

Publisher's Note

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Butler

Tax Planned Will Precedents, 4th

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) and the Words and Phrases and Legislation.

Highlights

- **Part II Expositive Clauses — Joint Tenancies** — It is necessary to consider the totality of the evidence to determine whether the registered owners of a property intended to hold their interests as joint tenants or as tenants in common. It is not enough that one of the two co-owners intended to treat his or her interest as a tenant in common without the knowledge or agreement of the other: *Mayer v. Mayer Estate*, 2018 BCSC 2225, 2018 CarswellBC 3399, 42 E.T.R. (4th) 219 (B.C. S.C.).

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- **Part II Expositive Clauses — The Effect of Separation and Divorce —** Immediately prior to his death, the testator executed a new will altering the bequests that his wife of 22 years would have received under the testator’s former will, severed a joint tenancy with his wife on one or more properties, liquidated RRSPs, drew down on a line of credit secured against the matrimonial home depositing the funds into a bank account held in the testator’s name alone, and transferred properties to his son. The effect of these transactions was to reduce the value of assets that would have flowed into the estate from \$3.3 million to \$460,000 with the testator’s wife being entitled to only \$87,500 under the terms of the new will. There was some evidence that the testator separated from his wife prior to his death and resided with his son for the last days of his life. The wife sought an award of interim support while her dependant’s relief claim was pending. The testator earned a significantly greater income than his wife during their years of marriage and, due to the testator’s pre-death transactions, the testator’s wife could no longer afford the lifestyle to which she had become accustomed. However, during the last three years of the testator’s life the testator earned less than his wife. The court found that the testator’s wife was not in need of support at the time of the testator’s death as at that time the testator’s wife was the primary provider for the household. The testator’s wife had conflated her property based claims with entitlement for interim support: *Charles v. Junior and Estate*, 2018 ONSC 7327, 2018 CarswellOnt 20768 (Ont. S.C.J.).
- **Part II Expositive Clauses — Executor and Trustees —** The court removed 2 of the 5 executors where the executors were unable to work together to administer the estate, to the extent that an estate bank account could not be opened and rent cheques could not be deposited. The court noted that had the executors, who were siblings, been able to work together, the court would not have interfered with the testator’s choice of executors. However, the removal of executors was necessary as the estate remained “in a state of frozen inaction” and that the children regarded the role of executor as a “prize”: *Voloudakis v. Voloudakis*, 2018 ONSC 7399, 2018 CarswellOnt 21136, 42 E.T.R. (4th) 77 (Ont. S.C.J.).