

Table of Contents

CHAPTER 1. LAST WILLS AND TESTAMENT AND POWERS OF ATTORNEY

I. WHAT IS A WILL?

§ 1:1 General

II. WHY HAVE A WILL?

§ 1:2 General

§ 1:3 Rules of Intestacy

§ 1:4 Effective Immediately

§ 1:5 Ability to Choose Executors

§ 1:6 Ability of Choose Beneficiaries

§ 1:7 Ability to Appoint Guardians

§ 1:8 Property Provision for Minor Beneficiaries

§ 1:9 Tax and Probate Fee Planning

§ 1:10 *Family Law Act* Protection for Beneficiaries

III. FORMAL REQUIREMENT FOR EXECUTING A VALID WILL IN ONTARIO

§ 1:11 General

§ 1:12 Formal or Attested Wills

§ 1:13 Holograph Wills

§ 1:14 Wills by Members of the Forces on Active Service

§ 1:15 Foreign Wills and International Wills

§ 1:16 International Wills

§ 1:17 Multiple Wills

IV. WHO MAY MAKE A WILL

§ 1:18 Age Requirement

§ 1:19 Testamentary Capacity

V. GROUNDS FOR INVALIDATING A WILL

§ 1:20 Lack of Testamentary Capacity

§ 1:21 Improper Execution

§ 1:22 Undue Influence

§ 1:23 Suspicious Circumstances

- § 1:24 Fraud or Forgery
- § 1:25 New Section 21.1 of the *SLRA* - Extended power to Superior Court of Justice

VI. REVOCATION OF A WILL

- § 1:26 General
- § 1:27 Subsequent Will
- § 1:28 Marriage
- § 1:29 Written Declaration
- § 1:30 Destruction
- § 1:31 Effect of Divorce

VII. ALTERATIONS TO WILLS AND CODICILS

- § 1:32 General

VIII. REVIVAL OF A WILL

- § 1:33 General

IX. WILL DRAFTING

A. GATHERING INFORMATION

- § 1:34 General
- § 1:35 Personal Information

B. TAKING INSTRUCTIONS

- § 1:36 General
- § 1:37 Executors and Trustees
- § 1:38 Organ Donation and Funeral Arrangements
- § 1:39 Policies and Plans
- § 1:40 Legacies
- § 1:41 Residue

C. LIMITATIONS ON FREEDOM TO DISPOSE OF PROPERTY

- § 1:42 General
- § 1:43 Jointly-Owned Property with Right of Survivorship
- § 1:44 The *Family Law Act*
- § 1:45 Dependants' Relief
- § 1:46 Contractual Obligations
- § 1:47 Other Restrictions on Alienation

X. WILL CONCLUSION

- § 1:48 General

TABLE OF CONTENTS

XI. POWERS OF ATTORNEY

A. INTRODUCTION

§ 1:49 General

B. TERMINOLOGY

§ 1:50 General

**C. CONTINUING POWERS OF ATTORNEY FOR
PROPERTY**

§ 1:51 Capacity to Give a Continuing Power of Attorney

§ 1:52 Appointment of Attorney

§ 1:53 Formal Requirements

§ 1:54 Effective Date of Continuing Power of Attorney

§ 1:55 General Powers of Attorney for Property vs.
Restricted Powers of Attorney

§ 1:56 Termination

§ 1:57 Resignation of Attorney

§ 1:58 Duties of an Attorney

**D. POWER OF ATTORNEY FOR PERSONAL
CARE**

§ 1:59 General

§ 1:60 Formal Requirements for Power of Attorney for
Personal Care

§ 1:61 Appointment of Attorney

§ 1:62 Termination

§ 1:63 Resignation of Attorney

§ 1:64 Specific Instructions

§ 1:65 Duties of an Attorney

§ 1:66 *Human Tissue Gift Act*

**E. ISSUES COMMON TO CONTINUING
POWERS OF ATTORNEY FOR PROPERTY
AND POWERS OF ATTORNEY FOR
PERSONAL CARE**

§ 1:67 Appointment of Attorneys

§ 1:68 Use of Original Document

§ 1:69 Safekeeping

Appendix 1A. Example of Last Will and Testament

CHAPTER 2. PRIOR TO THE CERTIFICATE OF APPOINTMENT

I. DIFFERING ROLES OF THE PERSONAL REPRESENTATIVE AND LAWYER

- § 2:1 General
- § 2:2 Personal Representative's Responsibilities
- § 2:3 Lawyer's Responsibilities

II. LOCATION OF WILL

- § 2:4 General

III. LOCATING ASSETS

- § 2:5 General

IV. LOCATING LIABILITIES

- § 2:6 General

V. TO OBTAIN A CERTIFICATE

A. INTRODUCTION

- § 2:7 General

B. REAL ESTATE

- § 2:8 Real Estate Registered under the Registry System
- § 2:9 Real Estate Registered under the Land Titles System

C. SHAREHOLDINGS

- § 2:10 General
- § 2:11 Private Corporations
- § 2:12 Public Corporations

D. MONEY ON DEPOSIT

- § 2:13 General

E. SAFETY DEPOSIT BOX

- § 2:14 General

F. CANADA SAVINGS BONDS

- § 2:15 General

TABLE OF CONTENTS

G. OTHER ASSETS

§ 2:16 General

VI. VALUING THE ESTATE

§ 2:17 General

VII. INTESTACY

§ 2:18 General

§ 2:19 Distribution on an Intestacy

§ 2:20 Who is Entitled to Apply as Estate Trustee Without
a Will

§ 2:21 Posting Security

Appendix 2A. Forms

**CHAPTER 3. CERTIFICATES OF
APPOINTMENT**

§ 3:1 Jurisdiction to File Certificate of Appointment

§ 3:2 Court Fees on Applications for Certificate of
Appointment

§ 3:3 Estate Administration Tax

§ 3:4 Filing the Estate Information Return

§ 3:5 Role of the Court As a Will Depository

§ 3:6 Notice of Applications

§ 3:7 January 1, 2022 Amendments to Estate Forms

§ 3:8 Court Contact Information

§ 3:9 Application for Certificate of Appointment

§ 3:10 Application for Certificate of Appointment of Estate
Trustee With a Will Limited to Assets Referred to
in the Will

§ 3:11 Certificate, Where There Is No Will

§ 3:12 Application for Certificate of Appointment As
Succeeding Estate Trustee With a Will

§ 3:13 Application for Certificate of Appointment As
Succeeding Trustee Without a Will

§ 3:14 Confirmation By Resealing of Appointment of Estate
Trustee With Or Without a Will

§ 3:15 Certificate of Ancillary Appointment of Estate
Trustee With a Will

§ 3:16 Certificate of Foreign Estate Trustee's Nominee As
Estate Trustee Without a Will

§ 3:17 Certificate of Appointment of Estate Trustee During
Litigation

§ 3:18 Small Estate Certificate

- § 3:19 Bonds (Rule 74.11)
 - § 3:20 Confirmation of Estate Trustees - Status Certificate
- Appendix 3A. Forms

CHAPTER 4. ADMINISTERING AN ESTATE

I. LOCATING AND DEALING WITH ASSETS

- § 4:1 Introduction
- § 4:2 Proof of Death
- § 4:3 Opening the Estate Bank Account
- § 4:4 Dealing with the Safety Deposit Box
- § 4:5 Dealing with Money on Deposit
- § 4:6 Without a Certificate
- § 4:7 With the Certificate
- § 4:8 Dealing with Term Deposits and Guaranteed Investment Certificates
- § 4:9 Dealing with Real Estate—Under the *Registry Act*, R.S.O. 1990, c. R.20
- § 4:10 —Under the *Land Titles Act*, R.S.O. 1990, c. L.5
- § 4:11 —Possible Difficulties Dealing with Real Estate
- § 4:12 Dealing with Canada Savings Bonds and other Government of Canada Securities—Without a Certificate
- § 4:13 —With a Certificate
- § 4:14 Dealing with other Bonds and Shares—Valuing Public Shares
- § 4:15 —Valuing Bonds
- § 4:16 —Without a Certificate
- § 4:17 —With a Certificate
- § 4:18 Dealing with Life Insurance
- § 4:19 —Where there is a Named Beneficiary
- § 4:20 —Estate as Beneficiary
- § 4:21 Dealing with Registered Retirement Savings Plans
- § 4:22 —Dealing with Registered Retirement Savings Plans and Spouses
- § 4:23 Dealing with Pension Plans
- § 4:24 Dealing with Canada Pension Plan Benefits
- § 4:25 —Death Benefit
- § 4:26 —Survivor's Pension
- § 4:27 —Children's Benefit
- § 4:28 Dealing with Motor Vehicles
- § 4:29 Dealing with Other Assets

TABLE OF CONTENTS

II. LOCATING AND DEALING WITH LIABILITIES

- § 4:30 *Family Law Act* Election
- § 4:31 Payment of Debts
- § 4:32 Advertisement for Creditors
- § 4:33 Insolvent Estates

III. FINALIZING THE ESTATE

- § 4:34 Introduction
- § 4:35 Finalizing the Value of the Estate with the Court
- § 4:36 Documents to be Filed
- § 4:37 Arranging Return of Security from Court
- § 4:38 Distributions
- § 4:39 Ongoing Estates
- § 4:40 Payment of Money into Court
- § 4:41 Keeping a Tickler System
- § 4:42 Obtaining Status Certificates
- § 4:43 Succession Duty

Appendix 4A. Forms

CHAPTER 5. COURT DISPUTES

I. RULE 74

- § 5:1 Overview

II. REQUEST FOR NOTICE OF COMMENCEMENT OF PROCEEDING — RULE 74.03

- § 5:2 Generally

III. ORDERS FOR ASSISTANCE — RULE 74.15

- § 5:3 Introduction
- § 5:4 Order to Accept or Refuse Appointment — Rule
74.15(1)(a) and (b)
- § 5:5 Order to Consent or Object to Proposed
Appointment — Rule 74.15(1)(c)
- § 5:6 Order to File Statement of Assets of the Estate —
Rule 74.15(1)(d)
- § 5:7 Order for Further Particulars — Rule 74.15(1)(e)
- § 5:8 Order to Beneficiary Witness — Rule 74.15(1)(f)
- § 5:9 Order to Former Spouse — Rule 74.15(1)(g)
- § 5:10 Order to Pass Accounts — Rule 74.15(1)(h)

§ 5:11 Order for Other Matters — Rule 74.15(1)(i)

IV. CONTENTIOUS PROCEEDINGS

§ 5:12 Introduction

§ 5:13 Part III of the Consolidated Practice Direction
Concerning the Estates List in the Toronto Region
Effective July 1, 2014

§ 5:14 Mandatory Mediation — Estates, Trusts and
Substitute Decisions — Rule 75.1

§ 5:15 Objection to Issuing a Certificate of Appointment —
Rule 75.03

§ 5:16 Revocation of Certificate of Appointment — Rule
75.04

§ 5:17 Return of Certificate — Rule 75.05(1)

§ 5:18 Application or Motion for Directions — Rule 75.06

§ 5:19 Statement of Submission of Rights — Rule 75.07.1

V. CLAIMS AGAINST ESTATE

§ 5:20 Generally

VI. DEPENDANT'S RELIEF CLAIMS

§ 5:21 Generally

VII. FAMILY LAW ACT CLAIMS

§ 5:22 Generally

Appendix 5A. Forms

CHAPTER 6. PASSING OF ACCOUNTS

§ 6:1 Introduction

§ 6:2 Documents to Be Filed With the Court for a Passing
of Accounts (Rule 74.18)

§ 6:3 Uncontested Passings

§ 6:4 Contested Passing of Accounts Requiring a Hearing

§ 6:5 Notice of Objection to Accounts

§ 6:6 Request for Further Notice

§ 6:7 Form of Accounts

§ 6:8 Executor's Compensation

§ 6:9 Powers of Investment

§ 6:10 Special Fee

§ 6:11 Specific Problems Which Often Occur in the
Preparation of Accounts

§ 6:12 Costs

TABLE OF CONTENTS

§ 6:13 Unprobated Wills - Jurisdiction of Court to Pass
Accounts of Estate Trustees

Appendix 6A. Forms

CHAPTER 7. TAXATION ON DEATH

I. PREPARATION OF TAX RETURNS FOR THE TERMINAL YEAR

§ 7:1 Generally

II. CALCULATING INCOME IN THE TERMINAL YEAR

A. GENERAL PRINCIPLES

§ 7:2 Residence

§ 7:3 Sourcing of Income

§ 7:4 Cash versus Accrual Basis of Accounting

B. SOURCES OF INCOME IN THE TERMINAL YEAR

§ 7:5 Income Received Prior to Death

§ 7:6 Periodic Payments

§ 7:7 Rights or Things

§ 7:8 Proprietorship or Partnership Income

§ 7:9 Income from a Graduated Rate Estate

§ 7:10 Capital Property

§ 7:11 Eligible Capital Property

§ 7:12 Resource Properties and Land Inventories

§ 7:13 Registered Retirement Savings Plan Income

§ 7:14 RRIF Income

§ 7:15 Registered Pension Plan Income

§ 7:16 Deferred Profit Sharing Plan Income

§ 7:17 Life Insurance Proceeds

§ 7:18 Reserves

§ 7:19 Employee Stock Options

III. MISCELLANEOUS SPECIAL RULES REGARDING DEATH

§ 7:20 Tax Credits in the Year of Death

§ 7:21 —Medical Expenses

§ 7:22 —Charitable Donations

§ 7:23 —Foreign Tax Credits

- § 7:24 Capital Losses
- § 7:25 Death Benefits
- § 7:26 Forgiveness of Debt
- § 7:27 Alternative Minimum Tax
- § 7:28 Tax Instalments
- § 7:29 Avoiding Double Tax on Shares of a Private Corporation

IV. INTERPRETATION BULLETINS DEALING WITH TAXATION ON DEATH

- § 7:30 Generally
- § 7:31 Tax Treatment of Partnership Income

Appendix 7A. Glossary of Terms

CHAPTER 8. ROLLOVERS AND ESTATE TAXATION

I. TAX DEFERRED TRANSFERS “ROLLOVERS”

- § 8:1 Property Left to Spouse, *Common-law partner* or a qualifying Trust
- § 8:2 Property Left to Children
- § 8:3 —Farm Property
- § 8:4 —RRSP and RRIF Proceeds

II. ESTATE TAXATION

A. INTRODUCTION

- § 8:5 Generally
- § 8:6 Residence of Estate
- § 8:7 Testamentary versus Inter-vivos Trusts versus Graduated Rate Estate
- § 8:8 Filing Requirements
- § 8:9 Multiple Trusts

B. ESTATE INCOME AND DISTRIBUTION

- § 8:10 Introduction
- § 8:11 Income Paid or Payable to a Beneficiary
- § 8:12 Benefits to Beneficiaries
- § 8:13 Preferred beneficiary elections
- § 8:14 Flow-Through (or Sourcing) of Trust Income
- § 8:15 Non-Resident Beneficiaries
- § 8:16 Cashing Out an Income Interest

TABLE OF CONTENTS

C. DISTRIBUTIONS OF ESTATE CAPITAL

- § 8:17 Distributions
- § 8:18 *Clearance certificates*
- § 8:19 21-Year Deemed Disposition Rule
- § 8:20 Land Transfer Tax

D. NOTICE OF OBJECTION

- § 8:21 Generally

E. GOODS AND SERVICES TAX

- § 8:22 Introduction
- § 8:23 Application of Part IX of the *ETA*
- § 8:24 Supply (Distribution) of Business Assets
- § 8:25 Supply (Distribution) of Other Assets
- § 8:26 Clearance Certificate
- § 8:27 Executor's Fees

F. U.S. ESTATE TAX

- § 8:28 Introduction
- § 8:29 U.S. Situs Assets
- § 8:30 Taxable Estate
- § 8:31 Exemptions and Credits in Calculating U.S. Estate Tax
- § 8:32 Foreign Tax Credit
- § 8:33 Filing Requirements

APPENDIX

Appendix A. Glossary

Index

