

**The following is the “Sample Will” chapter, prepared by Peter Bogardus, Q.C. and Mary Hamilton for *Wills Precedents—An Annotated Guide*, Continuing Legal Education Society of British Columbia, 1998- (looseleaf)
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Sample Will

A draft sample will follows. It is not included for use as a precedent, but as a guide to the format or overall appearance of a will.

We have set out the numbers of the precedent clauses in the left-hand column, and have italicized the words that do not form part of the actual precedent clauses but which we have added to make this particular client's will.

LAST WILL

1. This is the last Will of me, *John Henry Smith, of 1234 Somewhere Street, Vancouver, British Columbia.*

Revocation of Prior Wills

2. I revoke all my prior wills and codicils.

Definitions and Interpretation

3. In this Will:
- (a) "Articles" means all items of personal, domestic, and household use or ornament, and includes automobiles and boats, and accessories to them, that I own when I die;
 - (b) "decide" or "decides" means, when referring to a decision of any person, a decision made in that person's discretion;
 - (c) "discretion" means sole and uncontrolled discretion to the extent permitted by law; and
 - (d) "Trustee" means both the executor of my Will and the trustee of my estate and any reference to my Trustee includes all genders and the singular or the plural as the context requires.
4. Headings are inserted for convenience only and do not affect how this Will is interpreted.

EXECUTOR AND TRUSTEE

Appointment

5. (a) I appoint *my wife, Mary Jane Smith ("Mary")*, to be my Trustee.
 (b) If *Mary* is unwilling or unable to act or to continue to act as my Trustee, I appoint *Reliable Trust Company, of 4444 Burrard Street, Vancouver, British Columbia*, to be my Trustee.

ADMINISTRATION OF MY ESTATE

Trustee to Administer My Estate

6. I give my Trustee all my property of every kind and wherever located to administer as I direct in this Will. In administering my estate, my Trustee may convert or retain my estate as set out in paragraph 10 of this Will.
7. I direct my Trustee:

Gift of Articles

- (a) if *Mary* does not survive me for 30 days:
 - (i) to distribute those items of the Articles that remain as equally as is reasonably practicable *among those of my son Henry James Smith ("Hank"), my daughter Susan Mary Smith ("Susan"), and my daughter Elizabeth Anne Smith ("Liz")* who survive me for 30 days;
 - (ii) it is my hope that my Trustee will, together with my children, devise a format of division that results *in those of Hank, Susan, and Liz* who survive me for 30 days,

receiving items (or items and cash, if an equalizing payment is required) of approximately the same total market value;

- (iii) to pay all necessary packing, freight, and insurance costs for delivering any items of the Articles as required by this Will;

Debts to Be Paid from My Estate

- (b) to pay out of my estate:
 - (i) my debts, including income taxes payable up to and including the date of my death;
 - (ii) my funeral and other expenses related to this Will and my death; and
 - (iii) all estate, gift, inheritance, succession, and other death taxes or duties payable in respect of all property passing upon my death, including:
 - A. insurance proceeds on my life payable as a consequence of my death (but excluding the proceeds of insurance upon my life owned by any corporation or owned by any partnership of which I am a partner);
 - B. any annuity, registered retirement savings plan, registered retirement income fund, pension, or superannuation benefits payable to any person as a result of my death;
 - C. any gift made by me in my lifetime; and
 - D. any benefit arising by survivorship,

my Trustee may pay these taxes whether they are imposed by the law of this jurisdiction or any other and my Trustee may prepay or delay payment of any taxes or duties.

University Scholarship

- (c) *if I am the last to die of Mary and me, to pay \$20,000 to the University of British Columbia of 6253 N.W. Marine Drive, Vancouver, British Columbia (the "University"), to establish a fund to be known as the Smith Family Fund (the "Smith Family Fund"), the income of which is to be used to award a scholarship or scholarships annually to one or more deserving students enrolled in the Faculty of Agricultural Sciences at the University. I direct that:*
 - (i) the University may invest the *Smith Family Fund* as part of its pooled endowment funds;
 - (ii) if any income of the *Smith Family Fund* is not used in a particular year, the University may either add the unused income to the capital of the *Smith Family Fund* or invest the unused income with the intent that it and any income resulting from it retain the status of income;
 - (iii) if unforeseen circumstances make the specified use of the *Smith Family Fund* no longer practical or desirable, the Board of Governors of the University may change the terms of the *Smith Family Fund*, those changes to be in keeping, as far as possible, with the spirit and general intent of this gift.

Residue of Estate

- (d) to give the residue of my estate to *Mary*, if she survives me for 30 days;
- (e) if *Mary* does not survive me for 30 days, to divide the residue of my estate into as many equal shares as there are of my children who are alive at my death, except if any child of mine has died before me and one or more of his or her children are alive at my death, that deceased child will be considered alive for the purposes of the division, and:
 - (i) with respect to the share created for any child of mine who is alive at my death, hold that share for that child on the following trusts:

- A. pay so much of its income and capital as my Trustee decides is advisable for the care, maintenance, education, and benefit of that child until he or she dies or reaches 25;
 - B. add any income not paid in any year to the capital of that share;
 - C. when that child reaches 21, give that child *one-half* of what remains of his or her share;
 - D. when that child reaches 25, give that child what remains of that share;
 - E. if that child dies before reaching 25 and leaves one or more children surviving him or her, divide what remains of that share equally among those of his or her children alive at his or her death;
 - F. if that child dies before reaching 25 and leaves no child surviving him or her, divide what remains of that child's portion equally among the other portions created under the provisions of paragraph 7(e) of this Will;
- (ii) with respect to the share created for any child of mine who died before me and left one or more of his or her children alive at my death, divide that share equally among those children of that deceased child;
- (f) if *Mary* does not survive me for 30 days and the trusts of paragraph 7(e) of this Will should at any time fail (the date of that failure being the "Failure Date"), *divide what remains of the residue of my estate into two equal shares and:*
- (i) *pay one of those shares to those of my father, Sebastian Henry Smith, and my mother, Anne Susan Smith, who survive the Failure Date, and if both, equally; and*
 - (ii) *pay one of those shares to those of Mary's father, Jeremiah Allan Jonston and Mary's mother, Elizabeth Mary Jonston, who survive the Failure Date, and if both, equally.*

POWERS OF TRUSTEE

Trust Terms for Those Who Are Under 19

8. If anyone becomes entitled to any part of my estate, is under 19, and I have not specified terms in this Will on which my Trustee is to hold that part, I direct my Trustee to hold that part, and:
- (a) pay as much of the income and capital as my Trustee decides for that person's benefit until that person reaches 19;
 - (b) add any unused income to the capital of that person's part of my estate and then pay the capital to that person when he or she reaches 19, but if that person dies before reaching 19, I direct my Trustee to pay that person's part of my estate to that person's estate; and
 - (c) regardless of paragraph 8(a), and at any time my Trustee decides, pay some or all of that part of my estate to that person's parent or guardian for that person's benefit.

Payment to Parent or Guardian

9. When my Trustee makes any payment for the benefit of any person under 19, my Trustee may make that payment to that person's parent or guardian. When the parent or guardian receives that payment, my Trustee is discharged for that payment and need not inquire about how it is used.

Convert, Keep, or Invest

10. When my Trustee administers my estate:
- (a) my Trustee may convert my estate or any part of my estate into money or any other form of property or security, and decide how, when, and on what terms;
 - (b) my Trustee may keep my estate, or any part of it, in the form it is in at my death and for as long as my Trustee decides, even for the duration of the trusts in this Will. This power applies even if:
 - (i) the property is not an investment authorized under this Will;

- (ii) a debt is owing on the property; or
- (iii) the property does not produce income;
- (c) my Trustee may invest my estate or any part of my estate in any form of property or security in which a prudent investor might invest; and
- (d) if at any time my Trustee is a corporate trustee, the Trustee may invest in that corporation's common trust funds and the corporate trustee need not account for any profit that accrues to it as a result of that investment.

Allocate Specific Assets of My Estate

11. When my Trustee divides or distributes my estate, my Trustee may decide which assets of my estate to allocate to any share or interest in my estate (and not necessarily equally among those shares or interests) and the value of each of those assets. Whatever value my Trustee places on those assets will be final and binding on everyone interested in my estate.

Income Tax Elections

12. (a) My Trustee may make any allocations, elections, and distributions as my Trustee decides are in the best interests of my estate as a whole, including any allocations and elections under the *Income Tax Act* of Canada.
- (b) Any election that allocates any portion of the income of my estate to any person for the purposes of the *Income Tax Act* shall not be regarded as a decision by my Trustee to allocate, in fact, that income to that person nor will that decision give that person any right to that income.
- (c) As a result of any of those allocations, elections, or distributions made in good faith, my Trustee will not be considered to have breached any duty to maintain an even hand *among* the beneficiaries and my Trustee will not be liable for any loss to my estate or any beneficiary of my estate.

Investments

13. When holding, keeping, or investing, my Trustee may invest in any investments authorized by the *Trustee Act* of British Columbia for the investment of trust funds.

Deal With Business

14. If my estate holds any interest in any business, incorporated or otherwise, my Trustee may deal with that interest and may exercise any rights, powers, and privileges in connection with that interest to the same extent as I could if I were alive and the only owner of that interest.

Further Powers Dealing With Property

15. My Trustee, with respect to any property (personal or real) forming part of my estate, may exercise any rights, powers, and privileges in connection with that property to the same extent as I could if I were alive and the only owner of that property. Those powers include:
- (a) managing any of that property;
 - (b) spending money out of the capital and income, or either, to repair, convert, improve, or rebuild any of that property;
 - (c) razing any building on that property;
 - (d) erecting any building on that property;
 - (e) insuring any of that property against whatever risks and in whatever amounts my Trustee decides;
 - (f) renting, leasing, or permitting the use or occupancy of any of that property for any period of time and on whatever terms that my Trustee decides;
 - (g) terminating or accepting the surrender of any lease or rental arrangement concerning that property;

- (h) granting any option or right of first refusal to any person to purchase or lease that property for any period of time and on whatever terms my Trustee decides;
- (i) paying off or renewing any mortgages on that property;
- (j) paying any person in any profession, trade, or business to transact any business or trade, or to do any act in relation to that property; and
- (k) transferring that property in exchange for other property on whatever terms and conditions my Trustee decides.

Receipts

16. When my Trustee makes any payment to any organization, society, foundation, association, or corporation, my Trustee may accept the receipt of any person purporting to be the secretary or treasurer or other officer or officers, as the case may be, of that beneficiary. The receipt will discharge my Trustee for that payment and my Trustee need not enquire about how that payment is used.

FUNERAL WISHES

17. I want my remains to be cremated *and my ashes disposed of.*

I have signed this Will on *September 30, 2005.*

We were both present, at the request of **John Henry Smith**, when he signed this Will. We then signed as witnesses in his presence and in the presence of each other.

Signature of Witness

Printed Name

Address (Street)

City

Occupation

Signature of Witness

Printed Name

Address (Street)

City

Occupation

[name]