

# INDEX

**ALTERNATIVE DISPUTE RESOLUTION**, *See* WILL CLAUSES

**ARBITRATION**, 212

**BENEFICIARY**

appointment of as trustee of testamentary trust, 127  
cash legacy, of, 142  
insurance, naming, *See* WILL CLAUSES  
personal property, of, 131, 134  
special needs, 56-59  
suits by, 203

**BENEFICIARY DESIGNATIONS**, *See* WILL CLAUSES

**BENEFICIARY, DISABLED**, *See* WILL CLAUSES

**BEQUESTS**, *See* PROPERTY DISTRIBUTION CLAUSES

**CAPACITY ASSESSMENT**

generally, *See* CLIENT INFORMATION AND INTERACTION  
power of attorney for personal care, 275

**CASH**, *See* PROPERTY DISTRIBUTION CLAUSES

**CHARITABLE BEQUESTS**, 144

**CHILDREN, MINOR**

advances to, 169  
clauses re, *See* WILL CLAUSES  
estate planning re, 55  
power of attorney for personal care, as, 276  
residue trusts for, 153-157

**CLIENT FOLLOW UP**, *See also* REPORTING

estate planning documents, timing of updates, 310-312  
generally, 299-301  
post-execution of documents, information for clients, 308-310

**CLIENT FOLLOW UP**, — *continued*

sample digital assets and devices memorandum, 305-308  
sample reporting letter  
    to couple, 303-305  
    to individual, 301-303

**CLIENT INFORMATION AND INTERACTION**

capacity assessment  
    capacity considerations, memo re, 30  
    client wellness summary, 29  
    duty re, 27-29  
estate planning questionnaire, 2-27  
information sheets, *See* INFORMATION SHEETS  
retainer, 1

**CODICILS**

adding clauses to will, 230  
affidavit of execution of, 234  
amending clauses in will, 230  
drafting errors, 229  
generally, 227-230  
instructions for execution of, 234  
introduction, 230  
necessity for, circumstances, 228  
original, retention of, 230  
reasons to use, 228  
revocation of will clauses, 230  
sample, 230  
SLRA provision re, 227  
testimonium, 233

**COMPENSATION**

estate trustee, *See* ESTATE TRUSTEE  
power of attorney, 246, 280, 288

**CONTINUING POWERS OF ATTORNEY FOR PROPERTY**

alternatives  
    affidavit of execution, 265  
    alter ego trust, 248  
    alternate attorney, 256  
    assets in different jurisdictions, where, 257  
    direction to release original power, 269-271  
    information sheet for assistance, 271-273  
    instructions for signing, 268

**CONTINUING POWERS OF ATTORNEY FOR PROPERTY** — *continued*

alternatives — *continued*

- joint and several attorneys, 255
- joint attorneys, 254
- joint partner trust, 248
- limited power of attorney, 258
- multiple powers of attorney, 256-258
- revocation, notice of, 266-268
- special power of attorney to operate business, 562-564
- special power of attorney to purchase property, 259-262
- three/more attorneys, 254

- authority of attorney, 241
- common law duties, 242
- compensation, 246
- delegation of duties, 253
- digital assets and devices, access to, 263
- duty to account, 246
- entitlement to be attorney, 239
- example, 249-252
- expenditures
  - optional, 245
  - required, 244
- general vs. restricted, 252
- generally, 238
- passing of accounts, 247
- probate fee planning, 247
- request for directions, 245
- requirements to execute, 238
- springing vs. non-springing, 240
- statutory duties, 243
- statutory sources, 238
- substitute attorney, 252

**COTTAGE PROPERTY**, 48-52, 138-140

**DIGITAL ASSETS AND DEVICES**, 177-179, 263, 305-308

**DISABILITY**, *See* WILL CLAUSES

**EQUALIZING PROVISIONS**, 123, 165-169

**ESTATE PLANNING**

- information re, *See* INFORMATION SHEETS
- minor children, re, 55

**ESTATE PLANNING** — *continued*

probate planning, 87-92, 247  
questionnaire, 2-27  
updates to, 310-312

**ESTATE TRUSTEES**

appointment and removal clauses

- appointment of additional trustee, 124
- appointment of beneficiary as trustee of testamentary trust, 127
- appointment of replacement trustee by law partners, 125
- appointment to be continuing estate trustee of other estates, 124
- appointments of trustees of testamentary trusts, 126
- majority rule variations, 121
- multiple named (one active), 120
- no alternate named, 117
- no bonding/security, 122
- one alternate named, 118
- removal by decision of remaining trustee, 123
- removal where spouse elects equalization, 123
- resignation, 122
- two named with no alternate named, 119
- two named with one alternate named, 120
- two/more alternates names, 119

compensation clauses

- contingent trustee, 210
- memorandum setting out, 209
- pre-taking allowance, 210
- Trustee Act* entitlement, 207
- without passing accounts, 208

generally, 116

liability clause, 204

powers of, clauses re

- appointment of agents, 176
- borrowing, 176
- carrying on business, 177
- digital assets and devices, 177-179
- distributions in kind, 179
- elections (tax), 179
- generally, 174
- indebtedness, 181
- insurance, estate trustee, 180
- introduction language, 175
- investments
  - sample clauses, 181-184

**ESTATE TRUSTEES** — *continued*

powers of, clauses re — *continued*

investments — *continued*

*Trustee Act*, prudent investor rules, 184-188

lending, 188

payments for minors, 189

real property, 189

record keeping, 190

retention of assets, 190

securities, 191

selling and disposing, 191

settlement of claims, 192

transactions with trustee, 192

resignation clause, 122

**EXECUTION**, *see also* TESTIMONIUM

affidavit of, 234, 265

codicil, of, 234

documents, of, *See* CLIENT FOLLOW UP

power of attorney, 238

will, of, 233-236

**EXECUTOR**, *See* INFORMATION SHEETS

**FAMILY LAW ACT**, 89, 123, 153, 200-202

**FOREIGN ASSETS**, 45-48, 84-86

**FUNERAL INSTRUCTIONS**, 216

**GUARDIAN**, 219

**INFORMATION SHEETS**

estate planning

cottage property, 48-52

minor children considerations, 55

special needs beneficiaries, 56-59

U.S. ties/assets, where, 45-48

executor duties, 40-45

executor selection, 38-40

generally, 31

joint ownership, 53-55

need for will, 32-35

powers of attorney

**INFORMATION SHEETS — *continued***

powers of attorney — *continued*

personal care, for, 37

property, for, 36

probate fee minimization

generally, 52

joint ownership strategy, 53-55

**INSURANCE**

declarations, *See* WILL CLAUSES

estate trustee, 180

named beneficiaries, *See* WILL CLAUSES

**INTERNATIONAL WILLS, *See* MULTIPLE JURISDICTION WILLS**

**INVESTMENTS, 181-188**

**JOINT OWNERSHIP**

information re, 53-55

probate fee minimization, 53-55, 87-92

**LAWYER'S ROLE, 1-4, 27, 28, 62, 91, 95, 96, 125-126, 153, 164, 175, 222-223, 225, 312, 313**

**LIABILITY, 204, 313**

**MEDIATION, 212, 213**

**MINORS, *See* CHILDREN, MINOR**

**MULTIPLE JURISDICTION WILLS**

Canadian estate, defined, 86

debt payment, 86

generally, 84

introductory clause, samples, 85

revocation clause, 85

**NEGLIGENCE**, *See* SOLICITOR'S NEGLIGENCE

**PERPETUITIES**, 204

**PERSONAL PROPERTY**, *See* CONTINUING POWERS OF ATTORNEY FOR PROPERTY; PROPERTY DISTRIBUTION CLAUSES

**POWERS OF ATTORNEY**

information re, *See* INFORMATION SHEETS

personal care, for, *See* POWER OF ATTORNEY FOR PERSONAL CARE

property, for, *See* CONTINUING POWER OF ATTORNEY FOR PROPERTY

**POWERS OF ATTORNEY FOR PERSONAL CARE**

authorities and duties, 277-279

capacity test, 275

child attorney, 276

compensation, 280, 288

direction to release original copy, 291

entitlement to be attorney, 276

example, 280-282

generally, 275-277

information for attorney, 290

information sheet for using power of attorney, 294-297

instructions for signing, 289

joint and several attorneys, 277

notice of revocation, 292-294

property, no access to, 276

sample letter of wishes, 285-288

sample wishes to include in power of attorney, 282-285

*Substitute Decisions Act* provisions, 275, 277-279

**PROBATE PLANNING**, 52-55, 87-92, 247

**PROBATE, SEPARATION OF ASSETS**

abatement of gifts clause, 100

allocation clauses, 91

benefits and risks, 89

debts clause, 98-100

definition clauses, 93-98

generally, 93

“my Non-Probate Estate”, 97

“my Probate Estate”, 94-96

**PROBATE, SEPARATION OF ASSETS** — *continued*

exoneration for trustee not applying for probate, 101  
introductory clauses, 92  
joint ownership, 89  
legacies clause, 100  
multiple wills, 89-92  
probate planning, 87-92  
revocation clauses, 93

**PROPERTY DISTRIBUTION CLAUSES**

cash legacies  
    charitable bequests, 144  
    division among group, 143  
    double legacies avoidance, 143  
    generally, 129  
    named beneficiaries, 142  
charitable bequests, 144  
debts and taxes, 130  
household goods and personal effects, 128  
personal property  
    accounting for on division of residue, 137  
    division among children, 134  
    division among group, 136  
    division at trustee's discretion, 136  
    held by trustee for minor, 135  
    outright to one beneficiary with gift over, 134  
    personal effects memorandum, incorporation of, 132  
    personal effects non-binding memorandum, 133  
    right of selection, 133  
    specified property to named beneficiary, 131  
    to named beneficiary, 131  
real property devices  
    cottage property sale/option to named beneficiaries, 138-140  
    cottage trust, 140  
    generally, 128  
    maintenance fund, 141  
    specific devise, 137  
transfer to trustees, 129

**REAL PROPERTY**

distribution, *See* PROPERTY DISTRIBUTION CLAUSES  
estate trustee power, 189

**RELATIONSHIPS, *See* WILL CLAUSES**

**REPORTING, *See* CLIENT FOLLOW UP**

**RESIDUE WILL CLAUSES**

considerations 145, 149-151

non-outright distribution

    children, trusts for, 153-155

    grandchildren, trusts for, 155, 157

    income sprinkling trusts, 158-165

    pool for children until specific age, 156

    spousal trust, 151-153

outright distribution

    division among named beneficiaries, gift over to issue, 148

    to named beneficiary, gift over to substitutes, 148

    to spouse, 146

    to spouse, gift over to children, 146

testamentary trusts, 150

**RETAINER, 1**

**SIMPLE WILL, STRUCTURE OF**

generally, 61

spouse, adult children, minor grandchildren, 72-83

spouse and no issue, 63-72

**SOLICITOR'S NEGLIGENCE**

client failure to convey information, 314

common problems, 313

generally, 312

standard of care, failure to meet, 312

virtual practice issues, 314

**SPOUSAL CLAIM, 201**

**SPOUSAL TRUST, 128, 151-153, 188, 202**

**TESTAMENTARY TRUST, 126, 127, 150**

**TESTIMONIUM, *See also* EXECUTION**

will clauses, 220-223

**TRUSTEE**, *See* ESTATE TRUSTEES

**TRUSTS**

“\$100,000 Disability Expenses Trust”, 171  
absolute discretionary, 170  
alter ego, 248  
children, for, 153-155, 157  
cottage, 140  
Henson Trust, 170, 172, 173  
income sprinkling, 158-165  
joint partner, 248  
“Qualified Disability Trust”, 172  
residue, 153-157  
spousal, 128, 151-153, 188, 202  
testamentary, 126, 127, 150

**VESTING**, 165-167

**VIRTUAL MEETINGS**, 3, 28, 315

**VIRTUAL SIGNING**, 221, 222-225, 231, 234, 265, 282, 301

**WILL CLAUSES**

beneficiary designations  
    insurance declarations, *See* insurance declarations/designations  
    RRFPs and RRIFs, 109-111  
    tax-free savings account, 111  
beneficiary with disability  
    “\$100,000 Disability Expenses Trust”, 171  
    absolute discretionary trust, 170  
    federal disability tax credit criteria, 171-173  
    generally, 169  
    Henson Trust, 170, 172, 173  
    Ontario Disability Support Program entitlements, 169  
    “Qualified Disability Trust”, 172  
bequests, *See* PROPERTY DISTRIBUTION CLAUSES  
body donation, 216  
burial instructions, 215  
cost of living increase, 205  
cremation, 215  
devices, *See* PROPERTY DISTRIBUTION CLAUSES  
dispute resolution  
    generally, 211  
    mandatory mediation, variations of, 213

**WILL CLAUSES** — *continued*

dispute resolution — *continued*

mediation followed by arbitration, 212

resolution without litigation, 212

equalizing provisions

advances made to children during lifetime, 169

considerations re, 167

gifts made to children during lifetime, 168

estate trustees, *See* ESTATE TRUSTEES

execution of will

affidavit of, 223

instructions, 224-226

funeral instructions

generally, 216

prepaid, 216

generally, 106

governing law, 206

guardianship, *See* minor children

headings, 207

Henson Trust, 170, 172, 173

hotchpotch provisions, *See* equalizing provisions

income tax (spousal trust clause), 202

insurance declarations/designations

benefits of naming beneficiary, 113

change to named beneficiary, 115

declaration in will with trust terms, 115

declaration in will, by, 113

generally, 112

how to name beneficiary, 113

insurance contract, by, 113

legacies, *See* PROPERTY DISTRIBUTION CLAUSES

marriage, will made in contemplation of, 107

minor children

generally, 218

permanent guardian, wish for appointment, 219

temporary guardian, appointment of, 219

net family property exclusions, 200

opening, 106

organ donation, 217

perpetuities clause, 204

relationships, definitions of

*Children's Law Reform Act* parent-child provisions, 193-200

generally, 193, 200

residue, *See* RESIDUE, WILL CLAUSES RE

**WILL CLAUSES** — *continued*

revocation, 108  
spousal claim, selection of property in satisfaction of, 201  
spousal trust clause, 202  
suits by beneficiaries, prevention of, 203  
testimonium  
    generally, 220  
    virtual signing, 221-223  
trustees, *See* ESTATE TRUSTEES  
vest, failure to  
    equal division between beneficiaries and all to survivor, 167  
    equal/unequal division among named beneficiaries, 165-167  
    generally, 165

**WILL STRUCTURING**, *See* SIMPLE WILL, STRUCTURE OF

**WILLS**

asset separation re probate, *See* PROBATE, SEPARATION OF ASSETS  
clauses, *See* WILL CLAUSES  
multiple jurisdictions, *See* MULTIPLE JURISDICTION WILLS  
planning, *See* INFORMATION SHEETS