

Publisher's Note

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Previous release was 2018-7

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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), Part III (Dispositive Clauses) and the Words and Phrases.

Highlights

- **Part II Expositive Clauses — Clause I — Identification — (b) Testamentary Capacity** — Physical disabilities such as difficulties in speech, swallowing and mobility issues, all caused by a stroke, did not affect the testator's cognitive ability to make financial decisions and execute a will. It was not suspicious that the testator would discuss her wishes concerning her estate with her son: *Wilton v. Koestlmaier*, 2018 BCSC 1257, 2018 CarswellBC 2021 (B.C. S.C.).

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- **Part III Dispositive Clauses — Clause 12 — Residence — 12 Residence** — The deceased's will included the following clause directing the trustee obtain an appraisal to determine the fair market value of the deceased's farm at the time of her death:

It is my wish that this home farm be kept within the Janicek family if possible. In accordance with that wish if any of my children, or a combination of the same, shall wish to purchase the said farm, they may do so at 75% of the appraised fair market value provided that they enter into an Agreement of Purchase and Sale with my Trustee within one year from my date of death and with a closing date not longer than 60 days from the date of the Agreement of Purchase and Sale. In the event that none of my children, or combination of same, have agreed to purchase the said farm, within the prescribed time, the same shall be sold by my Trustee at a price to be determined by my Trustee in his sold and unfettered discretion.

The trustees received competing offers from four children to purchase the farm for 75% of the appraised value. The trustees brought an application for advice and direction. The trial judge's decision was appealed and on appeal the court ordered that the application be reheard to determine the issue: *Janicek v. Janicek*, 2018 ONCA 679, 2018 CarswellOnt 12570 (Ont. C.A.).