

## Publisher's Note

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## Estate Planning Precedents A Solicitor's Manual

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“Estate Planning Precedents: A Solicitor's Manual” includes a wide variety of precedents covering all aspects of wills and estates. Also included are domestic contracts, trust deed documents, powers of attorney, appendices containing estate planning forms, checklists, and signing instructions, plus relevant legislation and IT Bulletins, Information Circulars and Advance Tax Rulings. This product is designed as a useful tool for everyday use by the busy estates practitioner.

### What's New in this Update:

This release features new and updated material in Chapter 2 (Complete Wills with Sample Instructions), Chapter 3 (Will Precedent Clauses), Chapter 5.3 (Trusts) and Chapter 6.1 (Commentary: Estate Planning Issues). Additionally, this release includes updates to the Will Precedent Clauses Checklist, Canada Revenue Agency Information Circulars and Recent Case Digests.

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## Highlights:

### Will Precedent Clauses

- **Commentary: Estate Planning Issues — Multiple Wills: Their Use and Drafting Issues** — In *Re Milne*, 2019 ONSC 579 (Ont. Div. Ct), the court held that a will is not a trust on the basis that: the definition of a “will” in the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, s. 1 (1), does not state that a will is a trust; while a will may include trusts, it is not necessary that it do so; there is no separation of the beneficial interest during the estate administration; and while the role of executors and trustees share similarities, the roles are distinct. While the *Estates Administration Act*, R.S.O. 1990, c. E.22, s. 2 (1), provides that the deceased’s property is vested in the estate trustee “as trustee for the persons by law beneficially entitled thereto”, the court observed that if this statutory vesting creates a trust, it would be a statutory trust and not subject to the three certainties.
- Having found that a will is not a trust, the court nonetheless considered whether the basket clause language in the *Milne* wills created uncertainty of subject matter, observing: “*The property in the Primary Wills can be clearly identified because there is an objective basis to ascertain it; namely whether a grant of authority by a court of competent jurisdiction is required for transfer or realization of the property. As a result, the Executors can allocate all the deceased person’s property between the Primary and Secondary Wills on an objective basis.*”