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TAX PLANNED WILL PRECEDENTS, 4TH Butler Release No. 1, February 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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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 Part IV (Administrative Powers of Executors and Trustees) and Appendix WP (Words and Phrases).

Highlights

- **Volume 1 — Part II Expositive Clauses — Special Circumstances** — The deceased was married in 2016 or 2017 and passed away suddenly in 2019. The deceased had no will but left an estate comprised of two real estate properties, several safety deposit boxes and bank accounts and two storage lockers. The properties were registered in the deceased's wife's name alone or in joint tenancy with the wife. The deceased's six adult children would receive nothing, while the deceased's spouse would receive property valued at approximately \$7,000,000. The properties, including the proceeds of sale of one of the properties, the contents of the safety deposit boxes, storage lockers and bank accounts were impressed with a resulting trust; it was not the intent of the deceased that his estate should be deprived of all these assets. Rather, the assets were held in the name of others due to the deceased's concern that the assets would be abated by his highly risky habit of sports gambling which was the source of his wealth: *McManus et al. v. Argiro*, 2021 ONSC 6385, 2021 CarswellOnt 14093 (Ont. S.C.J.).
- **Volume 1 — Part II Expositive Clauses — Will Formalities** — The testator died on the same day she was scheduled to meet with her lawyer to discuss her will. On the day of the testator's death, two pages of notes relating to the testator's will were found in her home. The notes were not signed, dated or witnessed. The court found that the notes were made by the testator in preparation for her meeting with her lawyer. The notes would have formed the basis for a new will had the testator lived long enough to see it prepared. The court found that the notes were a deliberate and final expression of intent and the notes were ordered to be admitted to Probate: *MacKinnon v. MacKinnon (Estate of)*, 2021 NSSC 272, 2021 CarswellNS 652 (N.S. S.C.).
- **Volume 1 — Part II Expositive Clauses — Commentary and Alternate Clauses — Clause 8 RRSP, RRIF, TFSA and Insurance** — The court was asked to determine whether, where a retired member spouse's pension payments are divided at source for family purposes, the parties can agree (or can a court order or an arbitrator award) that payment sharing continue to the non-member spouse's estate for the balance of the retired member spouse's life? The motion judge answered this question negatively – when the non-member spouse dies, his or her share of the pension payment reverts back to the surviving member

spouse. On appeal, this decision was overturned. The court determined that there was nothing in the legislation that would preclude the parties from agreeing, a court from ordering, or an arbitrator awarding the continued payment of the pension payments to the deceased non-member spouse's estate: *Meloche v. Meloche*, 2021 ONCA 640, 2021 CarswellOnt 13076, 2021 C.E.B. & P.G.R. 8434 (headnote only) (Ont. C.A.).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases and Index are now in PDF with no searching and linking
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