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TAX PLANNED WILL PRECEDENTS, 4TH

Butler

Release No. 3, April 2024

Written by a tax and estate planning specialist with over 30 years experience practicing law, this fourth edition of Tax Planned Will Precedents is an invaluable handbook for any lawyer engaging in estate planning. It features significant updates to commentary as well as a reorganization of relevant clauses in a more intuitive manner. It also features many useful forms and checklists including: the Estate Planning Information checklist, the Information for Executors form, the Checklist of Information about Testator, Directions to Executors and Trustees, and the Will Checklist.

What's New in this Update:

This release features updates to Part I (Model Wills), Part II (Expositive Clauses), Part III (Dispositive Clauses) and Part IV (Administrative Powers of Executors and Trustees).

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Highlights

- **Part I — Model Wills — Insolvent Estates** — The children of the deceased were not prepared to spend their own money to administer their father's estate in the event that there were no assets. The court opined that:

The court will not second-guess the business judgment or cost-benefit analysis made by [the executor's] children. If they believe there are no assets and, in light of their father's defalcation, they are not willing to spend their own money to chase their father's share of his father's estate, that is their choice to make. It appears to be both sensible and economically [sic]. But it is a decision for them and not for the court.
- The court found there was no point in appointing someone to administer the executor's estate as the executor's beneficiaries effectively renounced their right to share in his estate as it may have been insolvent: *Sullivan v. Sullivan*, 2023 ONSC 7172, 2023 CarswellOnt 19814 (Ont. S.C.J.[Estates List]).
- **Part II — Expositive Clauses — Executors and Trustees** — Where the appointment of an executor is challenged — for example, where the will itself is challenged or an application is brought to remove an executor, such challenge does not deprive the executor of the authority to act until the challenge is resolved. However, “[a]n [executor] who takes a material step while his or her position is questioned in litigation will certainly be at risk of microscopic review and will face serious criticism if the step is deemed improper. He or she may well face liability for steps taken under a will that is not probated that are later found to have been wrongful”. While an executor may act in the interim, it may be difficult for an executor to deal with estate assets without probate: *Lopresti v. Valerio*, 2023 ONSC 6972, 2023 CarswellOnt 19161 (Ont. S.C.J.[Estates List]).
- **Part III — Dispositive Clauses Commentary and Alternate Clauses — Model Clause 10 Specific Bequests — Additional Clause 6 — Outright Gift of Pets with Maintenance Funds** — The deceased's dog was cared for by a third-party while the deceased underwent chemotherapy. After the deceased's death the third party refused to return the dog to the deceased's family, claiming that the dog had been gifted to her by members of the deceased's family. The court found that the dog belonged to the estate and the executor could demand the dog's return. The court ordered the dog's return to the executor noting however that the third-party acted reasonably when she refused to return the dog during the period during which the estate administrator had not yet been appointed: *Parlett v. Gatfield*, 2023 BCCRT 1079 (B.C. C.R.T.).

ProView Developments

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