

outlined:making a will

Inheritance, provision and peace of mind



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life:outlined™

An unbiased guide to life events
and making key financial decisions

What is life:outlined™?

Every stage of life brings challenges. Standard Life has created life:outlined™, a tool that provides you with unbiased information to guide you through life's events and help you make key financial decisions.



WHAT TO INCLUDE IN YOUR WILL	4	YOUR QUESTIONS ANSWERED	12
What is a will?	4	How much does a will cost?	12
Who can make a will?	4	Where should I keep my will?	12
What kinds of wills are there?	4	When should I make a will?	13
What can go in a will?	6	Can I change my will?	13
		How do I destroy or cancel a will?	13
THE IMPORTANCE OF AN EXECUTOR	7	How often should I review my will?	13
What is an executor?	7	Who can benefit from my will?	14
Who should I choose as executor?	7	INTESTATE	14
What are the duties of an executor?	8	What happens	
What are probate rules?	8	if I don't make a will?	14
How do probate rules apply			
to life insurance and RRSPs/RRIFs?	9	CONCLUSION	15
GUARDIANS	10	TECHNICAL TERMS EXPLAINED	16
Should I appoint guardians		USEFUL INFORMATION	17
for my children?	10	How to find a lawyer	17
TRUSTEES	10	Province-specific sources	
What is a trustee?	10	of information	18
YOUR ESTATE	10	Other helpful links	18
What is my estate?	10		
How do I calculate			
the value of my estate?	11		
DRAWING UP YOUR WILL	12		
How do I draw up my will?	12		

This document is all about something you may not want to think about: preparing a will. Talking about death can be uncomfortable and even frightening. So it's not surprising that people are uncomfortable making plans with regards to death—specifically with making a will. In fact, less than half of Canadians have made wills¹, and a large proportion of all Canadians die without ever making a will. This can leave their families facing significant financial problems. These problems are unnecessary, because making a will is a straightforward, comparatively inexpensive process. And it can mean a great deal to those who rely on you.

No one can be sure what is going to happen in life, but it's a comfort to be prepared. You can rest easy when you know you've done all you can to make things easier for your loved ones.

Do I really need a will?

Yes, you really do. Almost everyone benefits from having a will. Although you may not consider yourself wealthy, you may be surprised by the total value of your estate when you take everything into account. If you own a house, this alone is likely to represent a significant sum of money. And you also almost certainly own items of sentimental value that you may want to pass on. A will can make sure this happens.

Your will is an important document when it comes to making sure your estate is dealt with quickly, smoothly, and according to your wishes. Having a will can help avoid costs and delays associated with validating your will (a process known as “probate”). Finally, a will can specify your funeral plans and, most importantly, indicate your preferences for the care and education of any children you may have.

¹Source: Canadians and Death (2002). Canadian Press and Leger Marketing. Retrieved from www.legermarketing.com



Leaving no will (which is called “dying intestate”) has legal consequences and can place an awkward administrative burden on your closest relatives. It can delay the settlement of your estate and cause financial hardship to those left behind. These arguments alone make a strong case for making a will.

This booklet will take you through some elements you should think about when drawing up your will, and help to answer your questions. It explains what a will is, what an executor does, and how to appoint one. It will show you how to help evaluate your estate, tell you who can draw up a will for you, and explain what happens if you fail to leave a will. If you have been putting off making a will, it will show you just how easy—and necessary—the process is.

Leaving a will means you have a say in what happens with your property and finances—and how your family is cared for.

WHAT TO INCLUDE IN YOUR WILL

What is a will?

A will is a legal document that states what you would like to happen to your property and personal effects after your death. No matter how little property you have, it is important that you make a will. If you don't have a will, the law dictates what happens to your estate. And what happens may not be what you would have wished.

Who can make a will?

In general, once you are over 18 years of age, you can make a will. However, be aware that there are slight variances by province. A local legal advisor can help you make sure you are eligible to make a will in your province of residence.

What kinds of wills are there?

There are several types of wills to consider. The type that works best for you will depend on the complexity of your estate, your needs, and your province of residence.



Holograph wills:

These are the simplest type of will. They cost nothing to draw up and may consist of only a few lines. They do not require the signature of a witness. However, holograph wills must be handwritten and signed by the person making the will. They cannot be drawn up using a typewriter, computer, or form. Furthermore, not all provinces recognize Holograph wills: they are valid in Ontario, Alberta, New Brunswick, Newfoundland, Quebec, Manitoba and Saskatchewan, but not in Nova Scotia and P.E.I. They are not allowed in British Columbia, but may be recognized if they are made outside of B.C. Because the rules governing whether or not a will is valid can be ambiguous, a holograph will may not be ideal if you want to be certain that your wishes are carried out.

Keep in mind that writing your own will doesn't save time and money if it means that your beneficiaries have to deal with a lengthy, expensive probate.

Conventional wills:

You can draw up a conventional will yourself, or have someone (a lawyer) prepare one for you. You must sign and date your will to make it valid. Depending on your province of residence, your signature must be witnessed by one or two people. In Quebec, both you and the two witnesses must initial each page. Note that your witness(es) should be people who aren't receiving anything under the will. If a witness or a witness' spouse is a beneficiary, they must prove to the court that they did not pressure the person to make the will, or their gift will be void.

Notarial wills:

The Civil Code of Quebec gives notaries in that province special will-making powers. Notaries specialize in succession law and drafting legal documents. Notarial wills are made before a notary and a witness, and come into effect immediately upon the death of the testator (person who wrote the will). This means they do not need to go through probate—a potentially costly and lengthy process.

Living wills:

Formally known as an Advance Health Care Directive. These specify the nature of medical treatment you wish to receive (or not receive) if you become incapable of communicating your own wishes. Not all provinces have laws making health care directives binding. These can be complicated, and are best drawn up with the help of a legal advisor.



Since legal requirements vary by province, it's a good idea to seek professional advice. It's money well spent if it means that your will does what you want it to do.

What can go in a will?

Your will is an invaluable opportunity to make your intentions clear, not just about financial issues, but also about other matters that are important to you. These include:

- Who you would like to act as executor (or liquidator, in Quebec)
- Who you would like to appoint as your children's legal guardian, and how you wish to provide for your children's upkeep
- Whether there are dependents with special needs who will require ongoing support upon your death
- How you would like your funeral conducted

- Whether you want to donate organs or leave your body to medical science
- How to provide for your pets or favourite charity
- Who you would like to receive particular items of your property, no matter how large or small. This can be money, valuable items such as your house, or items that may have sentimental value such as a watch or wedding ring. You can also let people know where to find these items

Your will can specify everything from what you want your funeral to be like, to who should receive treasured belongings.

THE IMPORTANCE OF AN EXECUTOR

What is an executor?

You will need to appoint an executor (or a liquidator, in Quebec) to make sure that the terms of your will are carried out. An executor will administer and value your estate once you die. It will be that person's job to establish what you owned at the time of your death, if there was any money owed to you, and if you had any debts. The executor then pays any outstanding debts and distributes your remaining assets in accordance with the terms of your will.

You can have more than one executor if you wish, but it is very common to name your spouse as both the sole beneficiary and the sole executor of the estate. Remember that you cannot have your executor as a witness to your signature on your will.

Naming the person you would like to act as executor is one of the most important elements of your will. Your executor has full access to your estate and affairs, and can be anyone you choose.

For example, your executor can be:

- A lawyer (who will charge for winding up your estate)
- Your bank or trust company (which will also charge)
- A beneficiary of your will

- Your next of kin
- A close friend

Who should I choose as executor?

The responsibilities can be considerable, so make sure you choose someone you believe is up to the task. You should always ask the person you have in mind if they are willing to act as your executor, given that it can be time-consuming and demanding. Once you have decided, you must notify the executor of your estate that you have designated him or her, and obtain consent.

Once they have agreed, remember to tell the executor where you are going to keep the will. In fact, it is good practice for you to write to the executor telling them where the will is kept.

Finally, it's a good idea to choose an alternative executor, just in case the first one is not able to carry out an executor's duties when the time comes.



It's an honour to be designated an executor—it means someone trusts you implicitly. But it's also a big responsibility, so think carefully about who you want to choose.

What are the duties of an executor?

Executors have various duties to perform and legal advice is often essential. If you have not already appointed a lawyer, your executor can do so.

There can be expenses involved with being an executor. The executor's expenses, including legal costs, can be recouped from the estate. The standard rate for executor's fees varies by province. For example, in Ontario, it is 2.5% of the receipts of the estate, and 2.5% of the disbursements of the estate. The fees are taxable for income tax purposes.

The executor must:

- **Make sure the funeral takes place and arrange payment**
- **Make an inventory of the full assets of the estate**
- **Have any valuables owned by the deceased professionally valued**

- **Handle the probate**
- **Find out if any money is owed to you from pension plans, life insurance, etc. A pension is not always part of the estate**
- **Prepare necessary tax returns (and obtain the necessary tax clearance certificates)**
- **Contact appropriate government authorities (e.g., cancel CPP/QPP and OAS benefits and apply for CPP/QPP death benefit)**
- **Attend to personal matters (e.g., pay creditors, pay utility bills, cancel credit cards, etc.)**
- **Gather information regarding beneficiaries**
- **Pay bequests**

What are probate rules?

Your executor is responsible for handling the probate of your estate. Probate is a legal process that establishes the validity of a will and allows the transfer of assets to beneficiaries. Provincial governments earn revenue from probate fees (except in Quebec, where notarial wills do not need to be probated by the court, and for non-notarial wills, the probate fees are minimal).



When they are applied, probate fees are usually a percentage of your estate's value. For example, the probate tax in Ontario is \$5 per \$1,000 for the first \$50,000 of the estate's value, and \$15 per \$1,000 after that. Alberta, on the other hand, charges a fee of \$25 for the first \$10,000, and a progressive fee for estates above that. The maximum charge is \$400.

There are ways to keep these taxes to a minimum. By naming one or more beneficiaries other than your estate to receive the death benefit offered by a life insurance contract, probate fees can be bypassed. As stated above, owing assets on a joint basis might also be considered.

Probate fees, beneficiary designations, and the calculation of the value of your estate vary considerably from province to province, so it's a good idea to consult a legal advisor about your particular situation. You should also look into the possibility of deducting certain liabilities when calculating the value of your estate—some provinces will allow this.

How do probate rules apply to life insurance and RRSPs/RRIFs?

People often buy life insurance to cover outstanding estate debts and taxes that arise upon death. When you name a beneficiary, you may be able to bypass probate fees since the insurer will pay the death benefit directly to the named beneficiary – without delay or extra costs. With a life insurance policy (which can include a segregated fund, term fund, or annuity), you can make sure your assets are directly transferred to your beneficiaries, thus bypassing your estate and avoiding probate fees and other estate related costs.

Note that there are also tax benefits to naming a beneficiary to your RRSPs or RRIFs. If the beneficiary is your spouse, or in some cases a dependent child or grandchild, the tax-deferred status of your registered assets can be maintained.

Note that if you don't name a beneficiary—if your estate is the beneficiary—then the proceeds become part of the estate's value, and they are subject to probate. This is another area in which a little advance planning can make a big difference to your loved ones.

GUARDIANS

Should I appoint guardians for my children?

If something happens to you, what will happen to your children? If you have children (under 18 years) and you do not have a close family member who is next of kin who would not hesitate to look after your children, your will should appoint a guardian. A guardian does not have to physically look after a child, but he or she is responsible for making sure that the child is properly cared for.

Your should:

- **Appoint someone who is unlikely to be elderly or infirm by the time your youngest child reaches the age of 18**
- **Seek the guardian's consent before you consider appointing him or her**
- **Remember that if you are separated or divorced and the other parent has parental responsibility, then the appointment will not come into effect unless the surviving parent dies.**

Having a child is one of the most common reasons people finally get around to making a will. That's because it's a critical step in making sure your children are properly cared for, no matter what happens. This is a very important part of your will. Professional advice is recommended.

TRUSTEES

What is a trustee?

To protect the beneficiaries of a will and minimize tax liabilities, some wills are written 'in trust'. Trusts are highly complex legal structures, often with wording running to many pages, and they come in several different varieties.

Trusts require named trustees, who administer the trust. It is usual to appoint two trustees (they can be the same people as the executors), and it is always necessary to have two trustees to deal with the sale of land which is subject to trust.

You can find out more about trusts from your lawyer and from your financial advisor.

YOUR ESTATE

What is my estate?

Your estate is everything you own that you leave behind when you die. It can be made up of many things: your house, insurance policies, pensions, savings, car and personal effects.



Note that if you own certain assets on a joint ownership basis, these assets generally do not form part of the estate. Ownership of these assets passes directly to the survivor upon your death. For example, if you and your spouse own a house together, the spouse will become the homeowner upon your death. The house will become part of the spouse's estate, but it will not be part of yours.

Insurance contracts for which there is a named beneficiary are also generally excluded from the estate.

How do I calculate the value of my estate?

The following checklist should help you estimate the value of your estate:

- Certain annuities _____
- Bank accounts _____
- Car(s) _____
- Foreign assets _____
- House (if not jointly owned) _____
- House contents _____
- Cottage _____
- Rental property _____
- Jewellery _____
- Life insurance policies (including segregated funds) without a named beneficiary _____
- Certain pensions _____
- Certain RRSPs and RRFs _____
- Personal effects _____
- Outstanding salary and other receivables at death _____
- Bonds and shares _____
- Valuables (antiques/paintings) _____
- Other assets _____

Total the above to get a rough estimate of the value of your estate.

Remember you should subtract any debts or liabilities to come up with a realistic value of your estate. (Note that not all debts and/or liabilities can be deducted in arriving at the value of the estate for probate purposes.)



DRAWING UP YOUR WILL

How do I draw up my will?

- You can use a lawyer. If you don't have one, your provincial law association can refer you to a lawyer in your area. Contact information is given at the end of this document.
- You can buy a will writing kit. But remember that you do not receive any professional advice using this option, and it may not be in your best interests.
- In theory, you can draw up a do-it-yourself "holograph" will on a blank sheet of paper. But in practice, it is surprisingly difficult to avoid ambiguities, so this is not a recommended option.

YOUR QUESTIONS ANSWERED

How much does a will cost?

Legal fees for drawing up a will vary according to how complex your instructions and your financial circumstances are. It can cost anywhere from a few hundred dollars to \$1,000+ to have a lawyer or notary draft a legal will for you. A paralegal can also help you with a simple will, and the fee may be less than a

lawyer would charge. As mentioned, you can also choose to buy an inexpensive will writing kit (about \$20), or simply write your will on a piece of paper, for free.

But remember: making sure that your will does what you want it to do is complex, and varies by province. Legal advice is highly recommended.

Where should I keep my will?

Once you have drawn up your will, it is important that you keep it in a safe place and let your executor and close family know where it can be found. Apart from a safe place at home, the will can be kept with your lawyer, your bank or with a friend or relative.

Make sure your will can be easily located, and that your executor knows where to find it. It can only be effective if people know what is in it!



When should I make a will?

Once you are over 18 years of age, you can make a will. It is particularly important to do this when any significant event happens in your life such as marriage, remarriage, divorce, the birth of children, or when you buy a house. If you become financially responsible for someone else, it's time to make a will.

Can I change my will?

To change your will, you can either draw up a new will or add clauses to alter your existing will. These additional clauses are known as codicils. Drawing up a new will can actually prove less expensive than adding codicils and makes for a clearer statement of your wishes. If you draw up a new will, remember to destroy the old one.

How do I destroy or cancel a will?

There are four ways to cancel or "revoke" your will.

- **Make a new will. A properly executed new will revokes a previous will.**
- **Prepare a written document saying that you want to revoke the will. Sign and witness it in the same way as a will.**

- **Get married (or cohabit in a spousal relationship for two years). Your will is revoked if you marry, unless you knew you were going to get married when you drew up the will. Note that divorcing does not revoke a will.**
- **Intentionally destroy the will or ask someone else to destroy it in your presence. If your will is accidentally destroyed, the will is not revoked because there was no intention to revoke (note: risk of accidental destruction makes a good case for keeping a copy of your will in a safe place).**

How often should I review my will?

Wills do not go out of date. But circumstances change (e.g., birth of additional children, divorce and remarriage, etc.), and if you fail to take account of these and you live for many years after writing your will, problems can occur. You should review your will every five years or whenever there is any change in your financial, marital or emotional circumstances. Feelings and friendships can change and your will should reflect these changes.



Who can benefit from my will?

Anyone can be a beneficiary of your will. You might want to leave money to a charity, for example, or to a non-charitable organization that you support.

When making gifts, you should bear in mind that you may well live for many years after drawing up your will, so leaving fixed amounts, or the contents of a particular account, to a beneficiary can mean that your intentions don't work out in practice. When you die, that particular account may no longer exist or have changed its name, and the value of the fixed sum you specified may have dropped considerably. Stating a percentage can get around this problem.

Tax tip:

If you are leaving part of your estate to a registered charity, it is possible to arrange it so that the donation is applied to the tax return filed for the year of death or immediately prior year. This can offer tax advantages, but you should seek professional advice to make sure Canada Revenue Agency requirements are met.

INTESTATE

What happens if I don't make a will?

If you don't make a will or your will is deemed invalid, you are said to have died intestate. Intestacy is a very complicated area, and different rules apply in different provinces. By failing to draw up a will, you are allowing the province to decide how your estate will be distributed. Your failure to plan could have significant negative consequences. It will mean that the province will:


- Appoint someone to be the administrator of your estate
- Charge administrative fees
- Identify family members to whom your assets will devolve and what their respective portions will be
- Establish the age at which any minor beneficiaries might inherit

It is possible that your estate could end up passing to people other than those you would have wished to benefit. It will likely take longer for the estate to be settled, which can cause hardship for your family. It is often women, who tend to live longer than men, who are left to deal with an intestate estate. This can leave them financially disadvantaged, which is why it is vital that you make a will and avoid intestacy.

CONCLUSION

Making a will is not just for the rich or the elderly. If you have anything to leave behind when you die, you should make a will now. If you think you don't own anything, think again: what about your house, car, furniture, jewellery, insurance policies, etc.? And money aside, if you have children, making a will ensures that if you die they will be cared for in the way that you want. Dying without a will means delay and extra expense for those you leave behind, and could mean that those you intended to benefit lose out.

Getting a lawyer to draw up your will need not be expensive, and the benefits far outweigh the cost. Making a will is an essential element of good financial planning, and a financial advisor is ideally placed to help you plan a will that matches your objectives. Taking this straightforward, sensible step will bring peace of mind, not only to you but also to your family and friends. And the sooner you take it, the better for all.



If you've been putting off writing a will because you are uncomfortable, or don't know where to start: it's time to make the first move! Making a will isn't difficult, and it will help make sure that your wishes are carried out.

TECHNICAL TERMS EXPLAINED

Asset: Any item with a monetary value, for example shares (equities), home and contents, personal effects, life insurance policies, etc., held in the name of an individual.

Estate: An estate is defined as the net value of assets and joint assets minus outstanding debts, held in the name of an individual at the time of their death.

Executor: A person appointed by you when you make your will, who has legal responsibility for executing, or giving effect to, your wishes after you die.

Gift: The legitimate transfer of any asset from one individual to another.

Holograph will: This is the simplest form of will. It costs nothing and may consist of only a few lines. It does not require the signature of a witness. However, it must be handwritten and signed by the person making the will. It cannot be drawn up using a typewriter, computer, or form. Not all provinces recognize Holograph wills.

Intestate/Intestacy: If you die without making a will you are said to be intestate.

Joint asset: Any asset held in the names of two or more people.

Life insurance policies: Note that under provincial insurance laws, “life insurance policies,” include such things as segregated funds and certain annuity contracts.

Notarial will: These are available in Quebec only, and are wills made before a notary and a witness. Notarial wills allow quick liquidation of the estate. They come into effect immediately upon the death of the testator. All other types of wills—handwritten (holograph) or signed by witnesses—must be probated.

Probate: Probate is a legal process that establishes the validity of a will and essentially allows the transfer of assets to beneficiaries. Provincial governments earn revenue from probate fees, which are usually a percentage of your estate’s value (except in Quebec, where notarial wills do not need to be probated by the court, and for non-notarial wills, the probate fees are minimal).

Witness: Depending on your province of residence and type of will, you may need someone (or two people) to sign or “witness” your will to make it valid. In Quebec, witnesses must initial each page of the will. A witness should be someone who isn’t receiving anything under the will. If the witness or the witness’ spouse is a beneficiary, they must prove to the court that they did not pressure the person to make the will, or their gift will be void.

USEFUL INFORMATION

How to find a lawyer

If you need help finding a lawyer, a Lawyer Referral Service will provide you with the name of a lawyer in your area. Most provincial law societies provide a Lawyer Referral Service. Contact information is below.

- **The Law Society of British Columbia**
www.lawsociety.bc.ca
 845 Cambie Street
 Vancouver, BC V6B 4Z9
 Tel: 604-669-2533
 Toll-free in BC: 1-800-903-5300
 Fax: 604-669-5232
 TTY: 604-443-5700
- **The Law Society of Alberta**
www.lawsocietyalberta.com
Lawyer Referral Service:
 Tel: 1-800-661-1095 (toll free number valid only in Alberta, Saskatchewan, Lower Mainland British Columbia, Yukon, NWT, and Nunavut)
 Tel: 403-228-1722 in Calgary
- **The Law Society of Saskatchewan**
www.lawsociety.sk.ca
Lawyer Referral Service:
 Tel: 306-359-1767 or
 1-800-667-9886
- **The Law Society of Manitoba**
www.lawsociety.mb.ca
 To reach the Law Phone-In and Lawyer Referral Service, call 943-2305 or toll free 1-800-262-8800 (from outside Winnipeg). For a referral to a lawyer only, you can also call 943-3602.
 For e-mail referrals:
info@communitylegal.mb.ca
- **The Law Society of Upper Canada**
www.lsuc.on.ca
Lawyer Referral Service:
 Tel: 1-900-565-4LRS (4577)
- **Le Barreau du Québec**
www.barreau.qc.ca
 Maison du Barreau
 445, boulevard Saint-Laurent
 Montréal Qc
 H2Y 3T8
 Par téléphone: 514 954-3400
 ou sans frais 1 800 361-8495
- **The Law Society of New Brunswick**
www.lawsociety-barreau.nb.ca
 Law Society of New Brunswick
 1133 Regent Street, Suite 206
 Fredericton, New Brunswick
 E3B 3Z2
 Tel: 506-458-8540
 Fax: 506-451-1421
 e-mail:
general@lawsociety-barreau.nb.ca
- **Legal Information Society of Nova Scotia**
www.legalinfo.org
Legal Information Line & Lawyer Referral Service:
 Tel: 455-3135 (HRM)
 Toll Free: 1-800-665-9779
 Dial-a-Law: 902-420-1888

- **The Law Society of Prince Edward Island**

www.lspei.pe.ca

The Law Society cannot refer individuals to particular lawyers, but there is a lawyer referral program financed by the Law Society that is operated by the Community Legal Information Association.

Tel: 1-800-240-9798 (in PEI)
or 902-892-0853

e-mail: cliapei@isn.net

- **The Law Society of Newfoundland & Labrador**

www.lawsociety.nf.ca

Public Legal Information Association of Newfoundland
(has a referral service)

Tel: 709-722 2643

Fax: 709-722 0054

e-mail: info@publiclegalinfo.com

- **Law Society of the Northwest Territories**

www.lawsociety.nt.ca

Lawyer Referral Service:

Tel: 867-873-3828

Fax: 867-873-6344

e-mail: LSNT@TheEdge.ca

- **Law Society of Yukon/Yukon Law Foundation**

www.lawsocietyyukon.com

Lawyer Referral Service

202 - 302 Steele Street

Whitehorse, Yukon

Upstairs, T.C. Richards Building

Tel: (867) 668-4231

(call collect from outside
Whitehorse)

Province-specific sources of information

Legal requirements of a will vary by province. Following are a few sites that offer province-specific information on writing a will.

- **Province of British Columbia: About Wills and Estates**
www.ag.gov.bc.ca
- **Ontario: Succession Laws Reform Act**
www.e-laws.gov.on.ca
- **Justice Québec: Wills**
www.justice.gouv.qc.ca
- **Legal Information Society of Nova Scotia: Making a will**
www.legalinfo.org
- **Public Legal Information Association of Newfoundland: Estate Planning**
www.publiclegalinfo.com
- **Public Legal Education and Information Service of New Brunswick: Wills and Estate Planning**
www.legal-info-legale.nb.ca

Other helpful links

- **Veterans Affairs Canada: Preparing a will**
www.vac-acc.gc.ca
- **CBC Report: Living Wills FAQs**
www.cbc.ca

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No guarantees are given regarding the effectiveness of any decisions made on the basis of this document's content.

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The material is not a substitute for obtaining professional advice from a qualified person or firm. Consult the appropriate professional advisor for more complete and up-to-date information.