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TAX PLANNED WILL PRECEDENTS, 4TH

Butler

Release No. 5, June 2025

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 II—Expositive Clauses, Part III—Dispositive Clauses and Appendix E—Advance Tax Rulings.

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Highlights

- **Part III—Real Property—Second Marriage: Residence is Not Jointly Owned but is Used by Both Spouses**—The testator bought a condo that had yet to be constructed. As is usual, the testator was required to advance certain payments before the closing. These payments were made by cheque. The transaction closed and a mortgage was registered against the property. The testator died less than a year later from cancer. The testator prepared a handwritten will leaving her estate, including the condo, to her four children. Two of the testator's children were appointed as executors. It was claimed that although the testator was the registered owner of the condo in fact it was the testator's common law partner who advanced funds prior to the closing date and made the mortgage payments owing until the testator's death and that the common-law partner was intended to be the beneficial owner of the condo. The court found that while there was some agreement between the parties, it was not clear what that agreement was. The only evidence of any agreement that the common law spouse might be the beneficial owner was oral – and oral evidence does not create an interest in property. There was no evidence to support a finding of purchase money resulting trust. Although the common law spouse was making the mortgage payments, he was also collecting rent in an amount in excess of the mortgage payments. The application for a declaration that the common law spouse held a beneficial interest in the condominium was dismissed. The appeal was dismissed: *Allison v. Bent*, 2025 ONCA 36.