law Society Rule 3-59). (See exceptions for fees, etc. in connection with the provision of legal services in subrules (2) and (4).) For more information see the July 15, 2019 Notice to the Profession, the Summer 2019 *Benchers' Bulletin*, pp. 10 to 14, and the Fall *Benchers' Bulletin*, pp. 14 to 17. For trust account questions, contact trustaccounting@lsbc.org or 604.697.5810. • **Fiduciary property rules.** The Law Society's consultation with the profession on proposed changes to Law Society Rule 3-55(6) that would prohibit fiduciary property from being deposited into a trust account when no legal services are provided has concluded. The Benchers are expected to consider the fiduciary property rules in light of Law Society Rule 3-58.1 in 2020.					

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• **Client identification and verification.** Changes to the client identification and verification rules take effect on **January 1, 2020**. The changes introduce more stringent requirements to verify a client's identity, provide more options for how to confirm a client's identity, and require lawyers in financial transactions to obtain additional information about a client's source of money, as well as periodic monitoring and recording of professional business relationships with clients. These changes will affect parts of the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist current to September 1, 2019. • The Law Society Rules are published at www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules. **Of note:** • **Fraud prevention.** Lawyers should maintain an awareness of the myriad scams that target lawyers, including the cheque printing scam, the bad cheque scam, fraudulent changes in payment instructions (i.e., through the client's email or a similar looking email address), and fake law firms and lawyers, and they must be vigilant about the client identification and verification rules, the source of money when there is a financial transaction, and the no-cash rules. Lawyers should be on high alert for fraudulent activity, especially while they are away from the office and during holidays. Lawyers should implement appropriate supervision of their practice while away. See the "Fraud Prevention" page, including the "Fraud Alerts" section, on the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention. • **Searches of lawyers' electronic devices at borders.** See "Crossing Borders with Electronic Devices—Canada, the US and Beyond" in the Spring 2019 *Benchers' Bulletin* for recommendations to minimize the risks of compromising professional responsibilities when travelling with electronic devices across borders. Links to correspondence about this topic between the Law Society, the Federation of Law Societies, and the federal government are included. • **Discipline Advisory—Private Lending.** The Law Society has warned lawyers that there is an increased risk of illegal activity with private lending and that it is a means by which proceeds of crime can be laundered. The warning is available at https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019. • **Aboriginal law.** The *Indian Act*, R.S.C. 1985, c. I-5, applies to wills made by "Indians" (as defined in the *Indian Act*) and to estates of deceased Indians who ordinarily resided on reserve land. The Minister of Crown-Indigenous Relations and Northern Affairs Canada is given broad powers over testamentary matters and causes (*Indian Act*, ss. 42 to 50.1). The formalities of execution of an Indian will are governed by the *Indian Act* (ss. 45 and 46) and the Indian Estates Regulations, C.R.C., c. 954 (s. 15). The Minister may accept a document as a will even if it does not comply with provincial laws of general application. It is good practice, however, to ensure that an Indian will or testamentary document is executed in the presence of two witnesses, with those witnesses signing after the will-maker in the will-maker's presence.					

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An Indian will is of no legal effect unless the Minister accepts it, and property of a deceased Indian cannot be disposed of without approval (*Indian Act*, s. 45(2) and (3)). The Minister also has the power to void a will, in whole or in part, under certain circumstances (*Indian Act*, s. 46(1)(a) to (f)). If part or all of a will is declared void, intestacy provisions in the *Indian Act* will apply (*Indian Act*, ss. 46(2) and 48). Should an executor named in a will be deceased, refuse to act, or be incapable of acting, a new executor can be appointed by the Minister (*Indian Act*, s. 43; Indian Estates Regulations, s. 11). The Minister has similar powers in intestacy situations. The Minister is vested with exclusive jurisdiction over estates of mentally incompetent Indians (*Indian Act*, s. 51). A provincial probate court may be permitted to exercise jurisdiction if the Minister consents in writing (*Indian Act*, ss. 44 and 45(3)). On December 16, 2014, ss. 12 to 52 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20, came into force; ss. 1 to 11 and 53 came into force on December 16, 2013. This federal legislation applies to married and common-law spouses living on reserve land where at least one spouse is a First Nations member or an Indian. Sections 13 to 52 apply to First Nations who have not enacted their own matrimonial real property laws. Sections 14 and 34 to 40 pertain to the consequences of the death of a spouse or common-law partner. Other statutory restrictions may apply to estates of deceased Indians. For example, a person who is "not entitled to reside on a reserve" may not acquire rights to possess or occupy land on that reserve under a will or on intestacy (*Indian Act*, s. 50), and no person may acquire certain cultural artifacts situated on a reserve without written consent of the Minister (*Indian Act*, s. 91). As some Indian bands or First Nation entities have entered into treaties (e.g., the *Nisga'a Final Agreement Act*, S.B.C. 1999, c. 2, and the *Tsawwassen First Nation Final Agreement Act*, S.B.C. 2007, c. 39) that may have governance, property, and other related implications, consider the status of an Indian instructing on a will and that of the band or First Nation in which a deceased Indian was a member. *WESA*, Part 2, Division 3 allows for the intervention of the Nisga'a Lisims Government and treaty first nations where the will of a Nisga'a or treaty first nation citizen disposes of cultural property. Further information on Aboriginal law issues is available on the "Aboriginal Law" page in the "Practice Areas" section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications. If acting with respect to an Indian will or estate, consider seeking advice from a lawyer who has experience in Aboriginal law matters.					
• **Additional resources.** See also annual editions of *Annotated Estates Practice*, (CLEBC, 2014–); *Wills and Personal Planning Precedents—An Annotated Guide* (CLEBC, 1998–); *British Columbia Estate Planning and Wealth Preservation* (CLEBC, 2002–); *British Columbia Probate and Estate Administration Practice Manual,* 2nd ed. (CLEBC, 2007–), all available at www.cle.bc.ca; and *Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide* (British Columbia Law Institute, 2012), available at www.bcli.org and on the Law Society website at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/guide-wills.pdf.					

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CHECKLIST

1. INITIAL CONTACT

1.1 Ensure there is no conflict of interest that would prevent you from acting for the client (e.g., you also represent a person whom the client wishes to disinherit from their will and therefore is a possible wills variation claimant, or you receive conflicting instructions from spouses who had previously advised you that they intended to make mirror-image interspousal wills). Review the general conflict provisions in rules 3.4-1 through 3.4-4 of the *Code of Professional Conduct for British Columbia* (the "*BC Code*"). Consider rules 3.4-5 to 3.4-9 when acting for more than one client or a client whom you previously represented on a joint retainer. Conflict provisions specific to lawyers and wills and estates are found in rules 3.4-37 to 3.4-39.

1.2 Arrange the initial interview.

1.3 Confirm compliance with Law Society Rules 3-98 to 3-110 (Rule 3-110 dealing with periodic monitoring is effective January 1, 2020) on client identification and verification; complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.

1.4 Provide the client with terms of engagement in writing, including an explanation of fees, other charges, disbursements, and taxes.

.1 If acting under a "limited scope retainer" (a defined term in the *BC Code*), ensure the client understands the limited scope of the retainer and the risks associated with the limits on the services you will provide. *BC Code* rule 3.2-1.1 requires that, before undertaking a limited scope retainer, you must advise the client of the nature, extent, and scope of the services that will be provided. Note that rule 3.2-1.1 does not apply to situations in which you are providing summary advice (e.g., as duty counsel) or to an initial consultation that may result in the client retaining you. If you are providing "short-term summary legal services" (different from a "limited scope retainer") under the auspices of a not-for-profit organization with the expectation by you and the client that you will not provide continuing representation in the matter, note *BC Code* rules 3.4-11.1 to 3.4-11.4 and commentaries regarding conflicts and confidentiality. See "Limited Scope Retainer FAQs" in the Fall 2017 *Benchers' Bulletin* for more information.

.2 See *BC Code*, s. 3.6 as to fees and disbursements. Note rule 3.6-3, commentary [1] regarding the duty of candour owed to clients respecting fees and other charges for which a client is billed.

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1.5 Send the client a form outlining information that the client should bring to the initial interview. The form should list all data required to create the will. .1 Request information and documents, including: (a) Client identification. (b) Client's citizenship. (c) Description of the client's family. (d) Whether any beneficiaries are U.S. residents or citizens. (e) A list of assets with particulars, and any documents necessary to substantiate the ownership of those assets. .2 Instruct the client to bring relevant documents affecting the ownership of assets (e.g., shareholders' agreements, separation agreements, co-habitation or marriage agreements, court orders).					
1.6 Request the client's birth date and place of birth, which will be required for filing a wills notice. (Note that a person who has attained the age of at least 16 years and is mentally capable of doing so can make a will (see *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 ("*WESA*"), s. 36 and *BC Code* rule 3.2-9).)					
2. INITIAL INTERVIEW					
2.1 If not already done (see item 1.4), confirm with the client the terms of your engagement. Discuss how fees, other charges, disbursements, and taxes are calculated. Identify the method and timing of payment. Have the client sign an engagement letter or agreement. .1 Joint retainer. Review *BC Code* rules 3.4-5 to 3.4-9. Note the requirements in rule 3.4-5, commentary [2] and [3] regarding specific advice the lawyer must give to clients when receiving will instructions from spouses or partners, the consent that should be obtained, and what to do if, subsequently, one spouse communicates new instructions. .2 Conflicts—clauses that should not appear in the will. Review *BC Code* rules 3.4-37 to 3.4-39. You must not include a clause directing the executor to retain the lawyer's services for estate administration (see rule 3.4-37). The will-maker may communicate in the will or by a separate document the will-maker's wish that the executor retain a particular lawyer or firm to act for the estate, although such a statement by the will-maker would be advisory only (Ethics Committee, April 4, 2013). Do not include a clause giving the lawyer, the lawyer's partner, or an associate a gift or benefit, unless the client is a family member (see rule 3.4-38). Also consider rule 3.4-26.1 to 26.2. "Family member" is not defined in the *BC Code*, but the BC Lawyers' Compulsory Professional Insurance policy defines "family member" as a spouse, children, parent, or siblings. The placing of a charging clause at the client's request does not constitute a gift or benefit within the meaning of rule 3.4-38. Such a clause is simply an authorization for the lawyer to charge a fee for performing executor services in the future and is subject to the same ethical constraints as any other fee.					

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The lawyer must not accept a gift, other than a nominal gift, from the client unless the client has received independent legal advice (see rule 3.4-39).					
2.2 Explain to the client the purpose behind preparing the will: i.e., to carry out the client's testamentary intentions.					
2.3 Be cautious when taking instructions for a will from anyone other than the client:					
.1 Satisfy yourself that that the will expresses the real testamentary intentions of the client.					
.2 It is preferable to meet with or speak to the client before drafting the will, but in any case you must meet with the client before execution to determine testamentary capacity, a lack of undue influence, and the client's instructions.					
2.4 Satisfy yourself that client has the capacity necessary to make a will. See *BC Code* rule 3.2-9 and item 3 of the WILL-MAKER INTERVIEW (G-2) checklist. Where the client's mental capacity is suspect or may later be called into question, be particularly sure to keep a record of answers to questions relevant to the issue of testamentary capacity (*Banks v. Goodfellow* (1870), L.R. 5 Q.B. 549). In any case, put a note on the file indicating that the issue of capacity has been considered. If you have concerns about capacity, consider getting a medical opinion. If the client lacks adequate capacity, refuse to draft the will.					
2.5 If you have not already done so, obtain information about the client, the client's family, and the client's assets. See, e.g., items 1 and 2 of the WILL-MAKER INTERVIEW (G-2) checklist.					
.1 If the client has already provided this information, review the form with the client as necessary.					
2.6 Review property that will pass outside the will (e.g., insurance, pension, TFSA, RRSP or RRIF proceeds, jointly held property).					
.1 Investigate the will-maker's intentions regarding joint tenancies and designations on registered plans and life insurance, and be aware of legal presumptions of resulting trust and of advancement. See *Pecore v. Pecore*, 2007 SCC 17, and with respect to beneficiary designations, *Neufeld v. Neufeld*, 2004 BCSC 25, and *McConomy-Wood v. McConomy* (2009), 46 ETR (3d) 259 (ON SCJ). Ensure all intentions, including gifts and bare trust arrangements, have been clearly documented.					
.2 Note the *Pension Benefits Standards Act*, S.B.C. 2012, c. 30, which applies to survivor rights and transferability of pension assets.					
2.7 Review the terms of any RESP and discuss the appointment of a successor subscriber and beneficiaries. Discuss the will-maker's intention for RESP following death—whether the will-maker wishes for the plan to continue, or for the contributions to fall to the residue of the estate. See chapter 5 of *British Columbia Estate Planning and Wealth Preservation* (CLEBC, 2002–).					
2.8 Ascertain whether the client was married in a community property jurisdiction, or owns assets in a foreign jurisdiction.					

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2.9 Determine whether the client has any support obligations to a child or spouse that continue after death (see *Family Law Act*, S.B.C. 2011, c. 25, s. 170(g) and *Bouchard v. Bouchard*, 2018 BCSC 1728).					
2.10 Review the disposition of the estate that the client wishes to make.					
.1 Be aware of any relevant provisions of a co-habitation or marriage agreement that would limit the disposition of property.					
.2 See items 4 (on undue influence) and 5 (on testamentary wishes) of the WILL-MAKER INTERVIEW (G-2) checklist.					
.3 Consider alternate beneficiaries, to prevent a lapse.					
.4 If necessary, explain to the client that the variation of wills provisions in *WESA*, Part 4, Division 6 allow spouses and children to apply for variation of the will.					
.5 Explain how a trust works.					
.6 Explain to the client the tax implications of any proposed distributive scheme.					
.7 Discuss the practicality and expense of the client's proposed distribution.					
2.11 Review the appointment of executors and trustees with the client. In view of the client's proposed distribution and the nature of the estate, advise the client as to who might best serve as the executor of the will and trustee of trusts created under it. Consider alternate executors and trustees. Discuss executor and trustee remuneration.					
2.12 If applicable, review the appointment of a guardian. Note *Family Law Act*, s. 53, in respect of the appointment of alternative guardians in the event of the death of a guardian. Review the nature and value of property that will be given to a child, and whether this would require the appointment of a trustee to receive such property. Review the nature of the guardianship and whether the guardian would have parental responsibilities (see *Family Law Act*, Part 4, Division 3).					
2.13 If the client is separated from their spouse, examine all separation agreements. Explain to the client that s. 2(2) of *WESA* describes the circumstances under which two persons would no longer be considered spouses for the purposes of *WESA,* which is of particular relevance to the application of the rules of intestacy (*WESA*, Part 3) and the variation of wills provisions. Ensure that all designations and arrangements for property passing outside the will (see item 2.6) have been updated.					
2.14 During the course of the interview, keep notes of the instructions. Alternatively, make notes of the instructions immediately following the interview.					
2.15 For an Aboriginal client, consider whether the client comes within the scope of the *Indian Act*, since s. 45(3) provides that a will executed by an Indian is of no legal force and effect as a disposition of property until the Minister has approved the will or a court has granted probate pursuant to the *Indian Act*. See also the introduction to this checklist. Note whether any of the property disposed of by the will comprises cultural property.					

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2.16 Interview the client alone. One of the reasons this is important is to find out whether there are elements of undue influence, duress, or suspicious circumstances that might affect the client's ability to provide their "true" instructions concerning the will. See item 4 of the WILL-MAKER INTERVIEW (G-2) checklist.					
2.17 Consider any other "special" circumstances (e.g., any relatives and intended beneficiaries who are disabled or dependent, nature of the ownership of assets, location of foreign assets, contracts or agreements that affect the client's assets, and debts and liens encumbering those assets). If the will-maker intends to make an outright gift to a disabled beneficiary, consider whether the beneficiary would be capable of receiving and managing the gift, and whether the gift would diminish any government benefits or require significant expense to rearrange the gift in order to preserve benefits. Consider the benefits of a discretionary trust, or a "qualified disability trust" (*Income Tax Act*, s. 122(3)).					
2.18 Consider whether to seek the assistance of outside experts (e.g., for tax or matrimonial matters).					
2.19 Ask whether the client wants to execute an enduring power of attorney. If the client wishes to do so, discuss s. 20(7) of the *Power of Attorney Act*, R.S.B.C. 1996, c. 370, and ask for instructions as to whether the client authorizes you to provide a copy of the will to the attorney upon the attorney's request.					
2.20 Ask if the client wants to execute a committeeship designation.					
2.21 Ask if the client wants to execute a representation agreement for personal and health-care decisions.					
3. AFTER THE INITIAL INTERVIEW					
3.1 In a letter to the client, ask the client to verify, or recommend that the client instruct you to verify, ownership of any assets. Identify the beneficiaries of any insurance policies, pension plans, TFSAs, or RRSPs, and successor subscriber and beneficiary information for RESPs, and ask for copies of any documents not provided at the initial interview. Make such searches as the client requests (e.g., land title office).					
3.2 Where the client does not wish to make provision for a person who would be entitled to apply to vary the will under the variation of wills provisions in *WESA*, prepare a memo to the file outlining the client's reasons and discuss with the client whether those reasons should form part of the will or whether the client should make a statement pursuant to *WESA*, s. 62 to be kept with the original of the will so that it will be available if any wills variation action is brought. See *Bell v. Roy Estate* (1993), 75 B.C.L.R. (2d) 213 (C.A.).					
3.3 If a client wishes to name a charity as a beneficiary, explain to the client the importance of using the correct legal name. Then either verify the charity's correct name or confirm that the client will perform the verification. If the gift is to be designated for a specific purpose, the client should confirm that the charity can actually fulfill that purpose. It may be appropriate to discuss the provision of an alternate beneficiary in the event the charity no longer exists on the date of the client's death. The *Canadian Donor's Guide* and Canada Revenue Agency's online searchable "List of charities" will provide information about a charity, including legal name and address.					

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3.4 Where the client wishes to dispose of property outside the jurisdiction, determine the proper law and ensure that it imposes no restrictions on distribution. Advise the client to get legal advice in the foreign jurisdiction or to instruct you to obtain such legal advice. This also applies if the client was married in a community property jurisdiction, or if the client is an American citizen or owns American assets. (See *Allison v. Allison* (1998), 56 B.C.L.R. (3d) 1 (S.C.), concerning the impact of foreign laws of matrimonial domicile.)					
3.5 Where you have some doubts about the mental capacity of the client, obtain a medical opinion. If you are convinced that the client lacks the requisite capacity, you should refuse to draw the will. (See *BC Code* rule 3.2-9 and item 3 of the WILL-MAKER INTERVIEW (G-2) checklist.)					
3.6 Where the estate includes shares of a private company, check for any restrictions or constraints on transfer in the articles of the company or any shareholders' agreement.					
3.7 Keep detailed notes of the instructions taken from the client in all cases where the client is elderly or in which the client has made unusual gifts or provisions in the face of contrary advice. The notes should be preserved indefinitely with the will file. (See *Closed Files—Retention and Disposition*, Appendix B: suggested minimum retention and disposition schedule for specific documents and files on the Law Society website.)					
3.8 Consider income tax consequences including:					
.1 Deemed realization at death (*Income Tax Act*, s. 70(5) to (10)).					
.2 Spousal rollover (*Income Tax Act*, s. 70(6) and (6.1)).					
.3 Family farm property (*Income Tax Act*, s. 70(9)).					
.4 21-year deemed realization for trusts (*Income Tax Act*, s. 104(4)).					
.5 Benefits of graduated rate estate (GRE) status (*Income Tax Act*, s. 248(1)), including graduated tax rates and flexibility in charitable gift planning.					
.6 Lifetime capital gains exemption for farm or fishing properties ($1,000,000) or qualified small business corporation shares ($848,252) (*Income Tax Act*, s. 110.6).					
.7 Tax planning for private corporation shares, including potential for double taxation on death, and provisions regarding the application of the tax on split income (TOSI) to property acquired as a consequence of death (*Income Tax Act*, s. 120.4(1)).					
.8 Possible rollover of a refund of premiums in the client's RRSP to spouse's RRSP (*Income Tax Act*, ss. 60 and 146).					
.9 Possible rollover of a refund of premiums in the client's RRSP, an eligible amount under a RRIF, or a payment out of a pooled registered pension plan, a registered pension plan, or a specified pension plan to the RDSP of a disabled child or grandchild (*Income Tax Act*, s. 60.02).					
.10 Ability to maximize charitable donations made by will or by designation of registered plans or insurance policies in order to minimize tax in the last two taxation years of the deceased and in the estate (*Income Tax Act*, s. 118.1(1) and (4.1) through (5.2)).					

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.11 Ability to create an *inter vivos* "alter ego" trust or "joint partner" trust if the client has attained the age of 65 years as an alternative to a will (see *Income Tax Act*, s. 73(1.01) and (1.02).					
.12 Whether beneficial Canadian income tax planning strategies available to an individual who qualifies as a common-law spouse will have an unintended adverse impact under applicable foreign tax rules that do not recognize such status.					
.13 The possible impact of a foreign jurisdiction's succession taxes arising in respect of the will-maker's assets situated in that jurisdiction.					
.14 U.S. estate tax consequences for U.S. citizens or others holding U.S. property (see chapter 11 of *British Columbia Estate Planning and Wealth Preservation* (CLEBC, 2002–)).					
3.9 Consider GST/PST consequences (see *Excise Tax Act*, R.S.C. 1985, c. E-15, ss. 267 and 269, on trustee supply of services to trust; and see *Provincial Sales Tax Act*, S.B.C. 2012, c. 35, ss. 1 and 222, on the definition of "vendor" and dealing with assets from which taxes must be remitted).					
3.10 Consider probate fee consequences and possible planning strategies. See chapter 6, part VI of *British Columbia Estate Planning and Wealth Preservation* (CLEBC, 2002–).					
3.11 Consider generally any possible impact that the following guardianship statutes may have on the client's contemplated estate plan: *Representation Agreement Act*, R.S.B.C. 1996, c. 405; *Adult Guardianship Act*, R.S.B.C. 1996, c. 6; *Public Guardian and Trustee Act*, R.S.B.C. 1996, c. 383; and *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181. Ensure that you are dealing with the most current version of these statutes.					
4. DRAFTING THE DOCUMENT					
4.1 Prepare an outline.					
4.2 Prepare the first draft. See the WILL DRAFTING (G-3) checklist.					
4.3 Review the first draft and ensure that each clause represents the client's intentions, and that the entire document is coherent and contains no contradictions or ambiguities.					
4.4 Send a copy of the first draft to the client, and have the client return it with comments. Alternatively, arrange to meet the client to go over the first draft. Give the client the choice, unless you decide that an interview is clearly preferable.					
4.5 Make changes as desired by the client, as well as other necessary or desirable consequential changes. Explain the function of each person in the will; use a diagram to explain a complicated scheme of distribution.					
4.6 Review the second draft, and prepare a final copy for execution.					

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5. EXECUTION					
5.1 Practitioners should ensure that the formalities in *WESA* for validly executing a will are strictly observed. While the curative provisions in *WESA,* s. 58 moves British Columbia from being a "strict compliance" regime to an "imperfect compliance" regime in respect of the formal requirements for making, altering, revoking, or reviving a will, invoking this provision will always involve uncertainty and expense.					
5.2 Immediately before execution, give the will to the client and explain each paragraph.					
5.3 Two witnesses.					
.1 Nineteen years of age or older, of sound mind, and not beneficiaries or spouses of persons who are or may be beneficiaries under the will.					
.2 No person who is an executor or other professional entitled to remuneration under the charging clause should witness the execution of the will. Where a partner is appointed as executor under the will, no partner of that person should witness the execution of the will.					
5.4 Execution of the will should include the following steps:					
.1 Both witnesses are present when the will is signed (failing this, have the will-maker acknowledge signature in presence of both witnesses).					
.2 The will-maker is physically present and attentive when the will is witnessed.					
.3 The client and the two witnesses remain together without interruption during the entire period from commencement to completion of execution of the will.					
.4 The client initials the bottom right corner of each page except the last. Date the document (if the date is not printed) and have the client sign on the line at the end of the document using their normal signature and handwriting. (Note that *WESA*, s. 1*,* defines "will-maker's signature" to include a signature made by another person in the will-maker's presence and at the direction of the will-maker, and may be either the name of the will-maker or the name of the person signing.)					
.5 Witnesses initial in the same places that the client has initialled. Witnesses then sign at the end of the will, using their normal signatures, and provide their residential addresses and occupations.					
.6 If any handwritten alterations have been made to the will, write "altered before execution" in the margin and have the client and both witnesses initial the alterations in the margin.					
.7 The will-maker sees the witnesses sign the will.					
5.5 If it is not possible for the will to be executed in the lawyer's presence, send the will with a letter setting out detailed instructions for the will-maker and witnesses to follow in execution. The letter should explain the legal effect of errors in the execution procedure.					
.1 Request a copy of the executed will, if the original is to be kept elsewhere.					
.2 Examine the copy for proper execution. If there is any apparent problem, contact the client.					

LEGEND — **NA** = Not applicable **L** = Lawyer **LA** = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
5.6 A wills notice in proper form should be completed and sent to the Vital Statistics Agency, either via the Agency's website with payment by credit card or by mail with a cheque for the fee. If the will is to be kept in the client's safety deposit box, include the box number and the address of the institution. The original will may be retained by the law firm or may be given to the client. A copy of the will should be made and retained in the file.					
5.7 Once the will is executed, consider options for dealing with any former will revoked by the new will:					
.1 Having the client destroy the revoked will in front of you.					
.2 Returning the revoked will to the client, with your advice to destroy it.					
.3 Keeping the revoked will in the file, with "revoked" stamped on the front.					
.4 Retaining the revoked will, if it may be needed later for evidence.					
6. CLOSING THE FILE					
6.1 Send a letter to the client reporting on execution and sending your account, outlining the manner in which you arrived at the amount, and advising the client that as their circumstances change, the will may require alteration. If the client has a spouse, a subsequent relationship breakdown will affect the will (*WESA*, s. 56). Advise the client that the will should be reviewed from time to time to determine if any of these changes require revision of the will.					
6.2 If the client has custody of the will, indicate in the covering letter that matters are at an end between you and the client. If your firm has retained custody of the will, indicate in the covering letter that the firm is a gratuitous custodian and has no obligation to advise of any changes that might necessitate changes to the will. Stress that any initiative for change must come from the client. If the will contains a beneficiary designation, remind the client that subsequent completion of a beneficiary designation form provided by a pension plan administrator may disturb the beneficiary designation in the will.					
6.3 Ensure that the file contains a copy of the will, the wills notice, and complete notes of the instructions taken. Mark the file for the appropriate retention period. For guidance, see *Closed Files—Retention and Disposition*, August 2017, Appendix B at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf: suggested minimum retention and disposition schedule for specific documents and files (for original wills and all wills files, 100 years, or, if a will of a client has been probated, 10 years after final distribution of the estate).					
6.4 Given the curative provisions in Part 4, Division 5 of *WESA,* records of the will-maker's testamentary intentions should be retained in the file.					
6.5 Make an entry in the wills index in your office of the following information:					
.1 Name and address of the client.					
.2 File number.					
.3 Executor's name.					

LEGEND — **NA** = Not applicable **L** = Lawyer **LA** = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
.4 Date of execution of the will.					
.5 Location of the will.					