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***Dalla Lana Estate (Re)*, 2020 ABQB 135 – Sticky notes found to be a valid holograph will**

Sanjana Bhatia, B.B.A., LL.B., LL.M., TEP – Director, Insurance Tax Solutions Group with Sun Life Financial

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In a recent case *Dalla Lana Estate (Re)*, 2020 ABQB 135, the Court found that two “sticky notes” met the requirements for a valid holograph will and revoked a previous will. This case is one more decision in a long line of cases with wills being upheld when written on everything from napkins to cigarette packages to tractor fenders.

The Facts

Mr. Lana made a formal will in 1997. He passed away in March 2018 at the age of 91. Four days before this death, he made what he described as “changes to my earlier will” on two “4” x 6” “sticky notes”.

Mr. Lana made the following changes to his will on the sticky notes:

- The appointment of his wife, Mary as executor instead of his son, Gene.
- He doubled the gifts to his five sons from \$10,000 each to \$20,000 each.
- He left \$10,000 to each of his ten grandchildren.
- Mary was the residual beneficiary instead of his grandchildren as residual beneficiaries.
- He left his Tax Free Savings Account to his son, Thomas.
- Directions to pay bills by disbursements.

The sticky notes were in Mr. Lana’s handwriting. He also signed the top and the bottom of them. Thomas witnessed the changes and signed the notes as well. The Court noted that the changes on the sticky notes were significant and re-wrote the 1997 will.

The main issue in the case was whether the sticky notes constituted a valid holograph will and thus revoked Mr. Lana’s previous will.

The Court's Findings

The Court concluded that the sticky notes constituted a valid holograph will and displaced Mr. Lana's previous will. The Court referred to the *Wills and Succession Act*, SA 2010, c. W-12.2. Section 16 of that Act sets out the requirements for a valid holograph will. It must be in writing and signed by the testator. There is no need for a witness and/or the witness' signature.

The Court also explained that the sticky notes contained the following building blocks for a valid will:

- The appointment of an executor
- The payment of debts
- Specific gifts
- Gift of the residue

Other provinces have similar requirements for a holograph will. In Ontario, for example, the requirements for a valid holograph will are set out in the *Succession Law Reform Act* ("SLRA"). Section 6 of the SLRA states "a testator may make a valid will wholly by his or her own handwriting and signature, without formality, and without the presence, attestation or signature of a witness".

Other influential factors

The Court also considered other factors to conclude that the sticky notes represented Mr. Lana's fixed and final intentions. These factors included the following:

- There were no questions about his mental capacity.
- Mr. Lana signed at the top and the bottom of the notes. This indicated his seriousness about the notes.
- Thomas' presence as a witness and his signature reflected the Mr. Lana's seriousness of the notes. Although Thomas' signature was not required, it did not affect the validity of the sticky notes as a holograph document.
- The notes referred to his previous will.

- The notes were specific about his property and nothing was left undistributed.

The sticky notes replaced the formal 1997 will and were admitted to probate. Probate is a procedure to ask the court to formally approve the validity of the deceased's will.

Virtual witnessing of wills and powers of attorney

The additional requirement for a "regular" will that is not a holograph will is that the testator's signature must be witnessed by at least two witnesses who also sign the will (sections 3 and 4 of the SLRA). As part of Ontario's pandemic measures, as of April 2020, wills can be signed and witnessed by video conference or by counterpart. This also applies to powers of attorney.

These wills and powers of attorney must meet certain requirements. First, for both wills and powers of attorney, at least one witness must be an Ontario-licensed lawyer or paralegal at the time of signing. Second, for wills executed and witnessed virtually, the testator may sign and witnesses may sign and subscribe on separate copies of the will, in counterpart. Likewise, donors and witnesses to powers of attorney for property or personal care that are executed and witnessed virtually may sign on separate copies of the power of attorney, in counterpart.

Also, there is still a requirement for a "hard copy" of the will. A purely electronic will with a digital signature is not permissible.

The virtual witnessing of wills and powers of attorney is extended until August 23, 2020. The Ontario government has the power to further extend the provisions. Other provinces have also enacted similar provisions.

Important things to note

Estate, tax and insurance planning are topical today as people are concerned about their mortality with the pandemic. Wills are a vital part of an estate plan. With respect to wills, some of the important points to remember include the following:



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- Holographic wills are recognized in most Canadian provinces, including Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland.
- A valid holograph will must be entirely in the testator's handwriting. The testator must also sign the will.
- Regular wills also require at least two witnesses and their signatures.
- Electronic wills are not valid in Canada.
- In Ontario, the virtual witnessing of wills and powers of attorney is extended until August 23, 2020.

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