SAMPLE LAST WILL AND TESTAMENT CLAUSES

The following sample clauses may be used by lawyers when developing last will and testaments for their law practice and other assets in the event of their own death. These sample form clauses should be modified to suit the personal circumstances of the lawyer.

The cross references in square brackets after each heading correspond to the paragraphs in the *Checklist of Issues to Consider When Preparing Wills* on page 40.

1. **Introduction [1]**

   General Will

   I, *[name of Planning Lawyer]*, of *[City]*, Ontario, hereby declare that this is my Last Will and Testament with respect to my General Estate (as hereinafter defined) and shall be referred to as "my General Will".

   Law Practice Will

   I, *[name of Planning Lawyer]*, of *[City]*, Ontario, hereby declare that this is my Last Will and Testament with respect to my Law Practice Estate (as hereinafter defined) and shall be referred to as "my Law Practice Will".

2. **Revocation [2]**

   General Will

   I hereby revoke all Wills and Codicils made by me prior to *[date]* regarding those of my assets that form part of my General Estate. For greater certainty, nothing in this my General Will shall revoke, or override, any Will made by me that purports to dispose of my Law Practice Estate (as hereinafter defined), which other Will shall be referred to as "my Law Practice Will".

   Law Practice Will

   I hereby revoke all Wills and Codicils made by me prior to *[date]* regarding those of my assets that form part of my Law Practice Estate. For greater certainty, nothing in this my Law Practice Will shall revoke, or override, any Will made by me that purports to dispose of my General Estate (as hereinafter defined), which other Will shall be referred to as "my General Will".

3. **Life Insurance [3]**

   Law Practice Will

   I hereby revoke all previous bequests, declarations or agreements made by me in connection with the payment of the insurance policy on my life with *[name of insurance company]*, policy number *[number]*, and I declare that the proceeds of the said policy shall be payable to [Name of Replacement Lawyer] as Special Trustee as a separate

trust upon the same terms and conditions contained in paragraph [*insert the paragraph number of the dispositive provisions of the Law Practice Will*] of my Law Practice Will. This declaration shall be a declaration within the meaning of the *Insurance Act* (Ontario).

4. Executors of Lawyer's Estate [4 and 5]

General Will

I appoint *[name]* to be the sole Estate Trustee, Executor and Trustee of this my General Will. In the event that *[name]* predeceases me, or is or becomes at any time unable or unwilling to act or to continue to act as the Estate Trustee, Executor and Trustee of this my General Will, then I appoint *[name]* to be the sole Estate Trustee, Executor and Trustee of this my General Will in the place and stead of *[name]*. The person or persons from time to time acting as the Estate Trustee, Executor and Trustee of this my General Will is or are referred to herein as "my Trustee".

Law Practice Will

I appoint *[name of first Replacement Lawyer]* to be the sole Estate Trustee, Executor and Trustee of this my Law Practice Will. In the event that *[name of first Replacement Lawyer]* predeceases me, or is or becomes at any time unable or unwilling to act or to continue to act as the Estate Trustee, Executor and Trustee of this my Law Practice Will, then I appoint *[name of alternate Replacement Lawyer]* to be the sole Estate Trustee, Executor and Trustee of this my Law Practice Will in the place and stead of *[first Replacement Lawyer]*. The person or persons from time to time acting as the Estate Trustee, Executor and Trustee of this my Law Practice Will is or are referred to herein as "my Trustee".

5. Executors of Clients' and Other Estates [6]

General Will

If at my death I am the sole executor of the estate of my spouse or of any parent, child or sibling of mine or my spouse, and where by reason of devolution of appointment, my executor would otherwise become successor executor or trustee of such estate or trust, then I appoint my Trustee to be the successor executor or the successor trustee of such estate or trust.

Law Practice Will

If at my death I am the sole executor or trustee of any estate or trust, other than the estate of my spouse or any parent, child or sibling of mine or my spouse, and where by reason of devolution of appointment, my executor would otherwise become successor executor or trustee of such estate or trust, then I appoint my Trustee to be the successor executor or the successor trustee of such estate or trust.

6. Compensation [7]

Law Practice Will

I authorize my Trustee to claim and receive from my Law Practice Estate, as compensation for his/her time, trouble, care and skill in administering my Law Practice Estate, compensation calculated at the rate of *[select one alternative]*

___ % of [net monthly billings / gross monthly billings / monthly accounts collected] from my law practice

$____ per hour/day/month

his/her hourly rate

Such compensation may be taken at intervals with the prior written approval of the person or persons from time to time acting as the estate trustee, executor and trustee of my General Will, or with the approval of the Superior Court of Justice upon application by my Trustee to pass his or her accounts.

7. Definitions [1 and 8]

Both Wills

In this Will,

(a) "My Law Practice Estate" means all property, both real and personal, of every nature and kind whatsoever, used in connection with my law practice including, without limiting the generality of the foregoing, [my Law Practice Corporate Properties and] all bank accounts, investments, trust funds, client lists, client property, leasehold interests in any business premises, accounts receivable, goodwill, equipment, software and software licences, intellectual property and passwords.

(b) "My Law Practice Corporate Properties" means all shares, debt and other interests which I may own at my death in *[name of law professional corporation]*, any successor corporation, and any other corporation that owns assets used in the carrying on of my law practice or that has employees who are involved in the carrying on of my law practice.

(c) "My General Estate" means all of my property of every nature and kind whatsoever and wheresoever situate, but excluding my Law Practice Estate;

General Will

(d) "My property" and "my estate" shall, unless the context otherwise requires, mean only my General Estate and shall not include my Law Practice Estate.

Law Practice Will

(e) "My property" and "my estate" shall, unless the context otherwise requires, mean only my Law Practice Estate and shall not include my General Estate.

8. Vesting Clause

General Will

I give, devise and bequeath my General Estate to my Trustee upon the following trusts, namely:

Law Practice Will

I give, devise and bequeath my Law Practice Estate to my Trustee upon the following trusts, namely:

9. Debts Clause [9]

General Will

My Trustees shall pay out of and charge to the capital of my General Estate my debts (including any income or profits tax payable by me or by my primary estate in respect of myself or my General Estate for the year of my death or any previous or succeeding year), funeral and testamentary expenses, and all estate, legacy, succession and inheritance taxes or duties, whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever, that may be payable as a consequence of my death and that have not been paid by the executors and trustees of my Law Practice Estate out of my Law Practice Estate. In addition, if my Trustees deem it to be necessary or advisable, my Trustees may pay out of my General Estate all or any portion of my debts specifically related to my Law Practice Estate.

Law Practice Will

My Trustees shall pay out of and charge to the capital of my Law Practice Estate my debts (including any income or profits tax payable by me or by my Law Practice Estate in respect of myself or my Law Practice Estate for the year of my death or any previous or succeeding year) specifically related to my Law Practice Estate and if my Trustees deem it to be necessary or advisable, my Trustees may also pay out of my Law Practice Estate all or any portion of my other debts, funeral and testamentary expenses, and all estate, legacy, succession and inheritance taxes or duties, whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever, that may be payable as a consequence of my death and that are not specifically related to my Law Practice Estate.

10. Purchase by Trustee [14]

Law Practice Will

Notwithstanding trusteeship, my Trustee may purchase any asset from my Law Practice Estate either at public auction or by private contract, provided that in the latter case the sale shall be at a price and on terms and conditions approved in writing by the person or persons from time to time acting as the estate trustee, executor and trustee of my General Estate.