

## Publisher's Note

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## 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 I (Model Wills), Part II (Expositive Clauses), Part III (Dispositive Clauses), Part IV (Administrative Powers of Executors and Trustees), Part V (Complete Wills), Part VI (Checklists), Part VII (Trusts and Trustees) and the Words and Phrases.

### Highlights

- **Part IV Administrative Powers of Executors and Trustees — Powers of Attorney** — The testator executed a will directing the estate trustee to transfer any interest that the testator had in two properties to her three children. Two days later, she executed a power of attorney including a clause which permitted her attorneys to sell or deal with any of her real estate or lands without restriction. Section 19(2) of the *Power of Attorney Act* requires that attorneys for property act in the incapable person's best interest, taking into account the incapable person's known beliefs and

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values. Section 19(3)(d) of the same Act prohibits an attorney from disposing of property that is the subject to a testamentary gift, unless necessary to comply with the attorney's duties. Before becoming incapable, the testator expressed that it was in her best interest that the properties be sold. This expression of interest imposed a duty on the attorney for property to sell the properties: *Brewis v. Brewis*, 2018 BCSC 371, 2018 CarswellBC 546 (B.C. S.C.).

- **Part IV Administrative Powers of Executors and Trustees — Powers of Attorney** — The grant of a power of attorney creates a fiduciary relationship between the grantor and attorney: *Sangha, Re*, 2013 BCSC 1965, 2013 CarswellBC 3268, 92 E.T.R. (3d) 272 (B.C. S.C.).
- **Part VII-B Inter Vivos Trusts — Drafting Traps** — A pour-over clause in a will was invalid as the trust to which the residue was purported to be poured-over was revocable. Permitting a revocable, amendable, inter vivos trust to receive a testamentary gift would create uncertainty contrary to the requirements for proper execution of a will. The clause in the will was not cured by s. 58 of the *Wills, Estates and Succession Act* (“WESA”): *Quinn Estate*, 2018 BCSC 365, 2018 CarswellBC 543 (B.C. S.C.).