INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1), CLIENT FILE OPENING AND CLOSING (A-2), WILL-MAKER INTERVIEW (G-2), and WILL DRAFTING (G-3) checklists. The checklist is current to September 4, 2024.

LEGEND

Checkbox

Important Reminder

Deadline or Limitation Date

NEW DEVELOPMENTS

- **Virtual witnessing and electronic wills.** In response to the COVID-19 pandemic, amendments were made to the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 ("*WESA*") to allow witnessing of wills by videoconference (s. 35.2).

OF NOTE

- **Aboriginal law.** Special considerations apply to wills made by Indigenous persons. The *Indian Act*, R.S.C. 1985, c. I-5, applies to wills made by First Nations persons who ordinarily reside on First Nations land and to their estate. The Minister of Indigenous Services has broad powers over testamentary matters and causes (*Indian Act*, ss. 42 to 50.1). Sections 45 and 46 of the *Indian Act* govern the formalities of execution of a will. Also see 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 a will or testamentary document governed by the *Indian Act* is executed in the presence of two witnesses, with those witnesses signing after the will-maker in the will-maker's presence.

  A will governed by the *Indian Act* is of no legal effect unless the Minister accepts it, and property of the deceased 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. A provincial probate court may be permitted to exercise jurisdiction if the Minister consents in writing (*Indian Act*, ss. 44 and 45(3)). The Minister is also vested with exclusive jurisdiction over the estates of Indigenous persons with mental and/or physical incapacity (*Indian Act*, s. 51).

  The *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20 applies to married and common-law spouses living on First Nations land where at least one spouse is a First Nations person. 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 governed by the *Indian Act*. For example, a person who is "not entitled to reside on a reserve" (still defined as "reserve" under the *Indian Act)* may not acquire rights to possess or occupy land on that First Nation under a will or on intestacy (*Indian Act*, s. 50), and no person may acquire certain cultural artifacts situated on First Nations land without written consent of the Minister (*Indian Act*, s. 91). As some First Nations 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 Indigenous person instructing on a will and that of the First Nation in which a deceased 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 a will or estate governed by the *Indian Act,* consider seeking advice from a lawyer who has experience in Aboriginal law matters.

- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues "Of note", see LAW SOCIETY NOTABLE UPDATES LIST (A-3).
- **Additional resources.** See also annual editions of *Annotated Estates Practice* (CLEBC); *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.

CONTENTS

1.	**INITIAL CONTACT**	
1.1	Arrange the initial interview.	☐

1.2	Conduct a conflicts of interest check and complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Ensure there are no conflicts 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 inter-spousal wills). Conflict provisions specific to lawyers and wills and estates are found in rules 3.4-5, 3.4-37 to 3.4-39 of the *Code of Professional Conduct for British Columbia* (the "*BC Code*").	☐
1.3	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Be alert to identity theft. Consider periodic monitoring requirements (Law Society Rule 3-110). You must not prepare a trust instrument that facilitates the settlement or transfer of property which you know or ought to know represents the proceeds of crime.	☐
1.4	Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	☐
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, loan agreements, and trust or bare trust agreements).	
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 *WESA* s. 36 and *BC Code*, rule 3.2-9).)	☐

2.	**INITIAL INTERVIEW**	
2.1	Discuss the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	☐

	.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. Do not include a clause giving the lawyer (or the lawyer's partner or associate) a gift or benefit from the client, unless the client is a family member of the lawyer or the lawyer's partner or associate (see rule 3.4-38). "Family member" is not defined in the *BC Code*, but the BC Lawyers' Compulsory Professional Liability Indemnification Policy defines "family member" as a spouse, children, parents, 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 (Ethics Committee, April 2013). Also consider whether any conflict arises due to a personal or business relationship with the client (see *BC Code*, rules 3.4-26.1 and 3.4-26.2).	
2.2	Explain to the client the purpose behind preparing the will (i.e., to carry out the client's testamentary intentions by directing the disposition of the client's estate upon death).	☐
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 and that the client is not subject to undue influence. See *BC Code*, rule 3.2-9 and item 4 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, see also *Laszlo v. Lawton*, 2013 BCSC 305). 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 you are convinced the client lacks adequate capacity, refuse to draft the will. If capacity is diminished but adequate, proceed with caution and keep detailed notes. For further resources on capacity and undue influence see: "Client capacity, undue influence and mistreatment (abuse and neglect)" (lawsociety.bc.ca)	☐

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 2 and 3 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 *Simard v. Simard Estate*, 2021 BCSC 1836. 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 property held in trust, including in a bare trust arrangement. This includes property held jointly where one party holds legal title but is not the beneficial owner.	☐
	.1 Advise of the obligation to file a T3 Trust Income Tax and Information Return for all trusts, including bare trusts, unless excepted, for taxation years starting in 2023 (*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 150(1.2) and (1.3)).	
	.2 For real property in British Columbia, consider and advise of the requirement to file a report under the *Land Owner Transparency Act*, S.B.C. 2019, c. 23.	
	.3 For residential real property in Canada, consider and advise of the requirement to file a return under the *Underused Housing Tax Act*, S.C. 2022, c. 5, s. 10.	
	.4 For private company shares, consider whether transparency registers are being maintained under the applicable corporate legislation, for example under	
2.8	Review the terms of any RESPs and discuss the appointment of a successor subscriber. An RESP is an estate asset of the plan subscriber and is not a separate trust. Discuss the will-maker's intention for RESP following death—whether the will-maker wishes for the plan to continue, or for the plan assets to fall to the residue of the estate. See chapter 5 (The RESP in Estate Planning) of *British Columbia Estate Planning and Wealth Preservation* (CLEBC, 2002–).	☐
2.9	Ascertain whether the client was married in a community property jurisdiction or owns assets in a foreign jurisdiction.	☐
2.10	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).	☐
2.11	Review the disposition of the estate that the client wishes to make.	☐

	.1 Be aware of any relevant provisions of a co-habitation agreement, marriage agreement, shareholders' agreement, or partnership agreement that would limit the disposition of property.	
	.2 See items 5 (on undue influence) and 6 (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.	
2.12	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.	☐
2.13	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).	☐
2.14	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.	☐
2.15	During the course of the interview, keep notes of the instructions. Alternatively, make notes of the instructions immediately following the interview.	☐
2.16	For an Indigenous client, consider whether the client comes within the scope of the *Indian Act*, since s. 45(3) provides that a will executed by a First Nations person is of no legal force and effect as a disposition of property until the Minister of Indigenous Services has approved the will or a court has granted probate pursuant to the *Indian Act*. See also "Aboriginal law" under the "Of note" section of this checklist. Note whether any of the property disposed of by the will comprises cultural property.	☐
2.17	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 5 of the WILL-MAKER INTERVIEW (G-2) checklist.	☐

2.18	Consider any other special circumstances (e.g., any relatives and intended beneficiaries who have a disability or who are 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, *Henson* trust, or a "qualified disability trust" (*Income Tax Act*, s. 122(3)).	☐
2.19	Consider whether to seek the assistance of outside experts (e.g., for tax or matrimonial matters).	☐
2.20	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.	☐
2.21	Ask whether the client wants to execute a committeeship designation.	☐
2.22	Ask whether the client wants to execute a representation agreement for personal and health-care decisions pursuant to the *Representation Agreement Act,* R.S.B.C. 1996, c. 405.	☐
2.23	If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society website at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf).	☐

3.	**AFTER THE INITIAL INTERVIEW**	
3.1	Confirm your retainer. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	☐
3.2	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).	☐
3.3	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. 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.).	☐

3.4	If a client wishes to name a charity as a beneficiary, verify the charity's correct legal name. If the gift is to be designated for a specific purpose, you or 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.	☐
3.5	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 U.S. citizen or owns U.S. assets. (See *Allison v. Allison* (1998), 56 B.C.L.R. (3d) 1 (S.C.), concerning the impact of foreign laws of matrimonial domicile.)	☐
3.6	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 at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf.)	☐
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 ($1,250,000 in 2024) (*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 Possible designation of spouse as successor holder of a TFSA to preserve tax-exempt status to the survivor with no reduction of the survivor's TFSA contribution room (*Income Tax Act*, s. 146.2(1), "survivor" and "holder").	
	.11 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)).	
	.12 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)).	
	.13 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.	
	.14 The possible impact of a foreign jurisdiction's succession taxes arising in respect of the will-maker's assets situated in that jurisdiction.	
	.15 U.S. estate tax consequences for U.S. citizens or others holding U.S. property (see chapter 11 (U.S. Tax Considerations in Estate Planning for Canadians) 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 (*Inter Vivos* Trust Planning) 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.	☐
3.12	Consider requirements under various disclosure and transparency laws when property is held upon a trust or bare trust, including a joint tenancy arrangement under which one party is a legal but not beneficial owner.	☐
	.1 Requirement to file a T3 Trust Income Tax and Information Return for all trusts, including bare trusts, unless excepted, for taxation years starting in 2023 (*Income Tax Act*, s. 150(1.2) and (1.3)). The T3 return requires disclosure of personal information for each settlor, trustee, beneficiary, and person with power to influence trustee decisions. For bare trusts, Canada Revenue Agency has waived the filing requirement for 2023 and has stated they are working to clarify reporting requirements for 2024 and beyond.	
	.2 For real property in British Columbia, reporting obligations under the *Land Owner Transparency Act*, S.B.C. 2019, c. 23.	

	.3 For residential real property in Canada, the requirement to file a return under the federal *Underused Housing Tax Act*, S.C. 2022, c. 5, s. 10 for owners other than excluded owners. For 2023 and subsequent years, a trust that qualifies as a "specified Canadian trust" is an excluded owner.	
	.4 For private company shares, the requirement to maintain transparency registers under applicable corporate legislation.	

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.	☐

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	Decide on the type of will and mode of execution (i.e., physical will executed with witnesses physically present, physical will executed with one or both witnesses remote, or electronic will). Take into account whether it will be necessary to rely on the will in any jurisdiction outside of British Columbia, and whether the mode of execution will affect its validity or recognition in that jurisdiction.	☐
5.5	Execution of a physical will with witnesses physically present 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 initialed. 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.	
5.6	If it is not possible for the physical will to be executed in the lawyer's presence, the lawyer may 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 return of the executed will or a copy, depending on where the original will is to be kept.	
	.2 Examine the will or copy for proper execution. If there is any apparent problem, contact the client.	
5.7	For a physical will to be executed with remote witnesses, see *WESA*, ss. 35.1 and 35.2. Both witnesses may attend by videoconference (separately or together), or one witness may be physically present with the will-maker while the other attends by videoconference. Execution should follow these steps:	☐
	.1 Confirm videoconference participants can hear and see each other and communicate simultaneously. Arrange cameras so that the act of signing by the will-maker and by each witness will be visible to all participants.	

	.2 Confirm the will-maker and the remote witness or witnesses have complete and identical copies of the will.	
	.3 Instruct the will-maker to show each page of the will to the camera, or read aloud the first and last words of each page, to confirm each page is identical in each counterpart copy.	
	.4 Instruct the will-maker to initial the bottom-right corner of each page as it is confirmed. Instruct each witness to do the same on their counterpart.	
	.5 Instruct the parties to date each counterpart (if date is not printed) and instruct the will-maker to sign on the line at the end. The witnesses sign at the end on their counterpart and write their addresses and occupations.	
	.6 Instruct the parties to send all counterparts to the lawyer, or send to the client with a copy to the lawyer.	
	.7 Assemble the counterparts to make the executed physical will.	
5.8	Execution of electronic wills with one or both witnesses remote requires a software platform that allows the will-maker and witnesses to sign electronically, to witness each other sign, and to hear and see each other. Execution should follow these steps:	☐
	.1 Confirm participants can hear and see each other and communicate simultaneously.	
	.2 Confirm that the will-maker and the witnesses can see and read the will.	
	.3 After confirming the will-maker is satisfied with the form and content, have the will-maker electronically sign the will.	
	.4 Have both witnesses confirm they can see the will-maker's signature applied to the document.	
	.5 Have each witness in turn electronically sign the will. For each witness, have the will-maker and the other witness confirm they can see the witness' signature applied to the document.	
	.6 Save the signed electronic will in its original electronic form. Lock the electronic document to prevent editing.	
5.9	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. It is recommended that the original will be given to the client for safe keeping when possible. Suggest to the client that they keep the original will in a fireproof and waterproof safe, if they intend to keep it in their home. See the Law Society resource "Closed Files—Retention and Disposition" (PDF), Appendix B, under the heading "Wills, Estates and Trusts", for original wills and wills files retention guidelines (100 years or, if the client's will has been probated, 10 years after the final distribution of the estate). A copy of the will should be made and retained in the file; a scanned copy is sufficient.	☐

5.10	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 or having the client give you their express direction to destroy the revoked will.	
	.2 Returning the revoked will to the client, with your advice to destroy it.	
	.3 Keeping the revoked will in the file, with the word "revoked" stamped on the front or added to the title of a revoked electronic will.	
	.4 Retaining the revoked will, if it may be needed later for evidence.	

6.	**CLOSING THE FILE**	
6.1	Prepare a reporting letter and account as soon as practicable after closing. In addition advise the client:	☐
	.1 As their circumstances change, the will may require alteration. Advise that any changes should be made by a codicil or new will.	
	.2 If the client has a spouse, a subsequent relationship breakdown will affect the will (*WESA*, s. 56).	
	.3 Indicate that your engagement for provision of legal services has concluded.	
	.4 If your firm has retained custody of the will, indicate 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.	
	.5 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.	
6.2	Ensure that the file contains a copy of the will, the wills notice, and complete notes of the instructions taken. 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. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	☐
6.3	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.	
	.4 Date of execution of the will.	
	.5 Location of the will.	
6.4	Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	☐