

WILLS, ESTATES AND SUCCESSION ACT

[SBC 2009] CHAPTER 13

PART 1 — DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1 (1) In this Act:

"beneficiary" means

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

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

"benefit plan" means

(a) any one or more of the following for the benefit of employees or former employees of an employer, agents or former agents of an employer, the dependants of any of them or a designated beneficiary:

- (i) a pension plan or retirement plan;
- (ii) a welfare fund or profit-sharing fund;
- (iii) a trust, scheme, contract or arrangement,

(b) a fund, trust, scheme, contract or arrangement for the payment of an annuity for life or for a fixed or variable term,

(c) a retirement savings plan or retirement income fund registered under the *Income Tax Act* (Canada) ,

(d) a fund, trust, scheme, contract or arrangement described in the regulations made under this Act,

(e) a tax-free savings account within the meaning of the *Income Tax Act* (Canada) , or

(f) a pooled registered pension plan as defined in section 147.5 (1) of the *Income Tax Act* (Canada) ,

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

"court" means the Supreme Court;

"descendant" means all lineal descendants through all generations;

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

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

"estate" means the property of a deceased person;

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

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

"gift" includes

(a) a beneficial devise or bequest, and

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

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

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

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

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

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

"nominee" includes

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

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

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

"property" means land and personal property;

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

"registrar general" has the same meaning as in the *Vital Statistics Act*;

"representation grant" means

- (a) the grant of probate of a will in British Columbia, whether made for general, special or limited purposes,
- (b) the grant of administration of the estate of a deceased person in British Columbia, with or without will annexed, whether made for general, special or limited purposes,
- (c) the resealing in British Columbia of a grant of probate of a will or a grant of administration of the estate of a deceased person,
- (d) an ancillary grant of probate or administration, or
- (e) [Not in force.]

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

"spousal home" means

(a) a parcel of land, owned or owned in common by the deceased person and not leased to another person, that

(i) is shown as a separate taxable parcel on a taxation roll for the current year prepared under the *Taxation (Rural Area) Act* or on an assessment roll used for the levying of taxes in a municipality, and

(ii) has as improvements situated on it a building assessed and taxed in the current year as an improvement, in which the deceased person and his or her spouse were ordinarily resident,

(b) a share owned or owned in common by the deceased person in a corporation whose charter, as defined in section 1 (1) of the *Business Corporations Act*, provides that a building owned or operated by the corporation must be owned and operated exclusively for the benefit of shareholders in the corporation who are occupants of the building, if the value of the share is equivalent to the capital value of a suite owned by the corporation, in which suite the deceased person and his or her spouse were ordinarily resident and which was not leased to any other person,

(c) a manufactured home, as defined in the *Manufactured Home Act*, situated on land not owned by the owner of the manufactured home and in which the deceased person and his or her spouse were ordinarily resident, or

(d) a parcel of land on Nisga'a Lands or treaty lands that has as improvements situated on it a building in which the deceased person and his or her spouse were ordinarily resident,

(i) owned or owned in common by the deceased person and not leased to another person,

(ii) held or held in common by the deceased person by way of a right to possession under Nisga'a law and not leased to another person, or

(iii) held or held in common by the deceased person by way of an interest under the laws of a treaty first nation and not leased to another person;

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

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

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

"will" means

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

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

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

(2) A reference to the signature of a will-maker includes a signature made by another person in the will-maker's presence and by the will-maker's direction, and the signature may be either the will-maker's name or the name of the person signing.

(3) If there is any conflict or inconsistency between this Act and the *Trustee Act* with respect to the powers and duties or office of a personal representative, this Act prevails to the extent of the conflict or inconsistency.