

HistropEP will2.5

## Histrop, Estate Planning Precedents

2 — Complete Wills With Sample Instructions

Lindsay Ann Histrop

### Alberta, Manitoba, Saskatchewan, Ontario, New Brunswick, Prince Edward Island

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will2.5 — Single Parent with Young Children

This is a sample will for a single parent with young children. The following is a list of the Ontario clauses that are included in the will, along with the sample information populated in the will as an example.

THIS IS THE LAST WILL of me, (*Testatrix's/testator's name*), of the (*Specify city/town, etc.*), Province of (*Province*).

I. I DECLARE that this my Will shall be governed by and construed in accordance with the laws of the Province of (*Province*), Canada.

I.1 I REVOKE all former wills and other testamentary dispositions made by me.

II. I APPOINT (*Specify name and relationship of first estate trustee*), and (*Specify name and relationship of second estate trustee*), to be the Estate Trustees, Executors and Trustees of this my Will. References to “my Trustees” in this my Will shall include each Estate Trustee, Executor and Trustee of my Will, my estate or any portion thereof who may be acting as such from time to time whether original or substituted and whether one or more.

III. I GIVE all my property wheresoever situate, including any property over which I may have a general power of appointment, to my Trustees upon the following trusts, namely:

(a) To divide all articles of personal, domestic and household use or ornament belonging to me at my death, including consumable stores, and including all automobiles and accessories thereto then owned by me, among those of my children living at my death in such manner as they may agree upon, or, failing agreement, in such manner as my Trustees in their absolute discretion deem advisable and not necessarily in equal shares; provided that in the case of any of my children who have not attained the age of majority as at the date of my death, my Trustees may select any such articles on behalf of such child or children and may retain any of the aforesaid articles which they deem it advisable to retain, and deliver such retained articles to the child or children for whom the articles are designated, upon such child or children attaining the age of majority, and any of the said articles which for any reason my Trustees do not deem it advisable to select and/or retain and which are not chosen by any of my other children shall be sold by my Trustees and the proceeds of such sale shall fall into and form part of the residue of my estate to be dealt with as part thereof. I authorize my Trustees to permit any of my children under the age of majority to have the use of any or all of the articles retained by my Trustees for such period or periods as my Trustees in their absolute discretion deem advisable and I also authorize my Trustees to deliver any or all of the said articles to any of my children at any time or times and to accept the receipt of such child as a sufficient

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discharge therefor notwithstanding the fact that such child may not have attained the age of majority. I declare that my Trustees shall be under no liability in connection with any of the said articles which are retained by my Trustees on behalf of any of my children.

(b) To pay out of and charge to the capital of my general estate my just debts, funeral and testamentary expenses and all estate, inheritance and succession duties or taxes whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever that may be payable in connection with any property passing (or deemed so to pass by any governing law) on my death or in connection with any insurance on my life or any gift or benefit given or conferred by me either during my lifetime or by survivorship or by this my Will or any Codicil hereto and whether such duties or taxes be payable in respect of estates or interests which fall into possession at my death or at any subsequent time; and I hereby authorize my Trustees to defer, commute or prepay any such taxes or duties. This direction shall not extend to or include any such taxes that may be payable by a purchaser or transferee in connection with any property transferred to or acquired by such purchaser or transferee upon or after my death pursuant to any agreement with respect to such property.

(c) So long as any child of mine shall be living and under the age of twenty-three (23) years, in the absolute discretion of my Trustees, to hold whatever property I may own and be using as my home at the time of my death together with all lands and buildings appurtenant thereto as a home for my children or any of them for such period as my Trustees in their absolute discretion shall determine. I authorize my Trustees in their absolute discretion to sell any property held from time to time pursuant to the provisions of this paragraph, and to purchase out of the proceeds of sale and out of the residue of my estate if the proceeds of sale are insufficient, a replacement residence property, and so on from time to time, the amount to be expended for that purpose to be in the absolute discretion of my Trustees and to permit my children or any of them to use such property as a home for such period as my Trustees in their absolute discretion shall determine. All taxes, insurance, repairs, mortgage interest and any other charges or amounts necessary for the general upkeep of any residence property held under the terms of this paragraph shall be paid by my Trustees out of the residue of my estate or my Trustees shall be authorized in their absolute discretion to set aside and keep invested a fund in such amount as they determine shall be necessary to satisfy such expenses, and such payments shall be made either out of income or capital or partly out of income and partly out of capital as my Trustees in their absolute discretion consider advisable, provided that after the expiration of the maximum period permitted by law for the accumulation of income hereunder, any excess income derived in any year from any such fund so set aside by my Trustees shall be paid to or applied for the benefit of those children of mine as shall then be living in equal shares. At such time as my Trustees are no longer holding a residence property hereunder, such fund or the amount thereof then remaining shall fall into and form part of the residue of my estate to be dealt with as part thereof. After a property has been purchased under the provisions of this paragraph of my Will any surplus proceeds of the sale of the previous property held under the provisions of this paragraph of my Will shall fall into and form part of the residue of my estate to be dealt with as part thereof. Any property held by my Trustees under the terms of this paragraph or the proceeds of the sale of any such property shall fall into and form part of the residue of my estate to be dealt with as part thereof.

(d) So long as any child of mine shall be living and under the age of twenty-three (23) years, to keep invested the residue of my estate and to pay the whole or such part of the net income derived therefrom together with such part or parts of the capital thereof as my Trustees in their absolute discretion deem advisable to or for the benefit of my children or some one or more of them, to the exclusion of any one or more of them, in such proportions and in such manner as my Trustees in their absolute discretion deem advisable from time to time, and any income not so paid or applied in any year shall be added to the capital of the residue of my estate to be dealt with as part thereof; provided that after the expiration of the maximum period permitted by law for the accumulation of income hereunder, if my Trustees are then holding the residue of my estate or any portion thereof, they shall thereafter pay to or for the benefit of my children or some one or more of them, to the exclusion of any one or more of them, in such proportions and in such manner as my Trustees in their absolute discretion deem advisable, the whole of the net income derived from the residue of my estate. Upon such time as there is no longer a child of mine living and under the age of twenty-three (23) years, my Trustees shall pay or transfer the residue of my estate or the amount

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thereof then remaining in equal shares per stirpes among my issue as shall then be living in equal shares per stirpes.

(e) If at the death of the last survivor of my issue and me (the “date of division”), any portion of my estate remains undisposed of, after giving effect to the foregoing provisions of this my Will, to divide such portion into as many equal parts as shall be necessary to give effect to the following provisions:

(i) one (1) of such equal parts shall be paid or transferred to (*Specify first beneficiary*), for (*his/her*) own use absolutely, if (*he/she*) is living at the date of division;

(ii) one (1) of such equal parts shall be paid or transferred to (*Specify second beneficiary*), for (*his/her*) own use absolutely, if (*he/she*) is living at the date of division;

(iii) one (1) of such equal parts shall be paid or transferred to my (*Specify third beneficiary*), if (*he/she*) is living at the date of division; and

(iv) one (1) of such equal parts shall be paid or transferred to (*Specify fourth beneficiary*), if (*he/she*) is living at the date of division.

IV. SUBJECT AS MAY BE SPECIFICALLY provided herein, if any person should become entitled to any share in my estate before attaining the age of majority or while mentally incapable of managing property, the share of such person shall be held and kept invested by my Trustees and the income and capital or so much thereof as my Trustees in their absolute discretion consider necessary or advisable shall be used for the benefit of such person until he or she attains the age of majority or is no longer mentally incapable of managing property when such share or the amount thereof remaining shall be paid or transferred to him or her, or should such person die before attaining the age of majority or while mentally incapable of managing property, to his or her legal personal representatives.

V. I AUTHORIZE my Trustees to make any payments for any person under the age of majority or who is mentally incapable of managing property, to a parent, guardian or attorney under continuing power of attorney of such person or to any other person my Trustees may consider to be a proper recipient therefor whose receipt shall be a sufficient discharge to my Trustees.

VI. I AUTHORIZE my Trustees to use their discretion in the realization of my estate, with power to sell, call in and convert into money any part of my estate not consisting of money at such time or times, in such manner and upon such terms, and either for cash or credit or for part cash and part credit as they may in their absolute discretion decide upon, or to postpone such conversion of my estate or any part or parts thereof for such length of time as they may think best. My Trustees shall have a separate and substantive power to retain any of my investments or assets in the form existing at the date of my death at their absolute discretion without responsibility for loss to the intent that investments or assets so retained shall be deemed to be authorized investments for all purposes of this my Will. No reversionary or future interest shall be sold prior to falling into possession and no such interest not actually producing income shall be treated as producing income.

VII. WHENEVER it becomes necessary for my Trustees to invest any moneys held in connection with my estate I will and declare that my Trustees in making such investment shall not be required to diversify and shall not otherwise be restricted by the provisions of (*Specify applicable legislation*), as amended from time to time, but may invest in any investment that in their uncontrolled discretion they consider advisable and my Trustees shall not be held responsible for any loss that may be occasioned by any such investment made by them in good faith. Without limiting the generality of the foregoing, my Trustees shall be specifically authorized to invest in mutual fund and pooled fund investments notwithstanding any rule of law that prohibits a trustee from delegating powers or duties.

VIII. WITHOUT LIMITING the generality of the foregoing, I expressly authorize my Trustees to engage the services of one or more investment counsel managers, mutual fund managers and/or investment advisors as my Trustees from time to time in their absolute discretion consider advisable (the “investment counsel”) to advise my Trustees in respect of the

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investment and reinvestment of my estate, with power to my Trustees to delegate to such investment counsel discretion to manage all or any part of the assets of my estate as may be directed by my Trustees. In delegating such investment discretion, my Trustees shall not be obliged to comply with the provisions of (*Specify applicable legislation*), as amended from time to time. They are further authorized to fix the remuneration to be paid to any such investment counsel and such remuneration is to be charged upon my estate and payable out of the capital or income thereof in such proportions as my said Trustees from time to time consider advisable. The amount of any such remuneration is not to be taken into account and or deducted from the compensation to which my Trustees would from time to time be otherwise entitled, but rather such remuneration shall be in addition to such compensation. In making any such arrangement as aforesaid, I authorize my Trustees to place estate investments in the custody of such investment counsel, to transfer such investments or any of them into the name of such investment counsel, or any nominee thereof and to delegate to such investment counsel any or all discretionary powers respecting investments. My Trustees shall incur no liability for any action taken in good faith as a consequence of following the advice of the investment counsel however communicated or for any loss resulting from the delegation of discretion to the investment counsel, provided that my Trustees have acted in good faith.

IX. MY TRUSTEES may make any division of my real or personal estate or set aside or pay any share or interest therein either wholly or in part in the assets forming my estate at the time of my death or at the time of such division, setting aside or payment, and I expressly will and declare that my Trustees shall in their absolute discretion fix the value of my estate or any part thereof for the purpose of making any such division, setting aside or payment and the decision of my Trustees shall be final and binding upon all persons concerned, notwithstanding any fluctuation in market value and notwithstanding that one or more of my Trustees may be beneficially interested in the property or any part thereof so valued.

X. I AUTHORIZE my Trustees to make or refrain from making, in their absolute discretion, any elections, determinations, and designations permitted by any statute or regulation enacted by the Parliament or government of Canada, by the legislature or government of any province of Canada, or by any other legislative or governmental body of any other country, province, state or territory, and such exercise of discretion by my Trustees shall be conclusive and binding upon all the beneficiaries hereof. My Trustees shall not be liable to any person, whether beneficiary or otherwise, by reason of any loss, claim, tax or other cost experienced by any such person or by my estate resulting from any election, determination, designation or exercise of discretion entered into by my Trustees in good faith.

XI. I AUTHORIZE my Trustees to sell, partition, exchange or otherwise dispose of the whole or any part of my real property in such manner at such time and upon such terms as to credit or otherwise as they in their discretion consider advisable, with power to accept purchase money mortgage or mortgages for any part of the purchase or exchange price. My Trustees shall also have the power to mortgage, to lease for any term the real or leasehold property forming part of my estate, subject to such covenants and conditions as they shall think fit, to accept surrenders of leases and tenancies, to expend money in repairs, alterations, rebuilding and improvements and generally to manage any such property. My Trustees shall also have the right to renew and keep renewed any mortgage or mortgages upon any real estate forming part of my estate or any part thereof, to borrow money on any such real estate upon the security of any mortgage or mortgages and to pay off any mortgage or mortgages which may be in existence at any time forming part of my estate. I also give to my Trustees power to execute and deliver such deeds, mortgages, leases or other instruments as may be necessary to effect such a sale, mortgage, lease or other disposition. The power of sale herein is discretionary and not mandatory.

XII. I AUTHORIZE AND EMPOWER my Trustees to lend such part or parts of my estate upon any security which they may deem sufficient or upon no security whatever, to enter into guarantees or indemnifications for the benefit of the beneficiaries of this my Will and persons, firms or corporations other than the beneficiaries of this my Will and to give security therefor as my Trustees may in their discretion decide and to renew and keep renewed such guarantees and indemnifications as my Trustees see fit, to borrow money from themselves individually or from others either without security or upon the security of any of the property, real or personal, entrusted to them or from time to time held by them under this my Will for such purposes and upon such terms and conditions as they shall deem advisable and without

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limiting the generality of the foregoing for the payment of taxes, debts, duties, legacies or expenses and to mortgage, pledge, hypothecate or otherwise encumber any or all of such property to secure the repayment of money borrowed and to extend or modify any such encumbrance. My Trustees may borrow from any person or corporation notwithstanding that such person or corporation may be a member of my family or a beneficiary or trustee under my Will, and the person or corporation from whom my Trustees borrow shall nevertheless be entitled to receive and be paid, for its, his or her own benefit, such interest as my Trustees in their absolute discretion deem advisable. Without limiting the generality of the foregoing, I specifically authorize my Trustees to lend without interest to the guardian or guardians of my minor children, such amount as my Trustees in their discretion deem advisable to enable the said guardian or guardians to purchase a larger home or put an addition on their present home for the purpose of comfortably accommodating my minor children during their minority.

XIII. MY TRUSTEES shall be fully protected in exercising any discretion granted to them in this my Will and shall not be liable to the beneficiaries or their heirs or personal representatives by reason of the exercise of such discretion. My Trustees shall exercise the powers, authority and discretion given to them in what they deem to be the best interest, whether monetary or otherwise, of the beneficiaries, whether or not such exercise may have the effect of conferring an advantage on any one or more of the beneficiaries or would otherwise, but for the foregoing, be considered as being other than an impartial exercise of their duties hereunder or as not being maintenance of an even hand among the beneficiaries and all such exercise of their powers, authority and discretion shall be binding upon all of the beneficiaries and shall not be subject to any question or review, by any person, official, authority, court or tribunal whatsoever or whomsoever.

XIV. I AUTHORIZE AND EMPOWER my Trustees to compromise, settle, waive or pay any claim or claims at any time owing by my estate or which my estate may have against others for such consideration or no consideration and upon such terms and conditions as my Trustees may deem advisable and to refer to arbitration all such claims if my Trustees deem same advisable.

XV. I DECLARE that no gift, or the income therefrom, under this my Will shall be assigned or anticipated, or fall into any community of property, partnership or other form of sharing or division of property which may exist between any beneficiary and his or her spouse or partner, and every gift together with the income therefrom shall remain the separate property of a beneficiary hereunder, free from all property rights or controls by his or her spouse. Without limiting the generality of the foregoing, I direct that all of the gifts and other benefits granted by me under this my Will and all the income derived therefrom shall be excluded from net family property of a beneficiary and the value thereof shall not be subject to division between a beneficiary and his or her spouse or partner pursuant to the Ontario *Family Law Act* or any successor legislation thereto. All references to income contained in this paragraph of this my Will are intended by me and shall be deemed to include capital gains as well as any other accretions to capital arising from a gift or benefit hereunder.

XVI. IN THE EVENT that I die before any child of mine has attained the age of majority I appoint (*Specify name of guardian*), to have custody of such child and act as the guardian of the property of such child. It is my wish that before the expiration of ninety (90) days from the date of my death (*Specify name of guardian*), apply to have custody of such child and act as the guardian of the property of such child pursuant to the provisions of the (*Specify applicable legislation*) as from time to time amended.

XVII. I AUTHORIZE my Trustees to make such annual contributions as my Trustees in their absolute discretion consider advisable to a registered education savings plan ("RESP") which may be established by one of my Trustees for the benefit of a minor beneficiary of this my Will, such contributions to be made from any fund or funds held for the benefit of such minor beneficiary pursuant to the terms of this my Will, provided that my Trustee who so acts as the subscriber to such RESP shall complete a declaration of trust in the form satisfactory to my Trustees together with an acknowledgment and undertaking that all proceeds that the Trustee may receive from the RESP in the event of the collapse of such RESP shall be held on trust for such minor beneficiary upon the terms of the trust hereunder from which such contributions were originally made.

Freedman, David 2/23/2016  
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XVIII. I AUTHORIZE my Trustees to permit any of my physical organs to be used for the purpose of transplants and to permit the use of my body for purposes of medical research and education.

IN WITNESS WHEREOF I have to this my Last Will, written upon this and (*Number of pages*) preceding pages, subscribed my name this (*Date*) day of (*Month*), (*Year*).

SIGNED by the (*Testator/testatrix*), (*Testator/testatrix's name*), as (*his/her*) last Will, in )  
the presence of us, both present at the same )  
time, who at (*his/her*) request, in (*his/her*) ) .....  
presence and in the presence of each other )  
have hereunto subscribed our names as wit- )  
nesses. )

WITNESS:

Signature: .....

Name: .....

Address: .....

Occupation: .....

WITNESS:

Signature: .....

Name: .....

Address: .....

Occupation: .....

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