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ESTATE ADMINISTRATION

Armstrong

Release No. 9, September 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in November 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the November 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Estate Administration: A Solicitor's Reference Manual is a how-to guide dealing with all aspects of estate administration in Ontario. Text is augmented by up-to-date forms, precedents, letters and checklists. Commonly used statutes and regulations are reproduced in full. All aspects of estate administration are examined, including the conveyancing of real property and the income tax implications arising upon death.

What's New in this Update:

In this release, a new Special Instructions Digest § E:10.50 has been added, as well as a new article in the Appendix Related Articles section – § RA:48, “A Broad View of the Law on Disclaimers, Renunciation and Other Forms of Divestment”. Special Instructions §§ C1:17, C1:18, and C1:19 have also been updated, as well as Digests §§ E:11 and E:12.

Highlights:

- **BENEFICIARY DESIGNATION—INSURANCE—WHERE ORIGINAL LOST—APPLICATION OF PRESUMPTION OF REVOCATION—SPECIAL INSTRUCTION DIGEST § E:10.50**—The testator made a will and purchased life insurance naming his four minor second cousins as beneficiaries. While hospitalized during his final illness, his cousin photographed handwritten notes she found by his bedside confirming some arrangements, adding gifts to his cousins and brother and expanding the list of insurance beneficiaries to ten minors. After his death, the notes could not be found. The executor applied for a ruling on whether the photograph constituted a testamentary document or effected a change to beneficiaries of life insurance policy. The application was granted, with the court ruling that the testator's handwritten notes were an adequate designation to effect change of beneficiaries under the policy. The court held that an instrument falling short of valid testamentary disposition could still effect a change in the designation of a beneficiary under a life insurance policy. The presumption that a lost will had been revoked could be applied less stringently to lost instruments affecting the insurance policy. It was undisputed that the notes existed, that the testator authored the notes and that the photograph was an accurate depiction of notes, so notes could be accepted as being valid and accurate at date of photograph. The suggestion that the testator destroyed the notes because he had changed his mind did not accord with reason, since much of the content of notes confirmed what the testator had previously set out in his will and power of attorney (including confirming a “do not resuscitate order”). Contradictory positions taken by cousins that gifts in notes should be honoured but not the designation of beneficiaries invoked the doctrine of estoppel, barring them from asserting inconsistent positions. Although there was no signature, the testator had written his name three times in cursive writing and once in block letters, therefore the notes were sufficiently signed to meet requirements of Insurance Act. The statutory conditions for changing designations superseded the requirements in the life insurance policy: *Kontek v. Golay*, 2021 SKQB 220, 2021 CarswellSask 498, 15 C.C.L.I. (6th) 249 (Sask. Q.B.)

- **APPENDIX RA—RELATED ARTICLES**—The article titled “A Broad View of the Law on Disclaimers, Renunciation and Other Forms of Divestment” has been added to this release. It discusses the considerations involved in disclaimers, renunciations, and other forms of divestments, including, consideration of statute and common law principles that govern whether a court application is needed to determine if acceleration will occur, the applicability of partial disclaimers or releases, and the potential tax consequences of each. Statute and case law from the following jurisdictions is considered in this article: federal, Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, and Saskatchewan.

ProView Developments

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