

Table of Contents

<i>Preface</i>	v
<i>How to Use This Book</i>	vii
<i>Relevant Statutes</i>	xvii
CHAPTER 1: INITIAL CLIENT INTERACTION	1
Retainer with the Client	1
A. The Estate Planning Questionnaire	2
A-1 Sample Estate Planning Questionnaire	5
B. Assessing Capacity	27
B-1 Sample Client Wellness Summary	29
B-2 Sample Memorandum for File: Capacity Considerations.....	30
C. Information Sheets for Clients (or Prospective Clients).....	31
C-1 Why Do I Need a Will?.....	32
C-2 Continuing Power of Attorney for Property.....	36
C-3 Power of Attorney for Personal Care	37
C-4 Selecting Your Executor	38
C-5 Duties of the Executor	40
C-6 Estate Planning When There Are Ties to the U.S.....	45
C-7 Estate Planning for Cottage Owners	48
C-8 How to Avoid or Minimize Probate Fees	52
C-9 Joint Ownership as a Method to Avoid Probate Fees	53
C-10 Estate Planning When There Are Minor Children	55
C-11 Planning for Beneficiaries with Special Needs	57
CHAPTER 2: WILLS – STRUCTURING	61
D. Samples of the Structure of a Single Will	61
D-1 Structure of a Simple Will (spouse, no issue)	63
D-2 Structure of a Simple Will (spouse, adult children, and minor grandchildren)	72
E. Wills for Assets in Several Jurisdictions and International Wills	84
E-1 Multiple Jurisdiction Will: Sample Introductory Clause.....	85

E-2	Multiple Jurisdiction Will: Second Sample Introductory Clause	85
E-3	Multiple Jurisdiction Will: Revocation Clause	85
E-4	Multiple Jurisdiction Will: Definition of Canadian Estate	86
E-5	Multiple Jurisdiction Will: Payment of Debts.....	86
F.	Wills Separating Assets that Require Probate from Assets that Do Not Require Probate	87
	Joint Ownership	88
	Multiple Wills	89
F-1	Sample Introductory Clauses.....	92
F-2	Sample Revocation Clauses	93
F-3	Sample Definition Clauses	93
F-4	Sample Debts Clause.....	98
F-5	Sample Abatement of Gifts Clause.....	100
F-6	Sample Legacies Clause	100
F-7	Sample Clause for Trustees Exonerated from Decision to Not Apply For Probate of the Non-Probate Will.....	101
CHAPTER 3: WILLS – SAMPLE CLAUSES		103
G.	Opening and Revocation.....	106
	G-1 Introduction	106
	G-2 Will Made in Contemplation of Marriage	107
	G-3 Revocation.....	108
H.	Beneficiary Designations	109
	H-1 RRSPs and RRIFs	109
	H-2 Tax-Free Savings Accounts	111
	H-3 Insurance Declaration in the Will.....	112
	Benefits of Naming a Beneficiary	113
	How to Name a Beneficiary	113
	Designation by Insurance Contract.....	113
	Designation by Declaration – In the Will.....	113
	Making a Change to the Named Beneficiary(ies)	114
	H-4 Insurance Declaration in the Will with Trust Terms	115
I.	Estate Trustees.....	116
	I-1 No Alternate Named.....	117
	I-2 One Alternate Named	118

Table of Contents

I-3	Two or More Alternates Named	119
I-4	Two Named with No Alternate Named	119
I-5	Two Named with One Alternate Named	120
I-6	Multiple Named and One Named as the Active Estate Trustee	120
I-7	Majority Rule	121
I-8	Majority Rule with One Trustee Forming Part of Majority	121
I-9	No Bonding/Security.....	122
I-10	Resignation of Estate Trustee	122
I-11	Removal of Estate Trustee if Spouse Elects Equalization	123
I-12	Removal by Decision of Remaining Estate Trustees.....	123
I-13	Appointment of Additional Estate Trustee.....	124
I-14	Appointment of Estate Trustee to be the Continuing Estate Trustee of Other Estates	124
I-15	Appointment of Replacement Estate Trustee by Law Partners	125
I-16	Appointment of Trustees of Testamentary Trusts	126
I-17	Appointment of Beneficiary as Trustee of Testamentary Trust on Attaining Specified Age.....	127
J.	Bequests, Devises and Legacies.....	128
	Household Goods and Personal Effects	128
	Real Property	128
	Cash Legacies	129
J-1	Transfer to Trustees	129
J-2	Debts and Taxes	130
J-3	Personal Property to Named Beneficiary	131
J-4	Specified Personal Property to Named Beneficiary	131
J-5	Incorporation of Personal Effects Memorandum.....	132
J-6	Testator Leaves a Non-Binding Memorandum	133
J-7	Right to Select Items of Personal Property	133
J-8	Outright to One Beneficiary; Gift Over to Children	134
J-9	Division Amongst Children	134
J-10	Trustees to Hold Personal Property for Minor.....	135
J-11	Personal Property Divided as Trustees Decide	136
J-12	Personal Property Divided Amongst a Group.....	136

J-13	Taking Personal Property into Account on Division of Residue	137
J-14	Specific Devise of Real Estate.....	137
J-15	Cottage Property to Be Sold – Option to Named Beneficiaries.....	138
J-16	Cottage Trust.....	140
J-17	Maintenance Fund	141
J-18	Cash Legacies	142
J-19	Cash Legacy to be Divided Amongst a Group	143
J-20	Avoiding Double Legacies	143
J-21	Charitable Bequests.....	143
K.	Outright Distributions of Residue	145
K-1	Outright to Spouse	146
K-2	Outright to Spouse; Gift Over to Issue.....	146
K-3	Outright to Named Beneficiary; Gift Over to Substitutes in Succession.....	148
K-4	Divided Amongst Named Beneficiaries; Gift Over to Issue	148
L.	Non-Outright Distributions of Residue.....	149
L-1	Spousal Trust.....	151
L-2	Trusts for Children.....	153
L-3	Pool of Residue for Children Until Youngest Attains Specific Age	156
L-4	Trusts for Grandchildren	157
L-5	Income Sprinkling Trusts.....	158
M.	Failure to Vest	165
M-1	Equal or Unequal Division Amongst Named Beneficiaries.....	165
M-2	Equal Division Between Beneficiaries and All to Survivor	167
N.	Hotchpot Provisions.....	167
N-1	Equalizing Gifts Made to Children During Lifetime.....	168
N-2	Equalizing Advances Made to Children During Lifetime	169
O.	Planning for the Beneficiary with a Disability.....	169
O-1	Henson Trust.....	173
P.	Powers of the Trustees.....	174
P-1	Introduction Language to Trustees' Powers	175
P-2	Appointment of Agents.....	176

Table of Contents

P-3	Borrowing.....	176
P-4	Carrying on Business.....	177
P-5	Digital Assets and Devices.....	177
P-6	Distributions in Kind.....	179
P-7	Elections (Tax).....	179
P-8	Estate Trustee Insurance.....	180
P-9	Indebtedness.....	181
P-10	Investments.....	181
	<i>Sample Clause 1</i>	181
	<i>Sample Clause 2</i>	182
	<i>Sample Clause 3</i>	182
	<i>Sample Clause 4</i>	183
	<i>Sample Clause 5</i>	183
P-11	Lending.....	188
P-12	Payments for Minors.....	189
P-13	Real Property.....	189
P-14	Record Keeping.....	190
P-15	Retention of Assets.....	190
P-16	Securities.....	191
P-17	Selling and Disposing.....	191
P-18	Settlement of Claims.....	192
P-19	Transactions with Trustee.....	192
Q.	Additional Clauses for the Will.....	192
	Q-1 Definitions of Relationships.....	193
	Q-2 Exclusions from Net Family Property.....	200
	Q-3 Selection of Property in Satisfaction of a Spousal Claim.....	201
	Q-4 Income Tax – Spousal Trust Clause.....	202
	Q-5 Preventing Suits by Beneficiaries.....	203
	Q-6 Liability of Trustees.....	204
	Q-7 Perpetuities Clause.....	204
	Q-8 Cost of Living Increase.....	205
	Q-9 Governing Law.....	206
	Q-10 Headings.....	207
R.	Compensation for Trustees.....	207
	R-1 Compensation Without Passing Accounts.....	208
	R-2 Memorandum Setting Out Compensation.....	209

R-3	Memorandum Setting Out Compensation and Allowing Pre-Taking Compensation	210
R-4	Compensation for Contingent Trustee	210
S.	Dispute Resolution	211
S-1	Resolve Disputes Without Litigation	212
S-2	Mediation Followed by Arbitration	212
S-3	Mandatory Mediation.....	213
S-4	Mandatory Mediation, Second Variation	214
T.	Funeral, Burial and Organ Donation	214
T-1	Cremation	215
T-2	Burial Instructions.....	215
T-3	Pre-Paid Funeral Instructions.....	216
T-4	Funeral Instructions.....	216
T-5	Donation of Body	216
T-6	Organ Donation	217
U.	Guardianship and Custody of Minor Children.....	218
U-1	Appointment of the Temporary Guardian and Custodian.....	219
U-2	Wish for the Appointment of the Permanent Guardian and Custodian	219
V.	Testimonium and Final Documents	220
V-1	Testimonium.....	220
V-2	Testimonium: Virtual Signing.....	221
V-3	Affidavit of Execution of the Will	223
V-4	Instructions for the Execution of the Will.....	224
	CHAPTER 4: CODICILS	227
W.	Codicils.....	227
W-1	Sample Codicil.....	230
W-2	Introduction	231
W-3	Revocation of Clauses in the Will.....	232
W-4	Amending Clauses in the Will.....	232
W-5	Adding Clauses to the Will	232
W-6	Testimonium.....	233
W-7	Affidavit of Execution of a Codicil.....	234
W-8	Instructions for the Execution of the Codicil.....	234

Table of Contents

CHAPTER 5: CONTINUING POWERS OF ATTORNEY FOR PROPERTY	237
X. Continuing Powers of Attorney for Property.....	238
Requirements to Execute a Valid Continuing Power of Attorney for Property.....	238
Who Can Be an Attorney for Property?	239
Effectiveness: Springing vs. Non-Springing.....	240
Authority of an Attorney	241
Common Law Duties	242
Statutory Duties	243
Required Expenditures.....	244
Optional Expenditures.....	245
Request for Directions	245
Compensation.....	246
Duty to Account.....	246
Passing of Accounts.....	247
Probate Fee Planning	247
Alternatives to a Continuing Power of Attorney for Property	248
X-1 Sample Continuing Power of Attorney for Property.....	249
X-2 Appointing Joint Attorneys for Property.....	254
X-3 Appointing Three or More Attorneys for Property.....	254
X-4 Appointing Joint and Several Attorneys for Property....	255
X-5 Appointing an Alternate Attorney for Property	256
X-6 Using Multiple Continuing Powers of Attorney for Property	256
X-7 Using Multiple Continuing Powers of Attorney for Property When There are Assets in Different Jurisdictions.....	257
X-8 Limited Continuing Power of Attorney for Property	258
X-9 Special Power of Attorney for Purchase of Property.....	259
X-10 Special Power of Attorney to Operate a Business.....	262
X-11 Affidavit of Execution of a Continuing Power of Attorney for Property	265
X-12 Notice of Revocation of Power of Attorney	266
X-13 Instructions for Signing the Continuing Power of Attorney for Property	268
X-14 Direction to Release the Original Power of Attorney for Property	269

X-15 Information Sheet for the Assistance of the Attorney for Property	271
CHAPTER 6: POWERS OF ATTORNEY FOR PERSONAL CARE	275
Y. Powers of Attorney for Personal Care.....	275
Authority and Duties of Attorneys for Personal Care.....	277
Compensation.....	280
Y-1 Sample Power of Attorney for Personal Care.....	280
Y-2 Sample Wishes to Include in the Power of Attorney for Personal Care.....	282
Y-3 Sample Letter of Wishes	285
Y-4 Compensation.....	288
Y-5 Instructions for Signing the Power of Attorney for Personal Care	289
Y-6 Information for the Attorney for Personal Care.....	290
Y-7 Direction to Release Original Copy.....	291
Y-8 Notice of Revocation of Power of Attorney	292
Y-9 Information Sheet for Your Assistance in Using a Power of Attorney for Personal Care.....	294
CHAPTER 7: REPORTING AND CLIENT FOLLOW UP	299
Z. Reporting and Client Follow Up	299
Z-1 Sample Reporting Letter for an Individual.....	301
Z-2 Sample Reporting Letter for a Couple	303
Z-3 Sample Digital Assets and Devices Memorandum	305
Z-4 Information to Send to the Client After the Execution of the Documents	308
Z-5 Follow Up: When Should You Update Your Estate Planning Documents?.....	310
CHAPTER 8: SOLICITOR'S NEGLIGENCE.....	313
<i>Index</i>	317