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ESTATE PLANNING PRECEDENT'S A SOLICITORS MANUAL

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"Estate Planning Precedents: A Solicitor's Manual" includes a wide variety of precedents covering all aspects of wills and estates. Also included are domestic contracts, trust deed documents, powers of attorney, appendices containing estate planning forms, checklists, and signing instructions, plus relevant legislation and IT Bulletins, Information Circulars and Advance Tax Rulings. This product is designed as a useful tool for everyday use by the busy estates practitioner.

What's New in this Update:

This release features updates to Appendix C—New Developments, Appendix D—Legislation and Appendix IF—Issues in Focus.

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Highlights

- **§ C:23. Recent Case Digests—Estates and trusts—Estates—Requirements for due execution of will—Knowledge and approval of contents**—In 2006, H made will naming husband as executor, nephew T and lawyer as alternate executors, and leaving entire estate to husband provided he survived her—If husband did not survive, will left 35 percent of estate to T, 25 percent to niece Ta, 15 percent to nephew J and 25 percent to sister—Husband died shortly thereafter followed by sister—In 2014, H made new will, prepared by different lawyer, revoking first, naming friend R as executor, T as alternate, and leaving all common shares and mutual funds to R, net proceeds of sale of residential property owned at time of death to grandnephew B and two charities, and 25 percent of residue of estate to T, 25 percent to Ta, 15 percent to J and 35 percent to fund to maintain burial plot—H signed codicil amending distribution of net proceeds of sale of residential property—H died in 2019, leaving estate valued at more than \$2 million, including mutual funds valued at more than \$1.2 million but no residential property (which she had sold prior to executing codicil)—T, Ta and J's application for declaration 2014 will and 2016 codicil were invalid on ground H had not known and approved of contents was granted—Trial judge found lawyer who drafted 2014 will had made little effort to ascertain what H knew of estate or to explain how assets would be distributed—Trial judge found that although there was no evidence R had been acting dishonourably, fact he was not member of family, had not been mentioned in 2006 will, had been involved in arranging lawyers to prepare 2014 will and 2016 codicil, and stood to benefit significantly at expense of family, constituted suspicious circumstances which, at minimum, meant that his opinion as to H's knowledge and approval could not be dispositive of issue on its own—Testamentary documents were declared invalid and probate order issued in relation to them was rescinded leaving estate to be administered in accordance with 2006 will—R appealed—Appeal allowed—Trial judge failed to apply correct legal test by applying wrong legal principles, despite having set out legal test correctly—Circumstances relied on by trial judge were not suspicious—Involvement by R in making will was not suspicious—R had no knowledge of bequests until after H passed away and no allegation of undue influence was made—Not suspicious nor surprising that R, who is friend and primary caregiver and who assisted H for several years, would be named as significant beneficiary—Maintenance bequest for burial plot was not suspicious or absurdity, and did not show lack of knowledge or approval of contents of will.
- *Small Estate (Re)*, [2025] 8 W.W.R. 511, 2025 CarswellMan 223, 2025 MBCA 63, James G. Edmond J.A., Janice L. leMaistre J.A., Marc M. Monnin J.A. (Man. C.A.); *reversing Black-Donaldson et al. v. The Estate of Helen Small* (2024), [2024] 6 W.W.R. 661, 2024 CarswellMan 121, 2024 MBKB 56, Rempel J. (Man. K.B.) [Manitoba].

ProView Developments

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